



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC CASE NO.816 OF 2012

AS CONSOLIDATED WITH CIVIL SUIT NO.47 OF 2010

RAJAB AHMED KARUME.....PLAINTIFF

=VERSUS=

THE CHIEF LAND REGISTRAR.....1ST DEFENDANT

ATTORNEY GENERAL.....2ND DEFENDANT

INSUARANCE TRAINING & EDUCATION TRUST.....3RD DEFENDANT

CONSOLIDATED WITH ELC CASE NO.47 OF 2010

THUMBI KARIUKI.....1ST PLAINTIFF

JANE WANJIRU NDUMIA.....2ND PLAINTIFF

JOHN NDUNGU GATHONDU.....3RD PLAINTIFF

=VERSUS=

THE REGISTERED TRUSTEES, INSURANCE

TRAINING AND EDUCATION TRUST.....DEFENDANT

=AND=

CHRISTIAN PROJECT GROUP.....INTENDED INTERESTED PARTY

RULING

1. This is a ruling in respect of notice of motion dated 11th July 2018. The application seeks leave to amend notice of motion dated 15th May 2018. The two applications were filed by Christian Project Group which seeks to be enjoined in these proceedings as an interested party.

2. The proposed interested party had filed notice of motion dated 15th May 2018 in its own name in which it sought to be enjoined in these proceedings as an interested party. The application was opposed by the respondents on among other grounds that it had no capacity to sue or be sued in its own name. This is what prompted the applicant to file the notice of motion dated 11th July 2018 seeking leave to amend the motion to bring in the names of the officials on board.

3. The applicant contends that when the notice of motion dated 15th may 2018 was filed, the names of the officials were inadvertently left out. It now seeks leave to amend the motion to bring it in the name of its officials.

4. There are two suits which were consolidated. There is ELC No.816 of 2012 and ELC 47 of 2010. The plaintiff in ELC 816 of 2012 has opposed the applicant's application based on grounds of opposition dated 17th July 2018 and filed in court on 23rd July 2018. The plaintiff in

ELC 816 of 2012 contends that the applicant's application is tailored to defeat the points raised in opposition to the applicant's notice of motion dated 15th May 2018; that the interests of the applicant have been ventilated in ELC 47 of 2010 and that this application is an abuse of the process of the court which is only meant to delay the finalization of this case.

5. The plaintiffs in ELC 47 of 2010 have opposed the applicant's application based on grounds of opposition dated 14th August 2018 and filed in court on the same date. The plaintiffs in ELC 47 of 2010 contend that the applicants application is an abuse of the process of the court; that the applicants are members of Christian Project Group whose interests have been taken care of in ELC 47 of 2010 and that the application is only meant to delay the finalization of this case.

6. The defendants in both ELC 47 of 2010 and ELC 816 of 2012 seem not to have filed any response to the application dated 14th July 2018 because I cannot see any responses from their side in this file. However, this notwithstanding , I will go ahead to consider the application based on the grounds of opposition on record as well as the oral submissions made in court.

7. I have carefully considered the applicant's application as well as the opposition thereto by the plaintiffs in ELC 47 of 2010 and ELC 816 of 2012. The only issue for determination is whether the amendment ought to be allowed. The applicant in this application had made a similar application for joinder on 27th may 2014. This application was however abandoned after the court observed that it had been brought too late in the day after the case had been listed for hearing. The applicant was then being represented by the firm of AGN Kamau Advocates were was appearing for the plaintiffs in ELC 47 of 2010. The plaintiffs in ELC 47 of 2010 were then officials of the applicant.

8. On 11th April 2018, the firm of C M Ongoto & Co. Advocates filed a notice of change of advocates taking over from the firm of AGN Kamau Advocates who were acting for the applicants. Instead, of pursuing the application which had been filed on 27th May 2014,the applicant chose to file a fresh application while the earlier one was still in existence.

9. The application for amendment of motion for joinder is being filed after hearing in ELC 816 of 2012 has been completed and evidence in ELC 47 of 2010has been taken partly . The officials of the proposed interested party are the plaintiffs in ELC 47 of 2010. One of them has however died and has been substituted. Though there are new officials, the interests of the group are still being taken care of by the parties who are plaintiffs in ELC 47 of 2010. Even though the law is clear that amendments should be granted freely at any stage of proceedings, these amendments should not prejudice the other parties or take away their defence. In the instant case, the amendment is being sought after objections were raised regarding the competence of the application for joinder. If the court were to allow the amendment, it will take away grounds of attack which have already been raised in opposition to the motion for joinder. The amendment will also prejudice the other parties in that hearing has gone so far. On the other hand there will be no prejudice suffered by the applicant as its interests are catered for by the presence of plaintiffs in ELC 47 of 2010 who are members of Christian Project Group. I therefore find no merit in the application which is hereby dismissed with costs to the plaintiffs and defendants in ELC 816 of 2012 as well as ELC 47 of 2010.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 25th day of September,2018.

E.O.OBAGA

JUDGE

In the presence of:

M/s Gachomba for Mr Muchoki for Plaintiff in ELC 816 of 2012

Mr Kamau for plaintiffs in ELC 47 of 2010

Mr Chelagat for Mr Ochieng Oduor for 3rd defendant in ELC 816 of 2012.

Court Assistant: Hilda

E.O.OBAGA

JUDGE