



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ELC CASE NO. 35 OF 2015 (O.S)

AHMED SHEIKH AMIN MSELLEM.....PLAINTIFF

VERSUS

KENYA POWER & LIGHTING COMPANY LTD.....DEFENDANT

RULING

1. What is before me is the Defendant's Application dated 26th August, 2016 in which the Defendant is seeking for the following orders:

a. That this Honourable Court be pleased to join Rural Electrification Authority as a Defendant to this suit.

b. That this Honourable Court be pleased to order that the Originating Summons be amended in such manner as may be necessary and the amended Originating Summons be served upon the new Defendant

2. The Application is premised on the grounds that the electricity line that the Plaintiff is complaining about as having traversed through plot number 12 Group 1 Takaungu was put up by Rural Electrification Authority; that it was the responsibility of the Authority to seek the way leaves consent from the land owners and offer the necessary compensation and that the presence of the Authority in this matter will enable the court to effectually and completely adjudicate upon and settle all questions arising in the suit.

3. In response to the Application, the Plaintiff deponed that he has no evidence of any wrong doing on the part of the party to be joined; that he saw the impugned works being done by the employees of the Defendant and that he has never had any problem with the said Rural Electrification Authority.

4. The Defendant's advocate submitted that the Rural Electrification Authority (REA) is established under Section 66 of the Energy Act as a body corporate; that it was the responsibility of the Rural Electrification Authority (REA) to seek for necessary way leaves consent from the land owners and offer them compensation and that the presence of Rural Electrification Authority (REA) in this suit is necessary.

5. Counsel submitted that the Plaintiff will not suffer any prejudice if Rural Electrification Authority (REA) is joined as a Defendant in the suit.

6. On his part, the Plaintiff's advocate submitted that the Application is an abuse of the process of the court; that the Defendant should not be allowed to shift blame to Rural Electrification Authority (REA) and that it is the Defendant who undertook the impugned works.

7. The Defendant is seeking to enjoin the Rural Electrification Authority (REA) in these proceedings.
8. It is not in dispute that the Rural Electrification Authority (REA) is a body corporate established under Section 66 of the Energy Act.
9. According to the Defendant, the works that the Plaintiff is complaining about were done by the Rural Electrification Authority (REA), and that it is the Rural Electrification Authority (REA) which should compensate them.
10. That may be true or not. However, having maintained that position, and to avoid a multiplicity of suits being filed if it transpires that indeed it is the Rural Electrification Authority (REA) that was responsible for the works that the Plaintiff is complaining about, the said body should be enjoined in this suit.
11. I say so because under Order 1 Rule 10(2) of the Civil Procedure Rules, the court may at any stage of the proceedings order that a name of any person who ought to have been joined, whether as Plaintiff or Defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit, be added.
12. In the case of *Civicon Limited vs. Kivuwatt Limited & 2 others (2015) eKLR*, the Court of Appeal referred to *O'Hare & Hill's Civil Litigation, 7th Edition (1996) page 101* where the authors have stated that one cannot be added as a Plaintiff unless one gives one's consent in writing. In contract, anyone can be joined as a Defendant even against his wishes. The authors further stated as follows:
- “The doctrine of “dominus litis” does not however extend to the joinder of parties. This is because the court has a duty and the power to add a person who is not a party to the action as originally constituted as a Defendant even against the will of the Plaintiff, whether on the application of the Defendant or of the non-party in order for the real matter in dispute to be determined.”***
13. Considering that no decree in a suit can bind a person if he is not a party thereto, and being satisfied that the Interested Party is a body corporate and could have been involved in the impugned works, I allow the Defendant's Application dated 26th August, 2016 as prayed.
14. However, each party will bear his/its own costs.

DATED AND SIGNED AT MACHAKOS THIS 8TH DAY OF NOVEMBER, 2017.

O.A. ANGOTE

JUDGE

DATED, DELIVERED AND SIGNED AT MALINDI THIS 15TH DAY OF NOVEMBER, 2017.

J.O. OLOLA

JUDGE