



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAROK**

**ELC CAUSE NO. 553 OF 2017**

**LESHAN OLE LETOLUO.....PLAINTIFF**

**-VERSUS-**

**HABA HABA INVESTMENT LTD.....1<sup>ST</sup> DEFENDANT**

**JAMES OCHENGO ONDUSO.....2<sup>ND</sup> DEFENDANT**

**SERAH NJOKI MUNGE.....3<sup>RD</sup> DEFENDANT**

**SANKALE OLE OTUNI.....4<sup>TH</sup> DEFENDANT**

**LAND REGISTRAR NAROK.....5<sup>TH</sup> DEFENDANT**

**RULING**

The Application before me is the Plaintiff's Notice of Motion dated 21<sup>st</sup> November, 2017 which was brought under the Provisions of Order 8 Rule 1 and 2 (a) (b) of the Civil Procedure Rules and Section 3,3A of the Civil Procedure Act. In the Application the Applicant seeks for leave to amend his plaint and that the amended plaint which is attached to the Application be deemed to be properly filed and served subject to the payment of the court fees.

The Application was based on the grounds that at the time of initiating the instant suit the proposed 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiff being the wife and mother-in-law of the 4<sup>th</sup> defendant had not provided instructions to the Plaintiff's Advocate to be included in the main suit.

The Applicant also based his application on the grounds that it is the proposed 3<sup>rd</sup> Plaintiff who sold one of the parcels of land being **CIS MARA/ILMASHARIANI/MORIJO/1189** to the 1<sup>st</sup> Plaintiff and further that the proposed 2<sup>nd</sup> Plaintiff being the spouse of the 4<sup>th</sup> Defendant approved the sale of the suit by appending her signature on the sale agreement and attended the Land Control Board with a view to obtain the relevant consent for the sub-division.

The Applicant had sworn a Supporting Affidavit in support of the Application which mainly expounded on the averment as contained in the grounds in support of the application.

The Application was opposed by the 3<sup>rd</sup> and 4<sup>th</sup> defendants' who by way of a Replying Affidavit sworn by Githui counsel for the 3<sup>rd</sup> Respondent opposed the application on the ground that the Plaintiff's application will lead to a misjoinder of actions and thus embarrass the Respondents and/or delay them a fair hearing of the suit. He further contended that the interest of the proposed Plaintiff has not been demonstrated and that the cause of action that the Applicant wishes to pursue cannot be tried and determined in the same suit and the application is frivolous and prayed that the application be dismissed.

The 4<sup>th</sup> Defendant on his part also opposed the application and he averred that he is the owner of the parcel of land known as **NAROK CIS MARA/ILMASHARIANI/MORIJO/1190** which was part of parcel **CIS MARA/ILMASHARIANI MORIJO/333**. He claims that he is a holder of the title to the suit land which is prima facie evidence that he is the absolute owner of the suit land and that land parcel **CIS MARA/ILMASHARIANI MORIJO/1190** ceases to exist.

When the Application came before court on the 6<sup>th</sup> February, 2018 the parties agreed to have the application disposed of by way of written submissions. However it is only the advocate for the 3<sup>rd</sup> Defendant who filed his submissions. The other parties did not offer any explanation and I thus order the Ruling in the Application be delivered today their lack of filing notwithstanding.

In reading of the Applicants Application it is evident that the Applicant wishes to enjoin two individuals as the proposed 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs. The Civil Procedure Act and the court have laid down the grounds upon which such an application may be granted.

An Applicant seeking orders should demonstrate that the same is necessary so that the court will be able to determine the issue between the parties more clearly if the proposed parties are admitted to the suit.

In the instant application I have looked at the grounds in support of the application, the Supporting Affidavit and the proposed amended plaint and the Applicant has not demonstrated to me the nexus between the proposed Plaintiff and the Plaintiff himself and the defendant.

From the pleadings what the Plaintiff seeks to achieve by way of joinder can best be done if the proposed Plaintiffs are called as witnesses during the trial.

The Applicant has not demonstrated that the proposed parties have interest in the subject suit.

From the foregoing therefore I hold that the Applicant has not placed before me any factual material to warrant me join the proposed Plaintiffs so that the court could completely and effectively determine and settle the issues before it.

From the foregoing therefore, I do dismiss the Application dated 21<sup>st</sup> November, 2018 with costs to the respondents.

Orders accordingly.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this **16<sup>th</sup>** day of **March, 2018**

**Mohammed Noor Kullow**

**Judge**

**16/3/18**

In the presence of:-

CA:Chuma

Kamwaro for 4<sup>th</sup> defendant

Mr. Kamwaro holding brief Githui foe 1<sup>st</sup>-3<sup>rd</sup> defendant

Ms Nchoe holding brief for Muigai for plaintiff/applicant

**Mohammed Noor Kullow**

**Judge**

**16/3/18**