



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ELC CASE NO. 243 OF 2014

TSANGWA NGALA CHOMEPLAINTIFF

VERSUS

TOWN COUNCIL OF MARIAKANI1ST DEFENDANT

KETRACO COMPANY LIMITED2ND DEFENDANT

MWABEJA, MWAMUNDU, MWAKAI CLANS.....OBJECTORS

KATEMBE NZEMBE LEWA & 13 OTHERS.....INTERESTED PARTIES

AND

REGIONAL CONTAINER FREIGHT

STATION LIMITED.....1ST INTENDED INTERESTED PARTY

SUGAR HOLDINGS LIMITED....2ND INTENDED INTERESTED PARTY

RULING

1. In the Notice of Motion dated 30th May, 2017, the Intended Interested Parties (*the Applicants*), are seeking for the following orders;

a. The Regional Container Freight Stations Limited and Sugar Holdings Limited be granted leave to be enjoined as Interested Parties in the matter herein.

b. That the Plaint be amended to include the names of Regional Container Freight Stations Limited & Sugar Holdings Limited as the first and second Interested Parties respectively.

c. That the Interested Parties be and are hereby granted leave to file necessary pleadings, list of witnesses, witness statements and list of documents.

d. That the Plaintiff's case and the Defence case be re-opened and the Interested Parties be granted unconditional leave to participate in the proceedings herein.

e. The costs of this Application be provided.

2. The Application is premised on the grounds that the 1st Applicant is the legal proprietor of land known

as L.R. No. 29168 measuring 21.04Ha; that the 2nd Applicant is the proprietor of land known as L.R. No. 29169 measuring 16.51Ha and that the Applicants are necessary parties in these proceedings.

3. In his Affidavit, the Applicants' Director deponed that the Applicants acquired the two suit properties following the laid down procedures; that it has come to the knowledge of the Applicants that the Plaintiff is claiming land which encompasses the two parcels of land and that the Judgment of this court is likely to affect the Applicants.

4. On his part, the Plaintiff deponed that he will be highly prejudiced if the Applicants are enjoined in this suit considering that he has already testified and closed his case.

5. The Plaintiff further deponed that his land is different from the land that the Applicants have referred to and that the Applicants do not fall within the definition of the original residents of the area as described in the two title documents.

6. The 1st Defendant filed Grounds of Opposition in which it averred that the Application has been brought too late in the day when the parties have already testified and that the Applicant must have been aware of the matter all along.

7. In his Supplementary Affidavit, the Applicants' Director deponed that there was no objection when the Applicants acquired the title documents; that the court may at any stage of proceedings join a party and that he has never been aware of the existence of the suit.

8. The Applicants' and the Plaintiff's advocates filed their submissions and authorities which I have considered.

9. The joinder of parties to a suit is governed by the provisions of Order 1 of the Civil Procedure Rules.

10. Order 1 Rule 3 provides that all persons may be enjoined as Defendants against whom any right to relief in respect of or arising 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.

11. 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.”

12. Commenting on the provision, the learned authors of *Savkar's Code of Civil Procedure, 11th 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.

13. Where the proposed cause of action is incompatible to an existing cause of action or relief, joinder of parties will be refused.

14. 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.

15. The Applicants herein have annexed on their Affidavit two title documents in respect of land known

as L.R. No. 29168 and 29169.

16. According to the two title documents, L.R. No. 29168 and 29169 was registered in favour of the Applicants on 29th August, 2012, with the Deed Plan having been issued on 26th June, 2012.

17. From the two title documents, the suit properties were allocated to the Applicants by the then Commissioner of Lands on behalf of the County Council of Mariakani, the 1st Defendant herein.

18. Although the Applicants have not annexed documents to support the title documents, it would appear that the issuance of the two title documents was sanctioned by the 1st Defendant during the pendency of this suit.

19. I say so because the Applicants' titles were issued presumably with the consent of the 1st Defendant in the year 2012 while this suit was filed in the year 2011.

20. Considering that the Applicants' titles were issued with the 1st Defendant's authority during the pendency of this suit, the Applicants should have been aware of the existence of this suit and should have applied to be enjoined before the commencement of the hearing.

21. The Applicants cannot wait, until when the matter is almost being finalized, to move the court for joinder, whose effect would mean that the matter would have to begin afresh. That, in my view, is an attempt on the part of the Applicants to deter the conclusion of this matter expeditiously.

22. In any event, if indeed it is the 1st Defendant who allocated to the Applicants the two suit properties, then the Applicants' interest will be taken care of by the 1st Defendant in its Defence. The Applicants will not suffer any prejudice if they are not joined in this suit because their case is predicated on the 1st Defendant's entitlement to the suit land.

23. The Applicants have also not annexed any documentary evidence, or a report by a Surveyor, to show that the land they are claiming forms part of the suit property.

24. Consequently, this court cannot assert with certainty that the Applicants' cause of action relates to the Plaintiff's cause of action for the purpose of enjoining the Applicants to the suit.

25. For those reasons, I dismiss the Application dated 30th May, 2017 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 22ND DAY OF SEPTEMBER, 2017.

O. A. ANGOTE

JUDGE