



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NYERI

ELC NO. 168 OF 2014 (O.S)

MARY NYAWIRA THEURI.....PLAINTIFF/APPLICANT

VERSUS

JAMES MUHENA KINYUA.....DEFENDANT/RESPONDENT

RULING

1. The Chamber Summons dated **8th September, 2014** seeks to enjoin **Joseph Wambugu Theuri** (a son of the plaintiff) to this suit. The application is premised on the grounds that the right of relief in this suit is common to the plaintiff and the person sought to be enjoined to the suit. It is contended that no prejudice will be occasioned on the respondent if the application is allowed and that it is in the interest of justice to allow the application.
2. The application is supported by the affidavit of the applicant and that of the person sought to be enjoined to the suit, in which the grounds on the face of the application are reiterated.
3. In reply and opposition to the application, the defendant/respondent **James Muhena Kinyua**, filed the replying affidavit he swore on **27th October, 2014**. In that affidavit, it is contended that the plaintiff/applicant has not given reasons for her inability to prosecute the case as it is; that the plaintiff/applicant has not given any reason for his failure to enjoin the person sought to be enjoined when the suit was being instituted and that whereas it is the person sought to be enjoined in the suit who ought to have brought the application for joinder, the current application has been brought by the plaintiff and not the person seeking to be enjoined.
4. Concerning the plaintiff's contention that no prejudice will be occasioned on the defendant if the application is granted, the defendant argues that because the plaintiff has not disclosed whether she will be seeking an amendment of the suit after the application is allowed, it cannot be said that no prejudice will be suffered by the defendant.
5. Terming the application misadvised and incapable of adding any value to the suit, the defendant contends that the suit is misconceived and incompetent and urges the court to dismiss it with costs to him.
8. When the matter came up for hearing, counsel for the plaintiff **Mr. Cheruiyot** informed the court that the plaintiff and the person sought to be enjoined in the suit are in occupation of the suit property and urged the court to allow the application in order to avoid multiplicity of suits.

9. Terming the application defective, counsel for the respondent, **Mr. Wachira** submitted that the suit covers the plaintiff and her family and for that reason, there is no need to enjoin the plaintiff's son to it. Mr. Wachira also submitted that the application is *res judicata*. In his view the introduction of the plaintiff's son in the suit is meant to inject fresh blood in the suit.

10. In a rejoinder Mr. Cheruiyot submitted that the suit before court is for adverse possession and is for that reason different from the appeal that was dismissed for want of prosecution.

Analysis and determination:

11. The law on joinder is found in **Order 1 Rule 1** of the Civil Procedure Rules which provides as follows:-

“All persons may be enjoined as plaintiffs in whom any right to relief in respect or arising out of the same act or transactions is alleged to exist whether jointly, severally or in alternative where, if such persons brought separate suits any common question of law or fact would arise.”

12. On the other hand, **Order 1 Rule 14** of the Civil Procedure Rules provides for the procedure of enjoining parties to a suit or removing them from the suit. The rule provides as follows:-

“An application to add or strike out or substitute a plaintiff may be made to the court at anytime before trial by chamber summons or at the trial of the suit in a summary manner.”

13. Contrary to the contention by the defendant that an application for joinder has to be made by the person seeking to be enjoined to the suit, it is clear from **Rule 14** aforementioned, that the law does not contemplate such a situation. The law contemplates that the application may be made by any person desiring to add a party to the suit or strike a party therefrom. The factors which the court considers in an application for joinder are those set in **Order 1 Rule 1** that is- existence of any right to relief in respect or arising out of the same act or series of acts or transactions alleged to exist whether jointly, severally or in alternative where, if such persons brought separate suits any common question of law or fact would arise.

14. In this application, it is not in dispute that the plaintiff and the person sought to be joined in the suit have an interest in the suit property by virtue of being persons in occupation of the suit property.

15. Although the defendant's counsel claimed that the application or suit is *res judicata*, no material was placed before this court to enable it determine that question.

16. As for the contention that it cannot be said that the defendant will not suffer prejudice because the plaintiff has not indicated whether she will be seeking to amend her pleadings, if the application is granted, I hold the view that amendment of pleadings *per se* cannot be said to be prejudicial to the defendant because if the plaintiff opted to do so, the defendant would get an opportunity to give his representation or objection to any amendment the plaintiff may require to effect. To deny the application on such speculation would clearly not be in the interest of justice.

17. Having found the person sought to be enjoined to the suit to be a person with sufficient interest in the suit property, notwithstanding the fact that his interest in the suit property may be canvassed by the current plaintiff and being of the view that no prejudice will be occasioned on the defendant if the person sought to be enjoined in the suit is allowed to join the suit, I allow the application as prayed.

18. Costs of the application shall be in cause.

Dated, signed and delivered in Nyeri this 27th day of May , 2015.

L N WAITHAKA

JUDGE

In the present of:

Mr. Cheruiyot for the Plaintiff/Applicant

Mr. Wachira for Defendant/Respondent

Court assistant - Lydia