



REPUBLIC OF KENYA



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Mukua & 3 others v Ndung'u alias Francis Maina Njonjo & 3 others; Kariuki (Proposed Respondent); Mugo aka Ndonga & another (Proposed Defendant) (Environment & Land Case E19 of 2023) [2025] KEELC 3078 (KLR) (25 March 2025) (Ruling)

Neutral citation: [2025] KEELC 3078 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E19 OF 2023
JM ONYANGO, J
MARCH 25, 2025

BETWEEN

FRANCIS NJENGA MUKUA 1ST PLAINTIFF
WANDATI LAWRENCE 2ND PLAINTIFF
EDWIN MURITHI MWANGI 3RD PLAINTIFF
WANJIKU WANJENGA KARANJA 4TH PLAINTIFF

AND

FRANCIS MAINA NDUNG'U ALIAS FRANCIS MAINA
NJONJO 1ST DEFENDANT
LAND REGISTRAR, RUIRU 2ND DEFENDANT
TERESIA NJERI MWANGI 3RD DEFENDANT
RANCHING COMPANY LIMITED 4TH DEFENDANT

AND

MARGARET NJERI KARIUKI PROPOSED RESPONDENT

AND

JOSEPH MUGO AKA NDONGA PROPOSED DEFENDANT
GODFREY NJENGA MUNGAI PROPOSED DEFENDANT



RULING

1. This ruling is in respect of the Proposed 5th, 6th and 7th defendants' application dated 26.6.24 seeking the following orders:
 - i. Spent
 - ii. That there be a stay of further proceedings in this matter pending the hearing and determination of this application
 - iii. That Margaret Njeri Kariuki, Joseph Karanja Mugo and Godfrey Njenga Mungai be added as defendants in this matter in the manner proposed.
 - iv. That the orders of the court issued on 13.6.2024 including or affecting plot numbers Ruiru/ Kiu Block 2 (Githunguri)/ 26171,26174 and 26175 be set aside.
 - v. That the Applicants plots being Ruiru/Kiu Block 2 (Githunguri)/26171, 26172 and Ruiru/Kiu Block 2 (Githunguri)/26175 being subdivisions of Ruiru/ Kiu Block 2 (Githunguri)/4546 be excluded from the dispute herein there having been amicable settlement with the 1st Defendant.
2. The said application is predicated on the grounds that Margaret Njeri Kariuki, Joseph Karanja Mugo and Godfrey Njenga Mungai are proprietors of plot numbers Ruiru/ Kiu Block 2 (Githunguri)/ 26171, 26174 and 26175 respectively. The said Applicants withdrew the suit they had filed with the Plaintiffs against the 1st defendant after reaching an amicable settlement. However, the Plaintiffs have proceeded to obtain orders against the properties of the Applicants knowing very well that the Applicants own the said properties which were also the subject of Milimani ELC Case No. 1391 of 2014.
3. The said grounds are elaborated in the supporting affidavit of Joseph Mugo, the proposed 6th Defendant sworn on his own behalf and on behalf of his co-Applicants. He depones that the Applicants were plaintiffs in the instant suit and defendants in Milimani ELC Case No. 1391 of 2014 where they were claiming a portion of land parcel number Ruiru/ Kiu Block 2 (Githunguri)/4546. They subsequently withdrew their claims as against the 1st defendant after settling the same amicably. He depones that he sold his plot number T.51 now registered as Ruiru/ Kiu Block 2 (Githunguri)/26174 to the 1st Defendant and he has been paid in full.
4. That Margaret Kariuki wife to Peter Wanjohi the owner of parcel numbers 26171 and 26172 has agreed to repurchase the property and the 1st defendant has fully been paid and Margaret is in the process of transferring the property to herself but she has been blocked by the court order obtained by the plaintiffs. That Margaret has built a permanent house for her family on the said plot.
5. He further deponed that Godfrey Njenga the owner of plot number 26175 agreed to repurchase the property from the 1st Defendant and has paid a substantial amount towards the repurchase but the transaction cannot progress if the plaintiffs continue laying claim on the said plot. That consequently the said plots ought to be excluded from these proceedings as the Plaintiffs are no longer claiming the said plots.
6. In response to the application the Francis Maina Ndungu, the 1st Defendant filed a Replying Affidavit sworn on 3rd July 2024. In the said affidavit he deponed that he is the registered owner of land parcel number Ruiru/ Kiu Block 2 (Githunguri)/4546, a sub-division of parcel number Ruiru/ Kiu



