



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC. CASE NO. 131 OF 2016**

**ANTHONY MWANZIA MULEI.....PLAINTIFF**

**MULEI WAMBUA.....INTENDED 2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**JEREMIAH MUTIKA NDULULU.....DEFENDANT**

**CHARLES NDULULU MUTIKA.....INTENDED 2<sup>ND</sup> DEFENDANT**

**RULING**

1. In the Application dated 24<sup>th</sup> March, 2017 and filed under the provisions of Order 1 Rule 10(2) and 14 of the Civil Procedure Rules, the Defendant is seeking for the following orders:

***a. That Mulei Wambua and Charles Ndululu Mutika be joined as 2<sup>nd</sup> Plaintiff and 2<sup>nd</sup> Defendant respectively.***

***b. That the cost of this Application be provided for.***

2. The Defendant has deponed that the intended 2<sup>nd</sup> Defendant is his father while the intended 2<sup>nd</sup> Plaintiff is the Plaintiff's father; that the intended 2<sup>nd</sup> Defendant purchased the suit land from the intended 2<sup>nd</sup> Plaintiff way back in 1996 and that when the Plaintiff's father failed to transfer the suit land to his father, his father sued him in Kitui CMCC No. 379/2010 which was determined in his favour.

3. It is the Defendant's claim that the Plaintiff's father then filed an appeal in Machakos HCCA No. 158B of 2013; that the said appeal is still pending in this court and that while the appeal was still pending, the Plaintiff's father transferred the suit land to the Plaintiff to defeat justice.

4. The Defendant/Applicant finally deponed that the intended Plaintiff and Defendant are necessary parties.

5. In response, the Plaintiff/Respondent deponed that the suit land originally belonged to his father (*the intended 2<sup>nd</sup> Plaintiff*) while the Defendant's father owned parcel of land known as Nzambani/Kyanika/2260 and that the suit land was legally transferred to him by his father.

6. According to the Plaintiff, he is seeking for orders of eviction of the Defendant from his land and that joinder of the intended Defendant will be prejudicial because he has no cause of action against him.

7. In his submissions, the Defendant's/Applicant's advocate submitted that having been the initial parties to have dealings in the suit land, the intended 2<sup>nd</sup> Plaintiff and 2<sup>nd</sup> Defendant are necessary parties and that the 2<sup>nd</sup> intended Defendant lives on the suit land.

8. The Plaintiff's advocate submitted that the Application has not been filed by the parties who are seeking to be enjoined in the suit; that the intended Defendant is not on the suit land and that the only remedy for the intended parties is to have these proceedings stayed pending the hearing of the appeal.

9. In his Complaint, the Plaintiff has averred that the Defendant has put up structures on suit land known as Nzambani/Kyanika/1452 (*the suit land*) which was initially registered in his father's name.

10. In the said Complaint, the Plaintiff acknowledged the fact that the Defendant's father (*the intended 2<sup>nd</sup> Defendant*) filed a suit against his

father (*the intended 2<sup>nd</sup> Plaintiff*) in Kitui CMCC No. 379 of 2010 which was concluded in favour of his father; that his father transferred the land to him on 6<sup>th</sup> August, 2013 and that the Defendant has refused to demolish his house from the suit land despite the Judgment of the court.

11. In a nutshell, the Plaintiff has admitted that indeed his father (*the intended 2<sup>nd</sup> Plaintiff*) sued the Defendant's father (*the intended 2<sup>nd</sup> Defendant*) in Kitui PMCC No. 379 of 2010 in respect to the suit land. The appeal is pending in this court.

12. The Plaintiff has also not denied that the pending appeal is meant to determine the issue of ownership of the suit land and that the suit land was transferred to him during the pendency of the appeal.

13. Considering that the intended Plaintiff is the one who transferred the suit land to the Plaintiff and the intended 2<sup>nd</sup> Defendant purportedly bought the suit land from him, the two parties are necessary parties in this matter.

14. I say so because the Plaintiff and the Defendant's claim over the suit land is premised on who between the intended Plaintiff and the intended Defendant actually owns the land.

15. As was correctly submitted by the Plaintiff's counsel, the circumstances which warrant the grant for leave to enjoin a party to proceedings is: where the presence of the party will result in the complete settlement of all the questions involved in the proceedings; where the joinder will provide protection for the rights of a party who would otherwise be adversely affected; and where the joinder will prevent a likely course of proliferated litigation (*See Meme vs. Republic (2004) KLR 637*).

16. The above circumstances apply in this case because the dispute in respect of the suit land revolves around the intended parties.

17. Although the Plaintiff's advocate has submitted that the best course of action is to have this matter stayed pending the hearing and disposal of the appeal, one wonders why he filed this suit while knowing that there is an appeal which is pending. He cannot therefore argue that the current Application should not be allowed on that ground.

18. For those reasons, I allow the Application dated 24<sup>th</sup> March, 2017 with no order as to costs.

19. The Plaintiff is hereby directed to file and serve an amended Plaint enjoining the two parties within twenty one (21) days from the date of this Ruling.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23<sup>RD</sup> DAY OF FEBRUARY, 2018.**

**O.A. ANGOTE**

**JUDGE**