



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

ELC. NO. 33 OF 2015.

WILLIAM OSIMITA EMASETE

VINCENT WESONG OSIMITA

(Suing as Personal Representative of Estate

Of DERIANDA AKANYAITI OSUMATI).....PLAINTIFF.

VERSUS

THE COUNTY GOVERNMENT OF BUSIA.....DEFENDANT

RULING

1. This is a ruling on a chamber summons application filed here on 8th December, 2015 and dated the same. The applicants – **KENYA SCOUTS ASSOCIATION and BUSIA COMMUNITY CULTURAL CENTRE** – want to be enjoined in the suit as interested parties. They have also made other prayers viz:

Prayer 3: That copies of pleadings be served on them.

Prayer 4: That pending hearing of this application interpartes, the honourable court be pleased to issue injunctive orders restraining the plaintiff, respondents, their agents, servants or any person purporting to act on instructions of the Plaintiff/Respondents from interfering in L.R. NO. BUKHAYO/MUNDIKA/328 and 329.

Prayer 5: That pending hearing and final determination of the suit, the honourable court be pleased to issue injunctive orders restraining the Plaintiffs/Respondents, their agents, servants or any person purporting to act on instructions of the Plaintiff/Respondents from interfering in L.R. NO. BUKHAYO/MUNDIKA 328 and 329.

Prayer 6: That costs of this application be provided for.

2. The grounds advanced in support stipulate that the applicants are directly affected by those proceedings and risk being condemned unheard. The supporting affidavit shows, inter alia, that the land claimed by the plaintiff is essentially government land. The applicants are operating on it and the plaintiffs have fenced it. Such fencing off has adversely affected them yet they are not parties to this case.

3. The plaintiffs/Respondents response was a replying affidavit filed here on 13th January, 2015. According to the plaintiffs, the applicants are defendants institutions and departments and are therefore represented by the counsel for defendant. The Plaintiffs also pleaded lack of knowledge of property NO.

4. Counsel for defendant filed grounds in support of the applicants application. The grounds were filed on 25th January, 2016. According to counsel, the applicants have demonstrated that they are stakeholders in the matter and may be condemned unheard if the opportunity they are seeking is not granted.

5. The application was not heard. Submissions were filed instead. The applicants submissions were file on 10th February, 2016. In the submissions, the applicable law was articulated and the court was urged to make a finding that the applicants have rights at stake and will be directly affected. In the submissions however, the issues of injunctive orders are completely left out.

6. The defendant's counsel filed submissions in support of the applicants. He submitted interalia, that the applicants have demonstrated on a balance probability that they have a direct interest in the matter and their presence is therefore crucial.

7. The respondent/plaintiffs filed their submissions on 11th February, 2016. According to them, the applicants have not established why they want to be enjoined as interested parties nor have they demonstrated nay prejudice they may suffer. It was submitted further that the applicants are already represented by the defendants.

8. I have considered the application, the responses made and the submissions. Generally speaking, the law is as articulated in Applicants submissions. Right from the outset, I dismiss the prayers for injunctive orders for simple reason that apart from being put in the application, nothing was forthcoming in their support. The Applicants submissions passed over them in silence.

9. The crucial issue before me therefore is whether the applicants should be joined in the suit. Counsel for applicant correctly pointed out in the submissions that a party seeking to be so joined must demonstrate strong interest in the matter and the real likelihood of being affected by any outcome. In other words, a possible right needs to be demonstrated and the party seeking to be enjoined must also show that an effective decree cannot be passed in its absence.

10. According to the Plaintiffs/Respondent, the applicants have not demonstrated any such interest or right. According to the Applicants, it is well shown they are operating on the land. The Plaintiffs/Respondents have fenced it off. This is affecting them and hence the need to join them as parties.

11. I think the applicants are making a useful point. The plaintiffs have not shown the applicants are not operating on the land. Instead, they are saying that the defendant represents them. To get a clearer picture, I have read the entire suit and the various applications filed before this one. I need to point out that courts are usually reluctant to shut out a party from a case where such party shows the likelihood of being affected.

12. In this matter however, the capacity to be enjoined in the suit becomes an issues, more so for the 2nd applicant. It was shown that the 2nd applicant is operating under the defendant. It is not easy to understand why counsel for applicants thinks that 2nd applicant can be joined as a party. The fact of the matter is that it cannot. It lacks the necessary capacity to sue or be sued. Such capacity can only be granted by a statute and it was not shown that it is available.

13. The first applicant was shown to have such capacity. There is a statute governing it, giving it capacity to sue and to be sued. Such statute is **KENYA SCOUTS ACT (CAP 219)**. Section 2A and 2B makes it a body corporate with capacity to sue and/or be sued.

14. The upshot is that the 1st Applicant is allowed to be joined as interested party. The same however cannot be said of the 2nd interested party. I decline to allow joinder of this party to the suit.

Costs of the application to be in the cause.

A. K KANIARU

JUDGE

8/3/2016

A.K Kaniaru J.

Ichuloi – CC

No party present.

Interpretation - English/Kiswahili.

Isoe for Plaintiff/Respondent.

Ipapu for interested parties

M/S. Kituyi for defefendant

COURT – Ruling on application dated 8/12/2015 read and delivered in open court. Status quo to continue. Right of appeal in 30 days. Mention on 4th April 2016.

A. K. KANIARU

JUDGE.