- Block 2 (Githunguri)/3610 which he purchased from Stephen Mwangi Maina, a former director and shareholder of Githunguri Constituency Ranching Company Limited.
7. That after he took possession of parcel 4546, Peter Mwangi and his wife Margaret started claiming the said parcel and he filed a case against them in Milimani ELC. The suit included other persons who were also claiming the same parcel. The court decided the case against them and ordered them to vacate the land and demolish all their structures.
 8. After the case was determined, he sub-divided the land into 8 portions being land parcel no. Ruiru/Kiu Block 2/26171-26178.
 9. He added that by 24.1.24 only Peter Mwangi and his wife Margaret had constructed a house on a small section of the suit land and he agreed with them that rather than demolish the house as ordered by the court, he was willing to sell to them a section of the plot where their house was standing.
 10. He deponed that Margaret has paid for the portion where her house stands and he was in the process of transferring the land to her.
 11. He confirmed that he had amicably settled the claims by all the Applicants over plot numbers Ruiru Kiu Block 2/26171, 26172, 26174 and 26175 and that there cannot be any inhibition or injunction against the said plots. He denies that he is in the process of selling the suit property to other parties. He wonders why the Plaintiffs would want to inhibit plots belonging to their former co-plaintiffs unless they were driven by malice.
 12. On his part, Francis Wandati, the 2nd Plaintiff filed a Replying Affidavit sworn on 26th August 2024 on his own behalf and on behalf of the rest of the Plaintiffs. He deponed that the application is a waste of the court's time.
 13. He stated that they are challenging the manner in which Stephen Mwangi Maina, the late husband of the 3rd Defendant obtained title to land registration number Ruiru/ Kiu Block 2 (Githunguri)/4546 which was later sub-divided by the 1st Defendant into 8 plots out of which the Applicants claim ownership of plots number Ruiru Kiu Block 2(Githunguri)/26171, 26172, 26174 and 26175. That they are challenging not only the resultant 8 titles which are registered in the name of the 1st Defendant but also the mother title.
 14. He wonders why the 1st defendant would buy plot no. 26174 from the Proposed 6th Defendant if he claims to be the legitimate owner of the said plot. Further he wonders why the Proposed 6th Defendant would want to be joined to the suit as a defendant if he has sold his plot to the 1st Defendant as that would mean that he no longer has an interest in the same.
 15. That on the other hand the Proposed 5th and 7th Defendants knew that the property they were purchasing from the 1st defendant had a dispute which was pending in court yet they went ahead and entered into a sale agreement with the 1st defendant so they cannot be heard to complain about the orders issued by the court in relation to the said parcels.
 16. He deponed that the applicants have not demonstrated what prejudice they will suffer if they are not joined in the suit. He was of the view that the application is merely intended to delay this matter and it is an abuse of the court process.
 17. The application was canvassed by way of written submissions and both parties filed their submissions which I have read and considered in determining this application.
 18. The issues for determination are as follows:



- i. Whether Margaret Njeri Kariuki, Joseph Karanja Mugo and Godfrey Njenga Mungai be added as defendants in this matter.
- ii. Whether the orders issued on 13.6.2024 touching on and affecting plot numbers Ruiru Kiu Block 2(Githunguri)/26171, 26172, 26174 and 26175 should be set aside.
- iii. Whether plot numbers Ruiru Kiu Block 2(Githunguri)/26171, 26172, 26174 and 26175 should be excluded from the dispute herein, there having been amicable settlement with the 1st Defendant.

Analysis and Determination

19. The relevant provision under which this application is made is Order 1 rule 10(2) of the Civil Procedure Rules which provides that:

“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.”

20. The principles that should guide the court in determining whether or not to join a party in proceedings were restated by Nambuye, J (as she then was) in the case of *Kingori vs. Chege & 3 Others* [2002] 2 KLR 243 as follows:

1. He must be a necessary party.
2. He must be a proper party.
3. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.
4. The ultimate order or decree cannot be enforced without his presence in the matter.
5. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.

The court further held that:

“Necessary parties who ought to have been joined are parties who are necessary to *the constitution* of the suit without whom no decree at all can be passed. Therefore, in case of a defendant two conditions must be met: (1) There must be a right to some relief against him in respect of the matter involved in the suit. (2) His presence should be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit being one without whom no decree can be made effectively and one whose presence is necessary for complete and final decision on the questions involved in the proceedings. A proper party is one who has a designed subsisting direct and substantive interest in the issues arising in the litigation which interest will be recognisable in the Court of law being an interest, which the Court will enforce. Order 1 rule 10 allows the Court to add a defendant on its own motion or upon application by either party either orally or formally by summons in chambers under Order 1 rule 22. Here the party has not moved on its own but has been moved by the intending party on its own formally. The use of the words “either party” denotes that the formal move has to be made by a party already participating



in the proceedings and it would mean that an intending party cannot come on his own and choose which position he wants.” [Emphasis added].

21. However, in *Civicon Limited vs. Kivu Watt Limited and 2 Others* [2015] eKLR the court observed that:

“the power given under the Rules is discretionary which discretion must be exercised judicially. ...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”
22. In the instant suit the Applicants have indicated that they are the proprietors of land parcels numbers Ruiru Kiu Block 2(Githunguri)/26171, 26172, 26174 and 26175 respectively. They claim that their interests will be affected as the Plaintiffs have obtained orders against the said properties. It is therefore their contention that it is necessary that they be joined in the suit for the effectual and conclusive resolution of the issues in dispute.
23. The court notes that the Applicants were initially Plaintiffs in this suit before they reached a settlement with the 1st defendant with regard to their respective parcel of land. They claim that having bought the suit properties from the 1st defendant, he cannot transfer the properties to them because of the interim orders in place.
24. Although the Plaintiffs have argued that their interests are merely equitable, the fact they have fully paid for the suit properties is sufficient to give rise to claim over the same. In the circumstances and guided by the above authorities, it is my finding that it would be expedient to join the Applicants in the suit so as to effectually and conclusively resolve all the issues touching on the suit property. This would also avoid a multiplicity of suits.
25. I will now determine whether the orders issued on 13.6.24 should be set aside and whether land parcels numbers Ruiru Kiu Block 2(Githunguri)/26171, 26172, 26174 and 26175 should be excluded from the suit herein.
26. I agree with learned counsel for the Plaintiffs that since the 4 parcel are sub- divisions of land parcel No. Ruiru Kiu Block 2(Githunguri)/4546 and the plaintiffs are challenging the manner in which parcel no. 4546 was registered in the name of Stephen Mwangi Maina before it was transferred to the 1st defendant, it would be premature to lift the orders issued on 13.6.24 or exclude the 4 sub-divisions of parcel number 4546 from the instant suit.
27. Accordingly, the application partially succeeds and I make the following orders;
 - a. That Margaret Njeri Kariuki, Joseph Karanja Mugo and Godfrey Mungai are hereby added to the suit herein as defendants.
 - b. That the pleadings shall be served upon the applicants within 14 days after which they shall file their responses within 14 days from the date of service.
 - c. The cost of this application are awarded to the plaintiffs.



DATED SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 25TH DAY OF MARCH 2025.

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J.M ONYANGO

JUDGE

In the presence of:

Mr Mbutia for Mr Kungu for the Plaintiffs/ Respondents

Miss Kemunto for Mr Oyunge for the Interested Party

Mr Wachira for Mr Kanyi for the 4th Defendant /Respondent

Court Assistant: Hinga

