



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

E & L CASE NO 225 OF 2016

ETHICS AND ANTI-CORRUPTION COMMISSION.....PLAINTIFF

VERSUS

GODFREY KAMITI.....1ST DEFENDANT

AKWALU M'LINTARE.....2ND DEFENDANT

THE ATTORNEY GENERAL.....3RD DEFENDANT

R U L I N G

1. The Exparte Chamber Summons dated 25th January, 2017 is brought under order 1 Rule 15 of the Civil Procedure Rules, 2010 and seeks for orders that:-

(1) That this Honourable Court be pleased to grant the 1st and 2nd defendants leave to issue a third party notice to the Director of Land Adjudication /Settlement the land Registrar Meru Central and the Ministry of Lands, Housing & Urban Development through the Attorney General.

(2) That costs be in cause.

2. The application is based on grounds:-

a. That the applicants are the secretary and treasurer of Buuri Cattle Dip Self Help Group.

b. That Buuri Cattle Dip Self Help Group is registered as owner of parcel of land number 719 EX-LEWA SETTLEMENT SCHEME (hereinafter "the suit land").

c. That the officials and membership of Buuri Cattle Dip Self Help Group had intended that the suit land be registered in the names of the officials of the self help group as holding for the self help group.

d. That however the intended third parties caused registration of the suit land into the name of the Self Help group instead of being registered in the names of the officials as holding the land for the self help group as intended.

e. That the Plaintiff has raised misgivings on this current registration and there's need for indemnity from the third parties and subsequent rectification of the registration of the land on the register and title documents.

3. The Application is also supported by the Affidavit of the 2nd defendant where he has deponed as follows:-

1. That he is the 2nd defendant /applicant herein well versed with the facts of this case with authority of the 1st defendant/applicant ,and is competent enough to swear this affidavit.
2. That he is the treasurer of Buuri Cattle Dip Self Help Group whilst the 1st defendant is the Secretary.
3. That Buuri Cattle Self Help Group is the registered owner of parcel of land No. 719 EX-LEWA SETTLEMENT SCHEME (hereinafter referred to as “ the suit land”).
4. That the officials and the membership of the self help group had intended that the suit land be registered in the names of the officials of the self group as holding the suit land for the self help group.
5. That however, the intended third parties caused registration of the suit land directly into the name of the self help group despite having the names of the officials of the self help group.
6. That the third parties ought to have known that by law, the suit land ought to have been held by the officials of the self help group and not by self help group in its own name.
7. That nevertheless, the names of the officials were available and rectification is possible.
8. That the Plaintiff has raised misgivings on the current registration hence the need for indemnity from the third parties given that they ought to have registered the suit land in the names of the officials of the self help group.

4. The second defendant has availed the following annexures to support the application;

- i. Copy of green card
- ii. Application to correct name in the register.

5. An application under order 1 rule 15 would ordinarily be a straight forward matter which is handled ex-parte. Not so in the present case. The intended 3rd parties are all government officers or government institutions, where by notice will be issued through the Attorney General. However, the AG is already a party to this suit (as the third defendant).

6. The interpretation of who government officials are is to be found in **section 2 (1) of the Government proceedings act** where it is stated;

“**officer**”, in relation to the Government, includes theany servant of the Government;

Section 12 (1) further provides that;

“Subject to the provisions of any other written law, civil proceedings by or against the Government shall be instituted by or against the Attorney-General, as the case may be”.

7. Under **order 1 rule 9 of the civil procedure rules**,

“ no suit shall be defeated by misjoinder or non joinder of parties”.

That being the case this court will allow the application notwithstanding the fact that the AG is already on record as a party. Perhaps the issues in controversy will be articulated more clearly if the third parties

are brought on board in the manner the 1st and 2nd defendant desires.

8. The application of 25/1/2017 is allowed with no orders as to costs.

DELIVERED IN OPEN COURT AT MERU THIS 4TH DAY OF APRIL,2017

IN THE PRESENCE OF:-

C/A Janet

E. Kimathi for 1st & 2nd Defendants (applicants)

L.N. MBUGUA

JUDGE