



REPUBLIC OF KENYA



Kariuki v Estate of Amos Ngata Muiruri (Environment & Land Case E105 of 2022) [2023] KEELC 17063 (KLR) (27 April 2023) (Ruling)

Neutral citation: [2023] KEELC 17063 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E105 OF 2022**

**AA OMOLLO, J
APRIL 27, 2023**

BETWEEN

GERALD NDIRANGU KARIUKI PLAINTIFF

AND

ESTATE OF AMOS NGATA MUIRURI DEFENDANT

RULING

1. The Defendant filed for determination the chamber summons application dated September 16, 2022 and brought under the provisions of Order 1 rule 10(2)(4) of the [Civil Procedure Rules](#). He sought to be granted the following orders:
 - i) That Daniel Gacanja Githaiga be added in this suit as a Defendant.
 - ii) That summons to enter appearance upon the said Daniel Gacanja Githaiga be signed and served on him
 - iii) That the pleadings be amended accordingly to reflect that the said Daniel Gacanja Githaiga is a 2nd Defendant
 - iv) Costs of this application be provided for
2. The application is grounded on the statement of facts listed on its face inter alia;
 - a) The joinder of Daniel Gacanja Githaiga is crucial and very necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit.
 - b) The said Daniel Gacanja Githaiga was the joint owner of the suit premises together with the Plaintiff
3. Mr Hiram Ngata Muiruri swore an affidavit on September 16, 2022 in support of the application deposing inter alia that he is the co-legal administrator of the estate of the Amos Ngata Muiruri. He



stated that in contracting to buy one acre of land from his late father, the Plaintiff acted jointly with the proposed 2nd Defendant. Mr Ngata Muiruri added that the subsequent agreement which voided the earlier agreement of August 22, 2012 was signed by Daniel Gacanja Githaiga showing that the said Daniel played a role in the matters pertaining to this suit and should therefore be added.

4. The proposed party filed grounds of objection dated November 29, 2022 in opposition to the application as follows;

- a) The application is bad in law, vexatious and misconceived and should be dismissed with costs
- b) No cause of action has been disclosed as against the party sought to be enjoined in the suit which renders the application vexatious
- c) The party sought to be impleaded has no role to play either in the production of the completion documents referred to or the registration of transfer and is therefore not a necessary party in these proceedings.

5. The advocates on record agreed to prosecute the application by filing of written submissions. The applicant quoted Order 1 rule 3 and 5 which provides that;

Order 1 Rule 3;

' All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same transactions or series or acts out of the same transaction is alleged to exist, whether jointly and/or severally.'

Order 1 Rule 5;

' It shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him.'

6. The Applicant submits that the pleadings and the documents filed demonstrate that Daniel Gacanja Githaiga was very active in the subject matter of this dispute. He referred the Court to paragraph 3(1) of the Plaintiff and paragraphs 4 and 7 of the Defence as well as document number one in their list that have all set out the role of Daniel Gacanja Githaiga in the transaction. Paragraph 3(1) stated thus;

' The agreement for sale was between the deceased, the Plaintiff and one Daniel Gacanja Githaiga'

7. The proposed 2nd Defendant submitted that nothing has been pleaded to warrant his joinder stating that the supporting affidavit is very scanty and does not disclose any tangible issues. He also recited the provisions of Order 1 rule 3 submitting that the position contemplated in that order does not subsist in this suit. Further, he referred this court to the case of *Departed Asians Property Custodian Board v Jaffer Brothers Ltd [1999] EA 55* where the Court held thus;

' In order for a person to be joined to a suit on the ground that his presence was necessary for the effective and complete settlement of all questions involved in a suit, it was necessary to show either that the orders sought would legally affect the interests of that person,



And that it was desirable to have that person joined to avoid a multiplicity of suits, or that the defendant could not effectually set up a desired defence unless such person was joined or an order made that would bind that other person.'

8. I have considered the application, the grounds in support of and against and the submissions rendered. At paragraph 3 of the Plaintiff, it is pleaded that the agreement was between the deceased (Defendant), the Plaintiff and Daniel Gacanja Githaiga. A copy of the sale agreement is available in the list of documents which agreement confirm the facts stated in the plaintiff and statement of Defence. The Plaintiff has not pleaded that he is bringing this suit on his behalf and on behalf of the proposed Defendant.
9. The objection by the proposed Defendant that he has no role to play either in the production of the completion documents referred to or in the registration and transfer makes sense. However, Daniel Gacanja is indicated as a co-purchaser and therefore enjoys a right to bring a suit against the estate of the deceased Defendant. The Applicant is entitled to bring the present application to avoid a similar claim brought in the future against the estate whether the Plaintiff herein succeeds or loses.
10. The proposed party has an option to join the suit as a second Defendant or as a co-plaintiff because this court finds him a necessary party going by the facts pleaded and the sale agreement referred to by both sides. In a nutshell, I find the chamber summons application dated September 16, 2022 as merited and allow it on terms that Daniel Gacanja Githaiga is joined to this suit. The Court grants him 14 days to elect which side to join and thereafter the plaintiff shall be amended to reflect the joinder.
11. Each party to bear their respective costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF APRIL 2023

A. OMOLLO

JUDGE

