



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 594 OF 2012

INTERNATIONAL PENTECOSTAL HOLINESS CHURCH

(SOUL RESTORATION WORSHIP CENTRE) 1ST PLAINTIFF

SIMON NYABERA 2ND PLAINTIFF

EZEKIEL KEARI GIDEON 3RD PLAINTIFF

ISAIS M. MOGUCHE ARORI 4TH PLAINTIFF

MOSES PETER OKERIO 5TH PLAINTIFF

KENNETH CHESEREK SANG 6TH PLAINTIFF

CHARLES MWALIMU OKERIO 7TH PLAINTIFF

VERSUS

STAR-LAND COMPANY LTD 1ST DEFENDANT

GREENVILE PLANTATIONS LIMITED 2ND DEFENDANT

PANCAS OYATSI 3RD DEFENDANT

RULING

The application before court is dated 30/9/2013. The plaintiff prays for leave to file a further further amended plaint and add one ***Samuel Kiptala Chemelil*** the alleged agent of Pancas Oyatsi as 4th defendant pursuant to receiving money from the plaintiffs in the suit and the draft amended plaint be deemed as duly filed subject to payment of fees. The application is based on grounds that the suit land is under a Registered Titles Act register and that this application is urgent as the matter is due for hearing and the plaintiffs have established the agent holding the title, whereas the registered owner is abroad. The plaintiffs seek leave to further amend the plaint and add one ***SAMUEL Kiptala Chemelil*** the agent of legal registered owner as the 4th defendant in the suit in order for the real issue to be determined. The Plaintiffs have paid him the balance of the purchase price pursuant to a bargain. The enjoining will enable the honorable court fully adjudicate on the matter to finality. That the plaintiff's investigations have unearthed the true agent of the registered owner of the suit land. That is only just and fair to allow the amendment to achieve justice.

The application is supported by the affidavit of Rev. Daniel Kwatutha. He states that he is the presiding Bishop of International Pentecostal Holiness church the 1st plaintiff and authorized by the Board to swear this Affidavit and the other plaintiffs herein. That the church purchased a 2-acre piece of land off Uasin Gishu Lr 23301/30 registered in the name of **Pacras Oyatsi** through Highland Valuers Limited. The true owner of the registered parcel of land had been a mirage till recently when they inspected title from the intended defendant **Samuel Kiptal Chemelil**. That the intended 4th defendant at the time of receiving money he produced the original title in the name of **Pacras Oyatsi** as his agent convincing the plaintiffs to make payments as annexed copy of title marked DK1. The application is made in good faith as the 1st defendant has always presented itself as the owner of the suit land though without title. That they obtained witness summons for the attendance of the said intended 4th defendant on 18th day of September 2015. That he declined to receive the same stating that he is not a party to the suit whereas he is the agent of registered owner the 3rd defendant herein. That he is the lawful agent of the registered owner and did receive the balance of the purchase price That it is only fair and just that he be enjoined in the suit in order for the court to fully adjudicate on the suit herein. That the further amendment will enable the Honorable court fully and in finality adjudicate on the suit herein.

Francis Pius Omweri Nyaberi filed a replying affidavit stating that it is not true that Samuel Kiptala Chemelil is the agent of 3rd defendant. That the plaintiffs have not demonstrated what dealing if any they have against the 3rd and 4th defendants in relation to this matter. That no sale agreement has been exhibited to show that the plaintiffs have bought land from the 3rd defendant through the 3rd defendant through the 4th defendant. That there is nothing in the document which have been exhibited which demonstrates a relationship between the plaintiff and the 4th and 3rd defendants. That from the documents produced by the plaintiffs the payment relates to Central Greenville S.G.H. That even the account exhibited relates to Central Greenville S.H.G which is not a party to the suit. That Central Greenville SHG is not a party to the suit. That it's is now obvious that the plaintiffs having filed a case against the 1st defendant and having obtained an injunction more than 4 years ago, have lost interest to have the case heard. That the plaintiffs have not demonstrated any issue that they have with the intended defendant to warrant his joinder in this matter. That the plaintiffs have always found an excuse to adjourn the hearing of the case That the documents relate to events which took place way back in 2010, 2011 and 2012 and they are no things the plaintiffs have stumbled upon. That the orders of injunction ought to be vacated. The application for joinder of Samuel Kiptala Chemelil ought to be disallowed. That the documents cannot form the basis of a suit for an interest on land both under the law of contract and the relevant land laws. That the application is solely calculated to forestall the hearing of the case.

The plaintiff filed unsigned and undated submission whose *gravamen* is that the power to sue is vested in the plaintiff and that the plaintiff elects whomsoever to sue and whomsoever to enjoin in the suit. That the 3rd defendant is out of the country and has appointed the 4th defendant to transact on his behalf. He argues that he should be allowed to make amendments which is necessary for determination of the real question in the dispute or to avoid a multiplicity of suits provided that there has been no undue delay that no new or inconsistent cause of action is introduced and that no vested interest or accrued legal right is affected and that the amendment can be allowed without injustice to the other side.

The 1st defendant submitted that the application is not merited as no nexus has been established between the plaintiff, intended 4th defendant and the 3rd defendant. Moreover, there is no agency agreement between the 3rd defendant and 4th defendant.

I have considered the application and the reply by the 1st defendant and do find that the intended amendment is not supported by any evidence as there is no evidence connecting the 4th defendant and the 3rd defendant. The joinder of the intended 4th defendant will not assist this court to determine the real issues in controversy but is likely to introduce an inconsistent cause of action. The application is otherwise an abuse of the process of the court as no scintilla of evidence has been exhibited in respect of the intended 4th defendant and any of the parties. The application is dismissed with costs.

DATED AND DELIVERED AT ELDORET THIS 3RD DAY OF FEBRUARY 2017.

A. OMBWAYO

JUDGE