



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L 594 OF 2012

Formerly HCC 23 of 2010

JESTIMORE SIMWENYI.....PLAINTIFF

VS

SAMSON SICHANGI.....DEFENDANT

RULING

The plaintiffs seek leave to amend the plaint further and add one Pancras Oyatsi the legally registered owner of the suit land as 3rd defendant in the suit on grounds that they have conducted an investigation and realized that the owner of the suit property is to intended 3rd defendant.

The application is supported by the supporting and supplementary affidavits of Rev Daniel Kwatuha the presiding Bishop of International Pentecostal Holiness Church (IPHC) Eldoret Highlands Conference and authorized by the Church and other plaintiffs to swear this affidavit who states that he has read and understood the replying affidavit of Pius Francis Omweri which is made in ignorance of the true factual picture that he was instructed by the Conference to investigate title herein to bring the transaction to a close as they need to develop the site and visited the Chief Land Registrars Offices with a copy of the title with a view of seeking to know how to transfer out interest. That the Registrar gave him the full particulars of the last registered owner of the land whom he seeks to enjoin herein. He later learned that the 1st defendant had not paid the purchase price hence the inability to pass any title to the plaintiffs.

The application is opposed by the 1st defendant through its director Pius Francis Omweri Nyaberi who states that Pancras Oyatsi the intended 3rd defendant is not a registered owner of the suit property and in any event the plaintiff has had no dealings with the registered owner.

The applicant submits that he requires leave of the Court to further amend the plaint and enjoin the 3rd defendant as a party to the suit to enable the court adjudicate to finality the issues touching land parcel UASIN GISHU.LR. NO. 23201/30 as the 1st defendant has no transferable interest capable of vesting title in the plaintiffs.

Citing various legal authorities which have been noted with approval **Mr. Angu Kitigin** argues that the court should freely allow amendments so long as the same would not occasion injustice.

Mr. Momanyi on the other hand argues that the plaintiffs have no evidence that they have had dealings with the 3rd defendants to warrant a suit against him and that this suit is purely to delay the case.

Order 1 rule 10(2) of the Civil Procedure Rules 2010 gives this court a wide discretion in addition of parties to suits. This can be done at any stage of proceedings, either upon or without the application of

parties and on such terms, as may appear to the court just. The court has a discretion to do this to enable it effectively and completely to adjudicate upon and settle all questions involved in the suit.

The copy of the title was annexed in the supplementary affidavit of Rev Daniel Kwatuha which shows that the property was transferred to the intended 3rd defendant on 4/6/1999. This court finds that at the time of the alleged transaction between the 1st defendant and the plaintiffs, the parcel of land had been transferred to the 3rd defendant therefore for the court to determine the issues herein effectively and completely, the 3rd defendant ought to be enjoined.

Ultimately, this court allows the application dated 31/3/2013 as prayed. Costs in the cause.

DATED AND DELIVERED AT ELDORET THIS 4TH DAY OF FEBRUARY 2015

JUSTICE OMBWAYO ANTONY

ENVIRONMENT AND LAND COURT AT ELDORET

In the presence of: