



IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

LAND CASE. 62 OF 2008

UCHUMI SERVICES LTD.....PLAINTIFF/APPLICANT

=VERSUS=

1. CHENGO KATANA KOI

2. MUGANGA MAGAYA KATANA

3. CHIEF LAND REGISTRAR

4. COMMISSIONER OF LANDS

5. DIRECTOR OF LAND AND ADJUDICATION AND

SETTELEMENT.....DEFENDANTS/RESPONDENTS

R U L I N G

1. I have before me a Notice of Motion Application dated 11th November 2016. The Applicant C.J. Papu Haroon is seeking for orders: -

2. THAT all other proceedings in this case be stayed pending the hearing and determination of this application; and

3. THAT at the inter-partes hearing of this application, leave be granted to the Interested Party to be enjoined in this case as the 2nd plaintiff and he be allowed to file his pleadings/claim against the Defendants, his Statement, his defence to the Defendant's Counter Claim, his List of documents, list of witnesses and witness statements.

2. The Application is supported by the Interested Party's affidavit sworn on 11th November 2016 and a supplementary one sworn on 2nd March 2017. The application is premised on the grounds among others: -

(i) that the Interested Party been in occupation of the suit property since the year 1981 and has carried out extensive development on the suit property.

(ii) that the Interested Party has acquired prescriptive rights over the suit property as against the Defendants.

(iii) that the Defendants counter claim against the Plaintiff will have a direct effect on the

interests of the Interested Party on the suit property; and

(iv) that similar and/or common issues of fact and law in respect of possession and/or ownership of the property will arise between the Interested Party and the Defendants if a separate land case is to be filed in respect of the suit property.

3. In a Replying Affidavit sworn by Chengo Katana Koi, the 1st and 2nd Defendants are opposed to the Interested Party being joined in this suit. It is their case that the Applicant is guilty of inordinate, extreme and unreasonable delay and as such the application ought not to be entertained by this court. The Defendants further aver that the Applicant is a complete stranger to the suit and his involvement is not only unnecessary but will also serve to convolute these proceedings and to embarrass the court. It is their case that the Applicant has failed to demonstrate any discernible interest in the case and that the application ought to be dismissed.

4. I have considered the application and the Replying Affidavit. I have also carefully gone through the submissions and authorities placed before me by the parties.

5. Order 1 Rule 10 of the Civil Procedure Rules empowers the court, at any stage of the proceedings, upon application by either party or *suo motu*, to order the name of a person who ought to have been joined or whose presence before the court is necessary to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit, to be added as a party.

6. In determining whether an Applicant should be admitted as an Interested Party, the Supreme Court in **Communications Commission of Kenya & 4 Others -vs- Royal Media Services Ltd & 7 Others** (Petition No. 4 of 2014(2014) eKLR held as follows: -

“(An) interested party is one who has a stake in the proceedings, though he or she was not a party to the cause ab initio. He or she is one who will be affected by the decision of the court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself/herself appears in the proceedings, and champions his or her cause.

7. Arising from the foregoing, the question then for me to determine is whether the Applicant before me has demonstrated that he has a stake in the proceedings which is likely to be effected by the decision of the court.

8. In his Affidavit in Support of the Application, the Applicant avers that the suit property is registered in the name of the Plaintiff. He however contends that he took possession of the suit property from the Plaintiff in the year 1988 after he formed what is termed “a development partnership” with the plaintiff. It is his case that upon taking possession of the property as aforesaid, he caused physical land preparations for his residence and a tourist establishment thereon in the year 2001. He has annexed a bundle of photographs showing a number of developments on the suit property. In addition, the Applicant avers that at some point in time, he incorporated a company known as Kilifi Mouna Estates which has also invested in the suit property by establishing an Agro industry which employs 27 people and supports well over 300 farmers from Madeteni Village.

9. It is worthy of note that this case was filed against the 1st and 2nd Defendant on 15th August 2008. The original claim by the Plaintiffs was for damages for defamation on the basis that the Defendants had caused libelious material that suggested and/or insinuated that the plaintiffs had irregularly acquired the suit property. On or about 14th April 2013, following a Court Order, the Defendants filed an Amended Statement of Defence and Counter-claim wherein they now among other things seek to be declared the rightful owners of the property. These are the orders that the Applicant contends will affect his interest.

10. A perusal of the application however reveals that while the Applicant purports to have carried out extensive developments on the suit property on the basis of “a development partnership” agreements, no evidence has been presented before me that even remotely suggests that the Applicant and the Plaintiff ever entered the alleged or any partnership in the year 1988 or at any other time. Indeed, while the

Applicant purports to have incorporated Kilifi Mouna Estates, a company again said to have invested heavily in the suit property, there was no evidence placed before me in regard to the existence of the company or the alleged developments it had carried out. All that the Applicant has placed before me are photos of various structures on the suitland with no evidence on how he is connected therewith.

11. At any rate, it is evident from the Supplementary Affidavit that the Applicant has been aware of the existence of this suit since the time it was filed some 9 years ago. From the record, it is apparent that the Applicant even testified as a witness for the plaintiff on 26th May 2010. No reasonable explanation has been given to explain the inordinate delay in bringing the application. In my view, this application is nothing but an afterthought by the Applicant to delay the conclusion of this case.

12. In my considered view, the court may refuse joinder of parties where such joinder will lead into practical problems of handling the existing cause of action together with the one of the party being joined; is unnecessary; or will just occasion unnecessary delay or costs on the parties in the suit. In other words, joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible, to or totally different from the existing cause of action or the relief. The claim by the Applicant that he has acquired prescriptive rights against the 1st and 2nd Defendants who are claiming the suit property under the Land Adjudication Act do not appear to me to be compatible with the reliefs sought herein. In any event, the Applicant has not satisfied me that he has a stake in these proceedings which may be affected by the decision of this court.

13. In the circumstances, this court is left with no option but to dismiss the application with costs to the 1st and 2nd Defendants.

Dated, signed and delivered at Malindi this 16th day of June 2017.

J.O. OLOLA

JUDGE