



Case Number:	Environment and Land Case 153 of 2015
Date Delivered:	16 Dec 2020
Case Class:	Civil
Court:	Environment and Land Court at Eldoret
Case Action:	Ruling
Judge:	Stephen Murigi Kibunja
Citation:	Endo Holdings Limited v Sammy Kiprotich Tangus & 4 others [2020] eKLR
Advocates:	M/s Rotich for Maritim for the Plaintiff M/s Moraa for the 1st & 2nd Defendants Mr. Kuria for the 3rd & 5th Defendants
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Uasin Gishu
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application dismissed with costs
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
<p>The information contained in the above segment is not part of the judicial opinion delivered by the Court. The metadata has been prepared by Kenya Law as a guide in understanding the subject of the judicial opinion. Kenya Law makes no warranties as to the comprehensiveness or accuracy of the information.</p>	

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 153 OF 2015**

**ENDO HOLDINGS LIMITED.....PLAINTIFF**

**VERSUS**

**SAMMY KIPROTICH TANGUS.....1<sup>ST</sup> DEFENDANT**

**NELLY CHEBET TANGUS.....2<sup>ND</sup> DEFENDANT**

**LANDS REGISTRAR, UASIN GISHU.....3<sup>RD</sup> DEFENDANT**

**COUNTY GOVERNMENT OF UASIN GISHU.....4<sup>TH</sup> DEFENDANT**

**HON. ATTORNEY GENERAL.....5<sup>TH</sup> DEFENDANT**

**RULING**

**[CHAMBER SUMMONS DATED ON 11<sup>TH</sup> OCTOBER, 2018]**

1. The 4<sup>th</sup> Defendant moved the Court through the Chamber Summons dated 11<sup>th</sup> October, 2018, seeking for its name to be struck out from the suit and costs. The application is based on the five (5) grounds marked (i) to (v) on its face and is supported by the affidavit of **Nelly Jerotich**, the Ag. Chief Officer, sworn on the 11<sup>th</sup> October, 2018. That it is the 4<sup>th</sup> Defendant's case that it is a stranger to the Plaintiff's cause of action and the particulars of fraud pleaded touches on 1<sup>st</sup> to 3<sup>rd</sup> Defendant only. That no claim has been made against the 4<sup>th</sup> Defendant who has however been enjoined in the suit. That the Plaintiff's suit against the 4<sup>th</sup> Defendant is incompetent, an abuse of the Court process and its name should be struck out from the suit.

2. The application is opposed by the 3<sup>rd</sup> and 5<sup>th</sup> Defendants through their four (4) grounds of opposition dated the 28<sup>th</sup> July, 2020 summarized as follows;

(a) That the application is incurably defective, misconceived, untenable, an abuse of the court process, devoid of substance and full of misrepresentations of facts.

(b) That the 4<sup>th</sup> Defendant's role in the cause of action of the suit is of paramount importance and striking it out will amount to a miscarriage of justice.

(c) That the application fails the test in **D. T. Dobie Kenya Co. Ltd Vs Joseph Mbaria Muchina & Leah Wanjiku Mbugua (1982) KLR I.**

3. The Plaintiff also opposed the application through their six (6) grounds of opposition dated 1<sup>st</sup> October, 2020 summarized as follows;

(a) That the application is untenable in law, incompetent, irregular, fatally defective, abuse of the court process and contravenes **Order 1 of Civil Procedure Rules.**

(b) That the 4<sup>th</sup> Defendant has not made a reasonable case to be excluded from the suit and the application should be dismissed with

costs.

4. The learned counsel for the Plaintiff and 4<sup>th</sup> Defendant filed their written submissions dated 1<sup>st</sup> October, 2020 and 10<sup>th</sup> August, 2020 respectively. That though Counsel for the 3<sup>rd</sup> and 5<sup>th</sup> Defendants informed the Court on 11<sup>th</sup> November, 2020 that they had filed their submission on the 16<sup>th</sup> October 2020, and promised to follow up with the registry to ensure a copy was placed on the record, none was traced by the Court.

5. The following are the issues for the Court's determinations;

*(a) Whether the 4<sup>th</sup> Defendant is a necessary party in this suit for the issues raised to be determined with finality.*

*(b) Who pays the costs of the application''*

6. The Court has carefully considered the grounds on the Chamber Summons, affidavit evidence, the grounds of opposition, submissions filed, superior courts' decisions cited therein, the pleadings filed and come to the following findings;

(a) That the 4<sup>th</sup> Defendant was enjoined in this suit through the Amended Plaint dated 20<sup>th</sup> August, 2020. That paragraph 5, 6, 7, 8 and 10 of the Amended Plaint clearly shows the nexus of the 4<sup>th</sup> Defendant in the eyes of the Plaintiff to the suit land, and hence the cause of action.

(b) That further, among the documents listed and attached to the Plaintiff's lists of documents dated 2<sup>nd</sup> June, 2015 includes letters from County Council of Wareng dated 9<sup>th</sup> June 1995, 16<sup>th</sup> November 1995, Miscellaneous Receipt No. 5607 issued by the same Council and copy of a cheque paid to the said Council of Kshs.150,000 dated 18<sup>th</sup> August, 1995.

(c) That the finding in (a) and (b) above, goes to show that indeed, the 4<sup>th</sup> Defendant, who for all purposes and intents is the one that inherited the County Council of Wareng after the introduction of devolution, courtesy of the Constitution 2010, is a necessary party in this suit and proceedings.

(d) That as the 4<sup>th</sup> Defendant's Chamber Summons is without merit, it will pay the costs to the Plaintiff, and the Defendants.

7. That flowing from the findings above, the 4<sup>th</sup> Defendant's Chamber Summons dated 11<sup>th</sup> October, 2018 is dismissed with costs. It is so ordered.

**Delivered virtually and dated at Eldoret this 16<sup>th</sup> day of December, 2020.**

**S. M. KIBUNJA**

**JUDGE**

**In the presence of:**

Plaintiff: Absent.

Defendants: Absent.

Counsel: M/s Rotich for Maritim for Plaintiff.

M/s Moraa for 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

Mr. Kuria for 3<sup>rd</sup> and 5<sup>th</sup> Defendants.

Court Assistant: Christine

and the Ruling is to be transmitted digitally by the Deputy Registrar to the Counsel on record through their e-mail addresses.



While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-ShareAlike 4.0 International](#), the texts of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)