



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 251 OF 2012

SKOV ESTATE LIMITED.....1ST PLAINTIFF

MUIGAI MACHARI.....2ND PLAINTIFF

SIMON NYARARI.....3RD PLAINTIFF

BEATRICE GICHUHI.....4TH PLAINTIFF

MWANGI MWANIKI.....5TH PLAINTIFF

ERASTUS GITHUKU.....6TH PLAINTIFF

VERSUS

AGRICULTURAL DEVELOPMENT CORPORATION.....1ST DEFENDANT

LANDS LIMITED.....2ND DEFENDANT

RULING

(Application by the State through the Attorney General to be enjoined as additional defendant to the suit; case of the plaintiff being that it purchased land from the two existing defendants and seeks specific performance and alternatively an order for the land through adverse possession; the two existing defendants being the owners of the land in issue and having capacity to sue and be sued and hold property; no purpose therefore in enjoining the Attorney General; argument that the State is farming on this land; this alone not reason enough to have them enjoined as defendants since the plaintiff holds no claim against them; application dismissed)

1. The application before me is that dated 8 August 2016 filed by The Honourable Attorney General. It is an application brought under Sections 1A, 1B and 3A of the Civil Procedure Act, and Order 1 Rule 10 , of the Civil Procedure Rules, 2010. There are various orders sought in the application, but I did direct that the application first be argued with regard to prayer 7, which is a prayer that The Honourable Attorney General be enjoined as a party to this suit on behalf of the Ministry of Agriculture, Livestock and Fisheries, State Department of Agriculture, through the Molo Potato Project, and be allowed to file their defence. I gave this direction because I was of the opinion that it was necessary for the circumstances of this case, that before I give any further orders in favour of the applicant, the applicant needs first to demonstrate that it is a necessary party to this suit. Just to mention, the other prayers basically seek to

have orders of injunction issued against the plaintiff over the property in dispute.

2. To appreciate this application, I think it is wise that I set down the nature of the suit before me and why The Attorney General has thought it prudent to be enjoined as a party to this case.

3. This case was commenced by way of plaint filed on 18 March 2010. The plaintiff is Skov Estates Limited and it has named two defendants, Agricultural Development Corporation (ADC) and its subsidiary, Lands Limited. It is the plaintiff's case that it had previously leased from the defendants the land parcel L.R No. 9467. On 27 November 1982, it claims to have entered into a sale agreement of the said land, which measures 1,300 acres, at a consideration of Kshs. 1,596,000/=. It states that it paid a deposit of Kshs. 319,200 being 20% of the purchase price and that the balance was to be paid over a period of 15 years by 30 half yearly installments. It is pleaded that on 5 November 1994, the 2nd defendant threatened that they would cancel the sale agreement unless the plaintiff paid the balance within 30 days. The plaintiff avers that on 11 July 1995, it did pay the balance but the defendants have refused to transfer the suit land to them. In this case, the plaintiff seeks orders of specific performance directed at the defendants.

4. The defendants filed defence vide which they agreed that they offered the suit land for sale but that the terms of the offer were never accepted by the plaintiff, and as a result, the sale agreement was rescinded and that the money received was applied to offset the rent accrued. It is their view that no sale agreement exists and any transaction between the parties has to commence afresh.

5. The original plaint was later amended to add an alternative prayer for the land by way of adverse possession. The defendants similarly amended their defences inter alia to refute the claim for adverse possession.

6. I need to mention that there was an application filed on 1 October 2014 by various persons seeking to be enjoined to these proceedings as interested parties. They stated that they have purchased portions of the suit land from the plaintiff. I did hear the application but dismissed it in my ruling of 19 February 2015.

7. In this application it is averred that there are about 3,600 people who claim to have purchased the suit land from the plaintiff and they currently illegally occupy approximately 103.96 acres of the suit land. It is claimed that these persons are interfering with the use of the rest of the land by the State Department of Agriculture who have a potato project, namely the Molo Potato Project, on this land.

