



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT ELDORET**

**ELC NO. 32 OF 2017**

**DAVID KIMELI LETTING ..... PLAINTIFF**

**VERSUS**

**PHILLIP SEREM**

**WILLIAM CHIRCHIR (Sued as officials of)**

**UIKARO SELF HELP GROUP ..... DEFENDANT**

**AND**

**JAMES K. TIROP**

**JAMES KANINI KARIOKI**

**DOMINIC KIPRUTO MISOI ARAP**

**TENAI (as the bonafide officials of)**

**UIKARO SELF**

**HELP GROUP ..... INTERESTED PARTIES/APPLICANTS**

**RULING**

This ruling is in respect of an application dated 21<sup>st</sup> September 2017 brought by way of notice of motion by the interested parties for orders that they be granted leave to be enjoined in this suit as interested parties. They also sought to be allowed to file pleadings in response to the claim herein. Counsel later agreed to canvass the application by way of written submissions.

**PROPOSED INTERESTED PARTIES/APPLICANTS' SUBMISSIONS**

Counsel for proposed interested parties relied on the supporting affidavit sworn by James Tirop who says that he is the current chairman of the applicant. He gave a background and stated that the proposed interested parties were registered as a self-help group in 1987 as per the certificate of registration and renewal respectively which was annexed to the supporting affidavit.

It was the applicant's averment that they then acquired a parcel of land known as I.R. 10867 (LR No. 8492/1) known commonly as Uikaro Farm with the view of having it subdivided among its members. He stated that they then commenced subdivision and a registry index map was prepared and forwarded to the Land Registrar Nairobi for registration. He further deponed that upon presentation, they discovered that there was a restriction in the register pursuant to a court order issued in this matter. He also stated that upon perusal of the court file, they discovered that another entity known as Uikaro Self Help Group had been sued by the plaintiff herein as the owners of the parcel of land known as I.R. 10687 and a consent order entered into resulting in the restriction.

It was Counsel's submission that further enquiries from the Ministry of East African Community, Labour and Social Services revealed that the new entity was registered on the 4<sup>th</sup> of November, 2016. He stated that it follows therefore that there exists two groups known as Uikaro Self Help Group one registered in 1987 and the other registered in 2016.

Counsel also submitted that whereas the Applicant's group was formed in 1987 with a view of inter alia bringing members together to acquire land and construct their houses, the defendants group was formed in 2016 with the aim of planting trees, poultry and fish farming. He

concluded that from the sequence of the events and the defendants having been registered on 4<sup>th</sup> November, 2016 could not have acquired the parcel of land in dispute given that it was registered as the property of Uikaro Self Held Group Ltd on 28<sup>th</sup> December, 1989, long before it came into existence.

It was the submission of Counsel that both the Plaintiff and the defendants contend that the applicant is claiming the parcel of land known as LR No. 8492/1 which is distinct from IR 10687, but from page 3 of annexure PS 1 of the Replying affidavit by Philip Serem it is obvious that they are one and the same parcels. The applicants also averred that they are in possession of all the original documents in respect of the suit land including the title and all transactions preceding acquisition of the said title.

Counsel submitted that the Applicants have demonstrated that they have an interest in the subject matter and that they will be adversely affected if the orders sought are not granted. He further stated that it is also clear that the Plaintiff and defendants herein entered into a consent which was adopted as an order of the court on 7<sup>th</sup> March, 2017 and since then none of them took any steps to fix this matter for hearing. He stated that it follows therefore that the only way the Applicants can safeguard their interest and that of other members is by being enjoined in this suit as rules of natural justice bar condemnation without hearing.

Counsel cited Order 1 Rule 10 of the Civil Procedure Rules 2010 that gives the Honourable court discretion at any stage of proceedings to add parties whose presence before the court may be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions in the suit.

Order 1 Rule 10 (2) of the Civil Procedure Rules, 2010 provides that;

"The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added."

Mr Kimani also relied on the case of Brek Sulum Hemed v Constituency Development Fund Board & another [2014] eKLR where Muriithi J held that;

"As necessary parties, the provisions of rule 10 Order 1 will apply to require that their involvement to be necessary for the court to effectually and completely adjudicate upon and settle all questions involved in the suit. As interested parties, the applicants need only demonstrate interest in the subject matter affecting the suit." (emphasis ours)

In response to the submission by the defendants and the plaintiff who opposed the application, counsel submitted that none of them has demonstrated what kind of prejudice they would suffer were the interested parties to be enjoined in this suit. It was further Counsel's submission that the interested parties and their members have a genuine and founded claim as they participated in the formation and registration of the group in question and members own individual parcels. He therefore urged the court allow the application as the applicants have demonstrated that they have an interest in the suit land and it's only fair and just that they are enjoined in this suit to safeguard their interest.

### **PLAINTIFF'S WRITTEN SUBMISSIONS**

Counsel for the plaintiff opposed the application by the proposed interested parties and gave a brief history of the suit. He stated that the plaintiff purchased land parcel No. I. R 10687 from various members of Uikaro Self Help Group who were the legal owners to the suit land in Uikaro farm. That the defendants however maliciously and fraudulently changed the group's name in the register of Societies to reflect it as Uikaro Self Help Group Limited which was an attempt to lock out the plaintiff from being issued with title deeds to the suit land which he rightfully purchased.

Counsel submitted that the interested parties have now come before this court through this application to be enjoined in this suit. He stated that it is his view that their application is misplaced as their claim is over land parcel No. L.R 8492/1 which is not the land in dispute in this suit. Further that the application to be enjoined is likely to cause confusion to this honourable court as the defendant and the interested party bear substantially similar names.

