



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. CIVIL SUIT NO. 339 OF 2010

RAMOKIA HOUSING CO-OPERATIVE

SOCIETY LIMITED.....PLAINTIFF

-VERSUS-

GEORGE KURIA MWAURA.....1ST DEFENDANT

KIMANI KAHUHU.....2ND DEFENDANT

ARTHER K. WAWERU, ANTONY K. NJUGUNA AND

SAMWEL M. MUNGAI AS TRUSTEES OF

MT. HEBRON SELF HELP GROUP.....3RD DEFENDANT

RULING

The 1st and 2nd Defendants seek leave to file their defence and introduce a counterclaim and to have the draft Defence and Counterclaim attached to the application dated 18/4/2018 deemed as properly filed after payment of the requisite court charges.

The application is based on the ground that the suit has not been heard hence the Plaintiff will suffer not prejudice while the 1st and 2nd Defendants stand to suffer great prejudice if the suit is allowed to proceed to full trial in its present state. The Defendants deny being the administrators of the estate of the late Kahuhu Kuogothoka. The Applicants fault the Plaintiff for joining them in original suit while leaving out the legal administrators. The Applicants wish to introduce a counterclaim to the suit. The application is supported by the affidavit of the 1st Defendant.

The court notes that the Applicants have interchanged the Parties in the application. For ease of reference the court will refer to the parties as they appear in the original suit.

The Plaintiff opposes the application and relies on the Replying Affidavit of John Osoro filed on 11/5/2018. The Plaintiff maintains that the 1st and 2nd Defendants are keen on delaying the hearing of the suit as they filed this application after the case was fixed for hearing. The matter is fixed for hearing on 3/7/2018. The Plaintiff contends that most of the issues raised by the 1st and 2nd Defendants in the application were dealt with in the court's decision of 14/12/2017. The court has looked at that ruling and notes that the 1st and 2nd Defendants were appointed attorneys in respect of the Suit Land through a power of attorney. The 2nd Defendant is the son of the late Kahuhu Kuogothoka. He is the right person to supply the Plaintiff with details of who the administrators of the late Kahuhu Kuogothoka are or the status of the administration of that estate.

The court grants the 1st and 2nd Defendants leave to file and serve their defence and counterclaim within 7 days of today. The 1st and 2nd Defendants will bear the costs of the application.

Dated and delivered at Nairobi this 31st day of May 2018.

K. BOR

JUDGE

In the presence of: -

Mr. Nyamweya holding brief for Mr. Ogeto for the Plaintiff

Mr. Lang'at for the Defendant

Mr. V. Owuor- Court Assistant