



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 155 OF 2016**

**THE EAST AFRICAN PORTLAND CEMENT CO.  
LTD.....PLAINTIFF**

**VERSUS**

**SAMMY KATHILU & 49  
OTHERS.....DEFENDANTS**

**AND**

**ANTONY MUTUNE AND BARTHOLOMEW NZILU *being sued in their personal capacity***

***and as the chairman and secretary of* MTOMAWA ASSOCIATION AND 498  
OTHERS.....PROPOSED DEFENDANTS**

**RULING**

1. In the Notice of Motion dated 25<sup>th</sup> May, 2017, the proposed Defendants are seeking for the following orders:

***a. That the proposed Defendants as per the annexed list of members be enjoined in this suit as parties and allowed to file Defence.***

***b. The Applicants have a valid legal claim in the suit property and if they are not enjoined adverse orders would be issued and their claim defeated without being heard.***

***c. That costs of the Application be in the cause.***

2. The Application is premised on the grounds that the intended Defendants are squatters who have constructed and are occupying one of the subject properties being L.R. No. 10425 for over fifteen (15) years; that the orders that will be issued in this matter will negatively affect them and that if the prayers in the Plaint are granted, the Plaintiff would be condemned unheard.

3. In his Affidavit, the Chairman of Mtomawe Association (*the Applicants*) has deponed that the association comprises about 500 people; that the members of the group are landless and that the said members have been living on the suit land for over fifteen (15) years.

4. It is the Applicants' case that although the Plaintiff's suit seeks to evict the Defendants from the suit land, they did not enjoin them; that the Applicants learnt about the suit from their friends and that being on the suit land, they will be affected in the event the Plaintiff's suit succeeds.

5. In her Replying Affidavit, the Plaintiff's Company Secretary deponed that the suit properties are registered in the name of the Plaintiff; that L.R. No. 10425 is currently uninhibited as claimed by the Applicants and that the Applicants have not produced any evidence to show that they occupy L.R. No. 10425.
6. The Plaintiff's Company Secretary finally deponed that the list annexed on the Applicant's Supporting Affidavit is unauthenticated, contains a list of duplicated names and that the proposed parties do not have any interest in the suit land.
7. It is the Plaintiff's case that this suit has been in the public domain for many years; that the Applicants have not met the threshold in law for joinder and that the Application lacks merit.
8. In the submissions, the Plaintiff's advocate submitted that the Applicants' claim is in respect of L.R. No. 1025 which is one of the suit properties; that their claim is for adverse possession and that it is not for the Applicants to assert that the Applicants have no claim over the suit land.
9. Counsel submitted that it is necessary to enjoin the Applicants to this case because the cause of action is about the alleged occupation and that the Applicants need not prove that their intended case would be successful.
10. The Respondents' advocate submitted that the Applicants have not shown any identifiable stake in the suit land; that the Applicants have not shown the prejudice they shall suffer if the orders they are seeking are not granted and that the suit has been in the public domain for long.
11. This suit was commenced by the Plaintiff vide a Plaint dated 2<sup>nd</sup> November, 2015.
12. In the Plaint, the Plaintiff averred that the Defendants and other "*unnamed persons*" are in illegal occupation of L.R. No. 12948/17, 10425, 8784, 7815/1 and 8786; that those properties are registered in favour of the Plaintiff and that the people who are occupying the said land should be evicted.
13. The prayers in the Plaint are in respect to the parcels of land that I have enumerated above.
14. The joinder of parties to a suit is governed by the provisions of Order 1 of the Civil Procedure Rules.
15. Order 1 Rule 3 provides that all persons may be enjoined as Defendants against whom any right to relief in respect of or a rising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly or severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.
16. In the case of *J.M.K. vs. M.W.M & Another (2015) eKLR*, the Court of Appeal held as follows:

***“Order 1 Rule 10(2) of the Civil Procedure Rules empowers the court, at any stage of the proceedings, upon application by either party or suo moto, 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 effectually and completely adjudicate upon and settle all questions involved in the suit, to be added as a party.”***
17. Commenting on the provision, the learned authors of *Savkar's Code of Civil Procedure, 11<sup>th</sup> Edition, Reprint, 2011, Vol. 1 page 887* states as follows:

***“This section should be interpreted liberally and widely and should not be restricted merely to the parties involved in the suit, but all persons necessary for a complete adjudication should be made parties.***
18. Indeed, the court can only allow a party to be joined in a suit if it is satisfied that there are common issues of fact and law which arises amongst the parties and that the course will prevent duplication of

efforts, unless the Application for joinder is allowed.

19. In its Complaint, the Plaintiff has pleaded that it is suing the Defendants “*and any other unnamed persons*” who might have illegally occupied several parcels of land, including L.R. No. 10425.

20. Indeed, other than this suit, the Plaintiff also filed Machakos HCCC No. 93 of 2009 in which they sought for the eviction of Defendants from L.R. No. 10425. That suit, amongst others, was consolidated with the current suit.

21. The proposed Defendants have deponed that they are occupying L.R. No. 10425, which is one of the properties that the Plaintiff is claiming that it is entitled to it.

22. Considering that the Defendants have asserted that they are entitled to the said land by way of adverse possession, it follows that they should be allowed to join the suit so as to prove at the hearing that they are indeed entitled to the land.

23. Once the Applicants are enjoined in the suit, they will have an opportunity to prove if indeed they have been living on the land for the requisite period stipulated in the statute.

24. Consequently, and in view of the fact that the cause of action herein is about the alleged illegal occupation of L.R. No. 10425, amongst other parcels of land, the Applicants are necessary parties.

25. For those reasons, I allow the Applicants’ Application dated 25<sup>th</sup> May, 2017 in the following terms:

***a. The proposed Defendants as per the list annexed in the Supporting Affidavit be enjoined in this suit as parties.***

***b. The proposed Defendants to file and serve their Defence, or any appropriate pleading within fourteen (14) days from the date of this Ruling.***

***c. The Plaintiff and the Defendants herein are at liberty to file their pleadings in response to the Applicants’ Defence within fourteen (14) days from the date of service.***

***d. Each party to bear its/his own costs.***

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 29<sup>TH</sup> DAY OF SEPTEMBER, 2017.**

**O.A. ANGOTE**

**JUDGE**