It was Counsel's submission that a plaintiff determines which defendant to sue and for what reliefs and as such a plaintiff ought not to be saddled with a party whom there is no commonality of interest. Counsel also stated that the applicants have no title to land parcel IR No. 10687 and cannot therefore be said to be legal owners of the suit land in question.

Mr. Omusundi Counsel for the plaintiff submitted that the issue of land parcel No. L.R 8492/1 should be brought under a fresh cause of action and separate proceedings to be filed against all the necessary parties if the issues being raised by the interested Parties are to receive real judicial adjudication. It was Counsel's position that the provisions of Order 1 Rule 10 of the Civil Procedure Rules, 2010 are clear in that allowing an interested party to participate in proceedings is the exception rather than the general rule. The duty lies with the Court to determine, depending on the circumstances of the case, whether or not a party should be enjoined in proceedings. This is a discretionary power of the court that ought to be applied judiciously. He stated that enjoining the applicant will not in any way assist in the settlement of the issues at hand and it has potential of delaying the conclusion of the claim between the plaintiff and defendant.

Finally, he submitted that the Interested Parties have not been able to satisfy the court that it had a good title to enable it be enjoined in the proceedings herein or that its participation in the proceedings herein would add value to the matter. He therefore urged the court to dismiss the application as it is an abuse of the process of the Court.

## **Defendants' Submissions**

Counsel for the defendants opposed the application and relied on the replying affidavit dated 27<sup>th</sup> October 2017. It was Counsel's submission that parcel No. LR. 8492/1 does not form part of LR. No. 10687 and no documents have been annexed to prove the same. He further submitted that the applicant has stated that their group was formed for purposes of bringing members together to acquire land and construct houses but the annexed registration certificate does not describe the purpose for which it was formed.

Counsel submitted that the applicant has not satisfied the court that they have an interest in the suit land and that they will be affected by the orders in this case. He cited the provisions of Order 1 rule 10 which gives the court powers at any stage of a suit to enjoin a party if such joinder will be necessary to enable the court to effectually and completely adjudicate upon and settle all questions in the suit. He therefore urged the court to dismiss the application.

## **Analysis and determination**

The issue for determination is whether the applicant has met the threshold for being enjoined as an interested party in this suit as laid down under Order 1 Rule 10(2) of the Civil Procedure Rules 2010.

I have considered all the arguments by all Counsel for and against the application for enjoining the applicant as an interested party and the supporting documentation herein. I have also considered all the judicial authorities and other legal materials presented before me and I have come to the conclusion that the issues for determination are as follows:-

- 1) Whether the applicant may be enjoined as an interested party in this suit in accordance with order 1 rule 10 (2) of the Civil Procedure Rules?
- 2) Whether the applicant has demonstrated that it has a stake or an interest in the subject of the suit or in other relevant matter affecting the suit?
- 3) Whether the interested party will be affected by the decision in this suit and finally that enjoining the interested party will avoid multiplicity of suits and save judicial time?

Courts have often used the provisions of Order 1 Rule 10 (2) to have persons come into a case as interested parties. That provision of the law provides as follows :-

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

It should be noted that there is no procedure under the Civil Procedure Act and Rules for the joinder of 'interested parties'. The procedure for joining a necessary party is indicated by Order 1 rule 10 (2) of the Civil Procedure Rules is to be available to either party to move the court, so that a person who is not a party but seeks to join may be enjoined in the case and invoke the inherent jurisdiction of the court and the overriding objective of the civil process.

The question therefore is whether it is in the interest of justice for the applicant to be enjoined as interested party to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. On this question I find that Order 1 Rule 10 (2) gives the court discretion to order joinder of an interested party.

The next issue that the court must consider is whether the applicant has demonstrated an interest in the subject matter. The applicant has annexed a letter from the Ministry of East African Community, Labour and social Protection which confirms that there are two groups registered with the same name, having different registration numbers, registered at different dates, undertaking different activities and that the two groups come from Simat Location, Kapsaret Sub County Uasin Gishu County. What a coincidence or confusion? On this alone, I am convinced that the court should enjoin the interested party so that evidence can be adduced to shed light on the coincidence or the anomaly of registering a self-help group with the same name, different officials and activities.

A consent order that was recorded between the plaintiff and the defendants already affected the interested parties by injuncting them from any dealings with the suit land. Any decision in this matter will substantially affect the applicant in one way or another. It would be in the interest of justice that the issues are articulated, heard and determined once and for all. The defendant and the plaintiff should also be wary of the fact that there is a similar self-help group with the same registration details.

I have considered the pleadings, the supporting documentation together with the judicial authorities cited and I am satisfied that this is a case where the applicant has established that they have a stake in this suit and any order granted in this suit may affect them in one way or another. It would also save judicial time and enable the court effectually and completely adjudicate upon and settle all questions involved in this suit.

The upshot is that the application dated 21<sup>st</sup> September 2017 is hereby allowed. Applicant to file a response to the claim if any, within Fourteen (14) days from the date of this ruling, and the plaintiff and defendant may file a reply if any, within fourteen days of service of the response, after which the matter will proceed for pre-trial directions.

The costs of this application will be in the cause.

**Dated and delivered at Eldoret on this 19<sup>th</sup> day of March, 2018.**

**M.A ODENY**

**JUDGE**

Ruling read in open court in the presence of Mr. Kibii holding brief for Mr. Omusundi for Plaintiff and in the absence of Mr. Kigen for defendant and Mr. Kimani for Interested Party.

Mr. Koech: Court Assistant.