



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT KERICHO

CIVIL SUIT NO. 37 OF 2014

CHARLES LANGAT.....PLAINTIFF

VERSUS

MNKESHKUMAR KANTILAL PATEL.....DEFENDANT

RULING

(Application for joinder and other orders; applicant stating that he was involved in processing of the title in the suit and that he has evidence that may assist the case; whether such person is competent to be enjoined as plaintiff; no interest demonstrated in the subject matter of the suit; application dismissed)

The application before me is that **dated 18th February, 2015** filed by one Martin Maurice Odhiambo, who is acting in person. The application is said to be brought under the provisions of **Order 1 Rules 3, 10(2,4) and 14** of the **Civil Procedure Rules, 2010, Sections 5A, 3A, 1 (A,B) and 63 (B,C,D,E)** of the **Civil Procedure Act** and all enabling provisions of the law. The application as drawn is seeking the following orders :-

1. *That this application be certified as extremely urgent and be heard ex-parte in the first instance.*
2. *That the 2nd plaintiff/applicant herein be enjoined in this suit.*
3. *That the defendant/respondent be ordered to vacate the premise for he is not the legal owner as he has a forged title which has been expunged from the Ministry of Lands records.*
4. *That the Bomet County Legal Officer Mr. Matwere be prohibited from representing the defendant/respondent in this suit for some Bomet County Government employees helped the defendant/respondent in forging some of the documents being used in this suit by the defendant/respondent.*
5. *That the cost of this application be borne by the defendant/respondent.*
6. *Such further and other orders be made as court may deem fit and expedient.*

Before I go further, I think it is necessary that I set down a little background on this suit. The plaintiff, Charles Langat, filed this suit on **6th August, 2014** against Mr. Mukeshkumar Kantilal Patel. In the plaint, he pleaded that he is the owner of the **land parcel Sotik Township/667** (the suit property). He has averred that he acquired the property when one Simon Shigali, a former manager at Kenya Commercial Bank (KCB), assigned his rights over the property to him. I think it is the position of the plaintiff that the said Simon Shigali, as purchaser, had entered into a sale agreement with KCB over the said property, and that he (the plaintiff) paid off Mr. Shigali and Mr. Shigali assigned his rights to him. It is his case that despite being the owner of the suit property, the defendant, whom it is pleaded that Mr. Shigali had

advised to be a tenant, has refused to move out and is claiming ownership over the same property. He has pleaded that any title documents held by the defendant are forged. In the suit, the plaintiff wants an order for vacant possession and mesne profits.

The defendant filed defence in which he has inter alia claimed that he is the rightful owner of the suit property. He has averred that Mr. Shigali sold to him the property in the year 2001, and the same was transferred to him.

Back to the present application. There are 13 grounds listed to support the application and the application is further supported by the affidavit of the applicant. Inter alia it is stated that the plaintiff is the legal owner of the property in issue in this suit having bought it from Kenya Commercial Bank Ltd (KCB); that the applicant had been following up on behalf of KCB the title which resulted in a lease issued on **30th April 2012**; that the title of the defendant was obtained by forgery; that it is the applicant who has been paying all the land rates and land rents and that he is ready to produce the receipts as proof of such payments.

In the supporting affidavit, Mr. Odhiambo has deposed that he is the managing agent of the suit property on behalf of Mr. Charles Langat, the plaintiff, and that he was tasked with getting the title on behalf of KCB. He has deposed that he has been following up on the issue in the Ministry of Land and KCB, since 1995, and that he dealt with the property in the lands registry at various times. It is his position that the plaintiff is the proper owner of the property in issue.

The defendant through his advocates on record, filed Grounds of Opposition to oppose the application. Inter alia, it is the position of the defendant that Mr. Odhiambo has no cause of action against the defendant and that he has not demonstrated that he has any right to any of the reliefs sought in the suit. It is further averred that the applicant has no material interest in the litigation, as he is not owner or joint owner of the property, and therefore has no locus standi. They have also opposed the other prayers sought in the application.

At the hearing of the Motion, Mr. Odhiambo submitted that he was engaged by KCB to assist them obtain title to the suit property, and that he followed up the matter, until a lease was obtained in the year 2012. He submitted that the lease was sent to Bomet Land Registry for registration but it was discovered that another lease had been issued in the name of the defendant. He submitted that he wants to be in the matter because he is the one who made all the payments and has the original documents. He stated that in the event that he is enjoined, he will produce all original documents related to the suit property.

Mr. Omuganda for the plaintiff did not oppose the application for joinder, but was of the view that the other prayers sought in the application, were matters to be canvassed at the hearing.

Mr. Mutai for the defendant opposed the application and stressed that the applicant has no material interest in the subject matter of the suit.

I have considered the application and I take the following view of the matter.

There are various prayers sought in the application, but in my view, I can only consider the rest, if the prayer for joinder succeeds. This is because the other prayers are hinged on whether or not the applicant will be made a party to this suit. I will therefore straight away address the issue of whether the applicant has made out a case to be made a party to this suit.

The applicant has applied to be enjoined as a plaintiff in this case. His argument is that he has in his possession a wealth of material which will assist this court in arriving at a fair determination in this case. He has explained that he pursued the issuance of title in favour of KCB and that his position is that the plaintiff is the true owner of the suit property.

Although various provisions of the law were cited by the applicant, I think, in the circumstances of this case, only **Order 1 rule 10** applies. The same is drawn as follows :-

10. Substitution and addition of parties [Order 1, rule 10.]

1. *Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.*
2. *The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the 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 to adjudicate upon and settle all questions involved in the suit, be added.*
3. *No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent in writing thereto.*
4. *Where a defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants.*

It will be observed that **Rule 10 (2)** above, does allow for the addition of a party to proceedings. But it is not everyone who may be enjoined to proceedings. The presence of such person, *must be necessary*, in order for the court to completely adjudicate the dispute and settle all questions involved in the suit. In my view, such person must show that he has an interest or claim over the matter in issue. In our case, the issue revolves around the ownership of the land parcel **LR No. Sotik Township/667**. The suit property is being claimed by both plaintiff and defendant.

Mr. Odhiambo, the applicant herein, is not claiming that he owns the said land. All that he has shown is that he may have some material which may help in the adjudication of the dispute. That in my view, does not make him a necessary party to the proceedings. If he was claiming that he also owns the suit property, then in order to adjudicate with finality the issue of ownership, he would have qualified to be made a plaintiff as he has proposed to do. But to me, Mr. Odhiambo at most, only qualifies to be a witness and not a party to the suit. One does not need to be made a party so as to adduce evidence. As to whether either party will invite him to be his/her witness, that is for the parties to decide.

Having not demonstrated that he has any interest in the suit property, I have no option but to dismiss the prayer for joinder.

Since I have dismissed the prayer for joinder, I cannot now go to the other prayers, for the reason that they are now prayers made by a person who is not a party to the suit. They collapse with the failure to succeed on the application for joinder. The totality of the foregoing is that I find no merit in this application and dismiss the same with costs.

It is so ordered.

Dated, Signed and delivered on this 8th day of May 2015

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

PRESENT

Mr. Martin Odhiambo as applicant

Ms. Misoi holding brief for Mr. Omuganda for Plaintiff

No appearance for M/s Chelule & Co. for defendant

C/Clerk; Miriam Sitienei