



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC CASE NO. 753 OF 2017**

**MOHAMMED SHAHID MOUGHAL.....PLAINTIFF**

**VERSUS**

**MICHAEL MOOKE KIKAYE.....1<sup>ST</sup> DEFENDANT**

**THE LAND REGISTRAR KAJIADO.....2<sup>ND</sup> DEFENDANT**

**THE NATIONAL LAND COMMISSION.....3<sup>RD</sup> DEFENDANT**

**THE ATTORNEY GENERAL.....4<sup>TH</sup> DEFENDANT**

**ESTATE OF LEKERRA OLE KIKAE.....5<sup>TH</sup> DEFENDANT**

**ESTATE OF LEKERA KIKAE REIPA.....6<sup>TH</sup> DEFENDANT**

**RULING**

What is before Court for determination is the 1<sup>st</sup> Defendant's Notice of Preliminary Objection dated the 12<sup>th</sup> February, 2018 on the hearing of the Notice of Motion application dated the 2<sup>nd</sup> February, 2018 on the following grounds:

1. The Application dated the 2<sup>nd</sup> February, 2018 is defective on account of misjoinder of parties.
2. The Plaintiff/Applicant has taken liberty to include parties who do not have locus standi in this suit.
3. The Honourable Court cannot determine the application as filed without determining the issue of locus standi.
4. The instant application is misconceived, lacks merit and it an abuse of the court process.

On the 13<sup>th</sup> February, 2018, the 1<sup>st</sup> Defendant and the Plaintiff submitted on the Preliminary Objection. The 1<sup>st</sup> Defendant's Counsel stated that the application filed by the Plaintiff has included parties who are not in the suit. He stated that the Plaintiff has taken liberty to include the 2<sup>nd</sup> - 6<sup>th</sup> Defendants without liberty of court. He averred that the Plaintiff had earlier made an application dated the 17<sup>th</sup> February, 2015 seeking to amend the Plaint, where he had struck out the said parties he has now included in the instant application, without leave of court. He confirmed that the application to amend the Plaint was allowed and parties struck out. He insisted that the Court could not decide on the application as it is without determining the issue of locus. He sought for the court to dismiss the application as filed.

The Plaintiff who was acting in person stated that he had done a further amendment to the application, and in the amended Plaint they stand as cancelled as before. He averred that he included the 2<sup>nd</sup> – 6<sup>th</sup> Defendants in his amendment, and that is the time he made his application dated the 2<sup>nd</sup> February, 2018. He insisted the parties are not part of his amendments.

The only issue for determination is whether the Plaintiff has included parties in the application who are parties to the suit. The 1<sup>st</sup> Defendant contends that the 2<sup>nd</sup> – 6<sup>th</sup> Defendants are not parties to the suit and it is pertinent for the court to determine the issue of locus before the application dated the 2<sup>nd</sup> February, 2018 is determined.

Order 1 rule 10 of the Civil Procedure Rules provides that:

**‘(1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.**

**(2) 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.’**

I note the Plaintiff had the intention of amending his Plaintiff and annexed the draft amended Plaintiff to the application. I however note that the Court is yet to grant leave to allow the amendment. In so far as the Plaintiff has indicated the names of the 2<sup>nd</sup> - 6<sup>th</sup> Defendants in the application, based on the provisions of the Civil Procedure Rules above, I do not deem this to be fatal. I note that the Court has a discretion to add a party as Plaintiff or Defendant whose presence before the court may be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit.

In the circumstances, I will decline to allow the PO but grant the Plaintiff leave of 14 days to file and serve the amended Plaintiff which includes the 2<sup>nd</sup> – 6<sup>th</sup> Defendants, after which the application dated the 2<sup>nd</sup> February, 2018 will be set done for hearing on its merits.

Costs will be in the costs

Dated signed and delivered in open court at Ngong this 21st day of June, 2018

**CHRISTINE OCHIENG**

**JUDGE**