



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ENVIRONMENTAL & LAND DIVISION

ELC NO. 1405 OF 2014

FRANCIS GITHOGE KARUGU & 21 OTHERS.....PLAINTIFFS

VERSUS

CITY COUNCIL OF NAIROBI.....DEFENDANT

RULING

1. Joinder of additional parties to proceedings like amendments of pleadings should always be freely allowed at any stage of the proceedings provided the opposing party is not prejudiced and can be compensated in costs and provided further that such application for joinder is made timeously: see the cases of **Maguire –v- Molin [2002]4 All ER 325, 326** and **Central Kenya Ltd –v- Trust Bank Ltd [2002]2 E.A 365** as well as Order 1 Rule 10 of the Civil Procedure Rules.
2. By an application dated 22nd January, 2013, one Geoffrey Mwangi Meni seeks to join the instant proceedings as a Defendant. He says he is an owner of the real property, the subject matter of this suit. He also says that any relief or orders made in the suit may affect him adversely. He explains that the delay in making the application for joinder was due to his Advocates inability to access the court file timeously.
3. The Plaintiffs oppose the application and view the applicant as an intruder. According to the Plaintiffs the joinder of the applicant to these proceedings will serve no useful purpose as the proposed 2nd Defendant has no interest in the suit property or the issues raised. If the joinder is effected the suit's trial will be delayed, so state the Plaintiffs.
4. A brief background is that the suit herein was filed on 8th November, 2011 by the twenty two Plaintiffs who seek against the current defendant the Nairobi City Council (now the Nairobi County Government) injunctive orders and damages over a disputed parcel of land namely LR. No. 209/841 Landhies, Road, Nairobi. The Defendant contests the suit. Prior to the hearing of the suit though the Plaintiff filed an interlocutory injunction application which is still pending. Then came the applicant with the current application.
5. I have reviewed the matter as well as the Affidavits filed in relation to the application for joinder. It is pretty clear that from the Applicant's supplementary Affidavit of 10th June, 2014, the Applicant is the registered owner of LR No. 209/11916. The suit property at the heart of the dispute between the Defendant and the Plaintiffs is however L.R No. 209/841. The Applicant

contends that this latter property on the ground is the same as his own property. It is according to the Applicant, a case of the same property but with two different land reference numbers. The court cannot firmly say so unless a trial is conducted. Indeed, it may entail a visit to the site. At the moment though, it can be said that the applicant is neither a necessary party nor a proper party to these proceedings. Is he a busy body with no reasonable or genuine concern or grievance: see Lord Denning in **Attorney General of Gambia –v- Njie [1961] AC 617, 634**? If he is, then he must be locked out. If he is not, then it must be determined whether the prejudice his joinder may occasion to the Plaintiff will be beyond compensation by costs.

6. From the documents availed by the Applicant and the descriptive factual details by both the Plaintiffs and the Applicant, I am not convinced that the Applicant is a busy body. It is apparent that orders may actually be made which may concern and touch the Applicant and or his alleged property and affect him adversely. If the orders will not necessarily touch on the applicant, the Plaintiff will certainly be compensated in costs. If, on the other hand the orders concern and touch the applicant or the applicant's property, then it would be appropriate if he was a party to the proceedings.
7. Secondly, the overriding objective is that the courts should always seek to deal with cases justly and expeditiously. The Plaintiffs are perfectly entitled to complain that the trial of this suit may be delayed but expedition must always seek to compliment justice and vice versa. Real issues in dispute are best determined when all necessary and proper parties are before the court. The Civil Procedure Rules at Rule 10 of Order 1 provides for exactly that. With the overriding objective in mind, a liberal interpretation of Rule 10 will lead one to conclude that parties ought to be freely joined in the proceedings so long as they are not busy bodies.
8. The application for joinder was filed some two years after the suit was commenced. It would appear there was some delay on the face of the litigation history of this matter but I am not convinced that either the Plaintiffs or the Defendant will be prejudiced in any way. The suit has not been actively prosecuted. The pleading are yet to close. It is still only an interlocutory application to be heard. Certainly, costs would adequately compensate the Plaintiff in the circumstances.
9. In the result and to avoid a multiplicity of suit, I will allow the application as the applicant is apparently a proper and necessary party to the proceedings and order as follows:-
 - a. The Applicant Mr. Geoffrey Mwangi Meni is to be joined to the proceeding as the 2nd Defendant forthwith.
 - b. The Plaintiff is at liberty to file and serve an amended Plaint appropriately within the next fourteen (14) days.
 - c. The Applicant shall file and serve a Defence Statement on the basis of the Plaint or amended Plaint as filed within the next twenty Eight (28) days with leave to the Plaintiff to file a reply to Defence within Seven (7) days thereafter.
 - d. The costs of such amendments as well as of the application shall be borne by the Applicant, now 2nd Defendant.

Dated, signed and delivered at Nairobi this 22nd day of January, 2015.

J. L. ONGUTO

JUDGE

In the presence of:-

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for the Plaintiff/Applicant

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for the Defendant/Respondent