8. In the supporting affidavit, sworn by Paul Njuguna Mwangi, the Officer in Charge of the Molo Potato Project, it is deposed inter alia that the Ministry of Agriculture, Livestock and Fisheries, State Department of Agriculture, own the suit land via Lands Limited. He has stated that the plaintiffs entered the suit land in the year 1968, through a lease which expired in the year 2003, and upon being asked to vacate, the plaintiff moved to court and has been benefiting from interim orders. He has deposed that the Molo Potato Project is a National Government Project and that the Molo Potato Seed Complex is one of the largest research operations in Kenya dealing with multiplication and production of seed varieties. It is averred that the persons who claim to have purchased the suit land from the plaintiff are currently wasting the arable land comprised in the suit property which is a threat to Kenya's food security. It is stated that while the substantive issue of ownership is pending, tax payers' money allocated to farming is wasting away, since every time Molo Potato Project and ADC officials attempt to move in and farm, they are engaged in fierce altercation by the plaintiff and its agents. It is said that the Molo Potato Plant is a government project managed by ADC.

9. The application is not opposed by the defendants and the plaintiff neither supported nor objected to it. Mr. Karanja Mbugua for the plaintiff left it for the court to decide.

10. The application is for joinder and Order 1 Rule 10 applies. The same is drawn as follows :-

10. Substitution and addition of parties [Order 1, rule 10.]

(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.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent in writing thereto.

(4) Where a defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants.

11. In my view, the provisions of Order 1 Rule 10 (2) above, do apply. The court has discretion to add the name of any person who ought to have been joined whether as plaintiff or defendant or whose presence before court is necessary in order to settle all questions in controversy. In this application, the Attorney General has sought to be added as a defendant in this case. From what I can see, the interest of the State is that it operates a potato seed project within the suit land.

12. In my view, the mere fact that the State manages a potato operation in the suit land is not by itself a good enough ground to permit the Attorney General to be a defendant or indeed a party to this suit. The main issue in this case is whether the plaintiff is entitled to an order of specific performance out of a contract that it claims to have with the defendants or whether it is entitled to the suit land by way of adverse possession. It does appear to me that the land in question is registered in the name of Lands Limited, and they have been properly named as defendants, for the plaintiff claims to have a sale agreement with this entity. Lands Limited is a limited liability company and ADC is a State Corporation. These two defendants have independent capacity to sue and to be sued. They also have capacity to hold and own property in their names. They do not need the agency of the Attorney General at all. It was not therefore necessary for the plaintiff to enjoin the Attorney General as defendant when suing Lands Limited or ADC.

13. The State wants to come in as an additional defendant but surely it does not appear to me as if the plaintiff has any claim against the State or any of its departments. There is no prayer that the plaintiff seeks against the State or any Government Department in this suit. I wonder, on what basis, I should thrust a defendant against the plaintiff when it is apparent that the plaintiff does not have any quarrel with the person sought to be enjoined as defendant. In my view, The Attorney General has not met the threshold set by the provisions of Order 1 Rule 10, to be entitled to be a party to these proceedings.

14. I am not therefore persuaded that I should allow the application to enjoin the Attorney General or any State Department as a party to these proceedings. The application for joinder is hereby denied. Having dismissed the application for joinder, I am not going to entertain the other prayers sought in the application before me. The entire application is hereby dismissed. But since no party actively opposed the application, I make no orders as to costs.

15. The only direction I think I need to make is that this suit needs to be heard and disposed of expeditiously and at the delivery of this ruling, I will give a hearing date for it.

16. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 16th day of February 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU

In presence of :

Mr Kirui instructed by the Attorney General /applicant

Mr. Karanja Mbugua for the plaintiff

Ms. Gachanja holding brief for Mr. E. M Juma for the 1st and 2nd defendants.

CA: Nelima

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU