



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC LAND CASE NO. 242 OF 2017

ZUMZUM INVESTMENT LIMITED.....PLAINTIFF

-VERSUS-

NDEGWA NDORO & 10 OTHERS.....DEFENDANTS

AND

CHIDZAYA NDEGWA ALIFAN & 820 OTHERS.....PROPOSED DEFENDANTS

RULING

1. For determination is the amended notice of motion brought by the proposed defendants/applicants dated 17th January 2018 and seeking for orders:

1. Spent

2. That the Honourable Court do issue orders allowing the proposed defendants listed in the letter of authority to CHARO MUMBA MASHA to join this suit as proposed defendants and be allowed to defend the suit.

3. That costs of this application be provided for.

2. The application is premised on the grounds inter alia that the applicants reside on the plot CR. MN/11/8408 within Mombasa County. That they got to know about the suit through service placed in the newspaper. They contend that they have acquired interest over the disputed property under the Land Registration Act and they stand to suffer loss and deprivation of their legal rights in the event eviction orders are issued in favour of the plaintiff.

3. The application is opposed by the plaintiffs vide their grounds of opposition filed and dated 18th January 2018. The plaintiff avers that it owns the suit land therefore chooses who to sue. That the present application will obfuscate issues at hand and lead to delay in resolving the dispute. Further that the applicants are strangers to the plaintiff and their grievance lies elsewhere. That there are no pleadings on record particularizing any claim against the applicants.

4. Order 1 rule 3 of the Civil Procedure Rules provides on who may be joined as defendants thus:

“All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise”

This rule includes instances where if suits are brought against such persons, a common question of law or fact would arise.”

5. The plaintiff is seeking in prayer (e) of the plaint for orders of vacant possession to issue against the named defendants and all other trespassers on the suit property. The applicant annexed an advertisement placed by the plaintiff referred to as **CMM – 6** serving eviction notice to all occupants of plot No MN/11/8408. This in my view is a notice directed to any persons in occupation of the suit land. The applicants state that they have homesteads on the suit land. This means that the orders sought by the plaintiff will directly affect them. The applicants are also claiming the land by virtue of limitation of actions. The plaintiff in prayer (a) and (b) of the plaint are seeking declaratory orders that they are entitled to exclusive and unimpeded rights of possession and occupation of the suit land. Were the proposed defendants to bring an independent suit based on their draft defence and counter claim annexed, it is highly likely that same questions of law and fact

would arise i.e. who is entitled to exclusive right of occupation & ownership of the suit land. For these reasons, I find the applicants are proper parties to be joined in this suit.

6. Although the plaintiff deposed that they have not particularized any claim against the proposed defendants, it is my finding that this is not true as their claim is against the named defendants as well as all persons described as trespassers on the suit land. It would defeat the rules of natural justice to condemn the unnamed trespassers unheard particularly where they have come forth to be identified as living on the suit land. Accordingly I find the amended notice of motion is merited. I hereby grant its prayer (2) allowing the applicants to be joined as defendants in the suit. Costs of the application ordered in the cause.

Dated & signed at Mombasa this 13th April 2018

A. OMOLLO

JUDGE

Delivered at Mombasa this 16th April 2018

L. C. KOMINGOI

JUDGE