



REPUBLIC OF KENYA

IN THE ENVIRONMENTAL AND LAND COURT

AT KISUMU

ELC. NO. 73 OF 2016

MOHAMED FEISAL MOHAMUD.....1ST PLAINTIFF

IBRAHIM MOHAMED OSMAN.....2ND PLAINTIFF

YASIN MOHAMED MAHAMUD.....3RD PLAINTIFF

-VERSUS-

RICHARD GUYA MEMBO.....1ST DEFENDANT

DISTRICT LAND REGISTRAR KISUMU...2ND DEFENDANT

RAMOGI CHEMISTS LIMITED.....3RD DEFENDANT

RULING

1. That following the directions/orders of the afternoon of 12th November 2018, the following oral applications were made;

- a) **Mr. Onsongo's application to be allowed to amend the 1st Plaintiff pleadings to join the four Plaintiffs in ELC 76 of 2016, who have since withdrawn their claims as Defendants in ELC 73 of 2016.**
- b) **Mr. Ouma's application for the hearing to be adjourned to enable him prepare the 2nd and 3rd Plaintiffs who claim has been reinstated through granting the Notice of Motion dated 22.10.2018 on the 12.11.2018.**
- c) **Mr. Ragot for 1st and 3rd Defendants oral application to have the status quo order (a) of 13th April 2016 reviewed to allow the rent collected from the suit properties be deposited in an interest earning account in the joint names of parties counsel.**
- d) **M/S Aliongo for 2nd Defendant's oral application to be granted last chance to file and serve witness statements and list of documents if application to amend the plaint is allowed.**

2. Mr. Onsongo's application was only opposed by Mr. P.D. Onyango and Ragot for the 1st and 3rd Defendants who took it as another attempt to delay the suit's hearing and finalization. That the two learned counsel also opposed Mr. Ouma's application for adjournment to prepare the 2nd and 3rd Plaintiffs on similar grounds. Mr. Ragot's application to review the status quo order on rent collected from the suit property was also opposed by Mr. Onsongo and Ouma, learned counsel for the Plaintiffs. Mr. Ragot also opposed M/s Aliongo's application for leave to file and serve witness statements and list of documents.

3. The court has considered the learned counsels submissions on all the matters raised and after perusing the record find and order as follows;

- a) That as the claim by the four Plaintiffs in ELC 76 of 2016 has wholly been withdrawn through the orders of 5th December 2016 and 12th November 2016, the consolidation order of 20th April 2016, made in ELC 76 of 2016 is hereby reviewed and set aside. That accordingly the record for ELC 76 of 2016 is to be separated from ELC 73 of 2016. That ELC 76 of 2016 be and is hereby marked closed.
- b) That the order to maintain the status quo of 13th April 2016 was to maintain ***"The status quo obtaining today under lower court***

order of 16th March 2016 in Kisumu CMCC NO. 110 of 2016". That the relevant order is at No. 2 which is in the following words; *"That pending the hearing and final determination of this application, there be an order of injunction restraining the Respondentsor any such persons acting on their behalf howsoever from trespassing into, meddling with or in any manner howsoever, interfere with the smooth and peaceful occupation by the applicant, and the operation of the businesses by his tenants and management by the applicant of the affairs of the property herein designated as Kisumu Municipality/Block 7/275 and 276."* That the issue of reviewing the consent order of 13th April 2016 was subject matter of the notice of motion dated 22nd June 2016 which was dismissed vide the ruling of the 24th May 2017. The court do not find any reasonable basis of revisiting the matter at this stage but may be considered in the future if the Plaintiffs are found to be unduly delaying the hearing and finalization of this suit.

c) That though the Plaintiffs in this suit, [ELC 73 of 2016], have not disclosed why they did not include the Plaintiffs in ELC 76 of 2016 as parties when filing the suit, their application to be allowed to amend their pleadings to include them is not without merit. That the application, if allowed, will however mean reopening of the pleadings and further delay. That nevertheless, it is fair and just to allow the amendment at this stage to enable all parties concerned in the issues herein participate in the proceedings. That accordingly, leave is hereby granted for the Plaintiffs to file and serve the amended plaint enjoining the persons who were Plaintiffs in ELC 76 of 2016 as Defendants in this suit in 14 (fourteen) days. That the Plaintiffs should also file and serve any additional statements and list of documents within the same period.

d) That flowing from (c) above, the existing Defendants will be required to file and serve amended statements of defence, incorporating the parties to be added in the amended plaint, upon service and will be at liberty to file and serve any or additional statements and list of documents with the amended statement of defence.

e) That in view of the foregoing, Mr. Ouma's application for adjournment to enable him prepare the 2nd and 3rd Plaintiffs, whose suit was reinstated on the 12th November 2018, is automatically granted. That accordingly, the hearing of 20th November 2018 is taken out.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 14TH DAY OF NOVEMBER 2018

In the presence of:

Plaintiff s Absent

Defendants Absent

Counsel Mr. Ouma for 2nd & 3rd Plaintiffs and holding brief for Onsongo for 1st Plaintiff

M/s Aliongo for 2nd Defendant, Mr. Ragot and P.D. Onyango for 1st and 3rd Defendants

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE