



REPUBLIC OF KENYA



Blue Quadrant Hospitality Limited v Nairobi City County & another (Environment & Land Case E340 of 2022) [2023] KEELC 18412 (KLR) (29 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18412 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E340 OF 2022**

JO MBOYA, J

JUNE 29, 2023

BETWEEN

BLUE QUADRANT HOSPITALITY LIMITED PLAINTIFF

AND

NAIROBI CITY COUNTY 1ST DEFENDANT

PBM NOMINEES LIMITED 2ND DEFENDANT

RULING

Introduction and Background

1. The Ruling herein relates to and/or concerns two (2) critical aspects touching on the subject matter. Firstly, the Ruling relates to whether or not the suit filed by and on behalf of the Plaintiff discloses a reasonable causes of action and whether the Honorable court is seized of the requisite Jurisdiction to grant the reliefs sought at the foot of the Plaint dated the 11th October 2022.
2. The Second limb of the Ruling relates to whether or not the proposed 2nd Defendant ought to be joined and constituted as the 2nd Defendant in respect of the instant matter, with a view to (sic) defending her Rights to and in respect of the Suit Property.
3. For good measure, it is imperative to state and point out that the instant suit was filed by and on behalf of the Plaintiff/Applicant and same has sought for the following Reliefs;
 - i. Declaration that the Plaintiff is the lawful Licensee of the parking space along General Mathenge Road, Opposite Plot, No. L.R 209/11876.
 - ii. Declaration that any dealings purporting to confer License/Interests on the subject space to 3rd Parties without prior revocation of the Plaintiff's license is illegal, null and void.



- iii. Permanent Injunction be issued restraining the Defendant, or their agents, employees or otherwise howsoever from licensing, granting permission, authority, leasing, subletting or otherwise interfering during the subsistence of the plaintiff's license of the suit property.
 - iv. Mandatory Injunction be issued compelling the Defendant to prevent Third Parties from interfering with the Plaintiff's quiet possession/ use of the suit property.
4. On the other hand, the proposed 2nd Defendant has filed the Application dated the 14th February 2023 and in respect of which same has sought for the following reliefs;
- i.(Spent).
 - ii. This Honorable court be pleased to join PBM Nominees Ltd to the proceedings herein as the 2nd Defendant.
 - iii. The Honorable Tribunal/Court be pleased to make any order to give effect to grant of prayer (ii) above including direction of service of all court processes filed herewith and direction in responding thereto.
 - iv. The Honorable court be pleased to make an order for the transfer of MCELC No. E396 of 2022 – PBM Nominees Ltd v Blue Quadrant Hospitality Ltd and Director General, Nairobi Metropolitan Services to this honorable court and that same be heard together with the suit herein.
 - v. Costs of the Application be provided for
5. It is instructive to point out that the subject matter came up for directions before the Honorable court on the 15th March 2023; when the court raised the issue with counsel for the Plaintiff as to whether or not a licensee has any legitimate or proprietary interests capable of anchoring a suit against the Licensor, in this case, the City County Government of Nairobi.
6. Other than the foregoing, it also transpired that the proposed 2nd Defendant had also filed an Application dated the 14th February 2023; and in respect of which same had sought to be joined into the current proceedings as a 2nd Defendant.
7. Premised on the foregoing position, the Honourable court ordered and directed that both the question of Jurisdiction/ Disclosure of reasonable Cause of action; and the Application for joinder be canvassed and disposed of simultaneously. Furthermore, the court also directed that the twin issues be canvassed and disposed of by way of written submissions.
8. Further and in addition, the court thereafter proceeded to and circumscribed the timelines for the filing and exchange of the written submissions by and on behalf of the respective Parties.

Submissions by the Parties

a. Plaintiff's Submissions:

- 9. The Plaintiff herein filed written submissions dated the 12th April 2023 and in respect of which the Plaintiff has raised, highlighted and canvassed two salient issues for consideration and determination by the Honourable court.
- 10. Firstly, Learned counsel for the Plaintiff has submitted that the Defendant herein issued to and in favor of the Plaintiff a license and/or authority to use the packing space along General Mathenge Road,



opposite L.R 209/11876. In addition, Learned counsel has submitted that pursuant to the license, the Plaintiff herein entered upon and developed the parking space for use by her customers.

11. On the other hand, Learned counsel for the Plaintiff has further submitted that the Plaintiff herein has variously complied and adhered to the terms of the license, which was issued by the Defendant herein.
12. Nevertheless, Learned counsel for the Plaintiff has submitted that despite having been granted a License/permission by the Defendant to use the named parking area, the Defendant herein has authorized and allowed third parties to also enter upon and use the same parking area, over and in respect of which a license was issued in favor of the Plaintiff.
13. Consequently and in the premises, Learned counsel for the Plaintiff has submitted that the Plaintiff has therefore accrued lawful and legitimate rights to and in respect of the parking space and hence same is entitled to the reliefs sought at the foot of the Plaintiff.
14. Furthermore, Learned counsel for the Plaintiff has submitted that the Honorable court is seized and vested with the requisite Jurisdiction to entertain and adjudicate upon the issues raised at the foot of the Plaintiff herein.
15. In support of the foregoing submissions and to underscore that the court is seized of the requisite Jurisdiction to entertain and adjudicate upon the subject suit, Learned Counsel for the Plaintiff has cited and relied on, inter-alia, Owners of Motor Vessel Lilian S versus Caltex Oil (K) Ltd (1989)eKLR, Samuel Kamau Macharia & Another versus Kenya Commercial Bank & Another (2012)eKLR, National Land Commission versus Afrison Export- Import Ltd & 10 Others (2019)eKLR and Faraj Maharus v J P Martin Plus Industries & 2 Others (2005)eKLR.
16. Secondly, Learned counsel for the Plaintiff has submitted that the proposed 2nd Defendant has since established nor demonstrated that same have an identifiable stake and/or claim over and in respect of the disputed property and hence it would be appropriate and expedient that same be joined into the subject proceedings, with a view to enabling the Honourable court to entertain and adjudicate upon all the issues in controversy; once and for all.
17. In support of the position that the proposed 2nd Defendant ought to be joined into the instant proceedings, Learned counsel for the Plaintiff has cited and relied on, inter-alia, the case of Kenya Medical Laboratory Technicians & Technologists Board & 6 Others versus The Attorney General & 4 Others (2017)eKLR, Judicial Service Commission versus The Speaker of National Assembly & Another (2013)eKLR and Mumo Matemu versus Trusted Society of Human Rights Alliance & 5 Others (2013)eKLR, respectively.
18. In view of the foregoing, Learned counsel for the Plaintiff has therefore impressed upon the court that the suit before hand raises and discloses a reasonable cause of action and thus same ought to be canvassed before the Honourable court for purposes of determination and adjudication thereof.

b.Respondent's Submissions

19. The Defendant/Respondent filed written submissions dated 15th May 2023; and in respect of which same has raised, canvassed and highlighted two issues for due consideration and determination by the court.
20. First and foremost, Learned counsel has submitted that what was given to and in favor of the Plaintiff was a license over and in respect of the named parking area.
21. Nevertheless, Learned counsel for the Defendant has submitted that the license in question neither vested nor conferred any proprietary rights to and in favor of the Plaintiff herein.



22. Further and in any event, Learned counsel for the Defendant has submitted that the license which was issued to and in favor of the Plaintiff did not vest in the Plaintiff any proprietary rights, capable of being ventilated before a court of law and in particular, as against the licensor.
23. Secondly, Learned counsel for the Defendant has submitted that the temporary occupation license, which was issued in favor of the Plaintiff cannot be relied upon by the Plaintiff herein to defeat and/or oust the Defendant's rights to and in respect of the designated portion of land.
24. In a nutshell, Learned counsel for the Defendant has therefore impressed upon the Honourable Court to find and hold that the Plaintiff herein has no lawful and/or legitimate rights over and in respect of the designated parking space, which falls within the purview of the Defendant/Respondent.
25. To buttress the foregoing submissions, Learned counsel for the Defendant/Respondent has cited and relied on, inter-alia, the decision in Eunice Njoki Kiruri (Suing as the legal Administrator of the Estate of the late Naashon Gicho Muchembe) versus Richard Kipruto Koech (2013)eKLR and Faraj Maharus versus G B Martine Glass Industries & 3 Others (2005)eKLR, respectively.

c. Proposed 2nd Defendant's Submissions

26. Though the proposed 2nd Defendant had filed the Application dated the 14th February 2023 and in respect of which same sought to be joined and constituted as the 2nd Defendant; same however failed to file the written submissions, either as ordered by the court or otherwise.
27. Nevertheless, it is not lost on the court that Learned counsel for the Plaintiff in his submissions has confirmed and signified that same is not averse to the joinder and/or inclusion of the proposed 2nd Defendant into the suit.

Issues for Determination

28. Having reviewed the Plaint dated the 11th October 2022 and the Application dated the 14th February 2023; and upon considering the written submissions filed by and on behalf of the respective Parties, I come to the conclusion that the following issues do arise and are thus worthy of determination;
 - i. Whether the Plaint dated the 11th October 2022 and which touches on a license; discloses a reasonable cause of action capable of being ventilated before the honorable court.
 - ii. Whether the Proposed 2nd Defendant has an Interests and/or stake in the subject suit and if so; whether the Joinder thereof will enable the court to determine all the issues in controversy once and for all.

Analysis and Determination

issue number 1

Whether the Plaint dated the 11th October 2022 and which touches on a license; discloses a reasonable cause of action capable of being ventilated before the Honorable court.

29. From the body of the Plaint dated 11th October 2022, it is apparent and evident that the subject suit touches on and/or concerns (sic) a license/permission, which was granted to and in favor of the Plaintiff by the Defendant herein, over and in respect of some designated parking space.
30. Further and in addition, the Plaintiff has averred that upon being issued with and/or granted the license by the Defendant, same has duly complied with and/or adhered to the terms of the license.



31. Nevertheless, it is the Plaintiff's case that despite complying with the terms of the license, the Defendant herein has since allowed and authorized Third-Parties to interfere with the Plaintiff's license/permission over the designated parking space. Consequently and in this respect, the Plaintiff now seeks inter-alia mandatory and a permanent injunction as against the Defendant herein.
32. On her part, the Defendant has contended that what was given to and in favor of the Plaintiff was a temporary license, which neither vested nor conferred upon the Plaintiff any proprietary rights over and in respect of the designated parking space.
33. Furthermore, Learned counsel for the Defendant has submitted that the Plaintiff herein cannot invoke and rely upon the terms of the license to defeat the title of the Defendant over and in respect of the named parking space.
34. Secondly, Learned counsel for the Defendant has also submitted that the license which was given to and in favor of the Plaintiff was subject to termination and thus the Plaintiff cannot approach the Honorable court with a view to procuring and/or obtaining an order of Permanent injunction to restrain the Defendant from dealing with and/or using the named parking bay.
35. Having enumerated the positions taken by the respective Parties, it is now appropriate to venture and consider the legal implications arising from the facts of the subject matter.
36. Be that as it may, it is instructive to observe that the facts of this matter are simple and straight forward. Clearly, there is no dispute that the Defendant issued to and in favor of the Plaintiff a license to use a particular parking space for her customers.
37. Further and in addition, there is also no dispute that the license which was issued to and in favor of the Plaintiff, neither vested nor conferred upon the Plaintiff any proprietary rights to and/or in respect of the designated parking space. Simply put, the license enabled the Plaintiff herein to use the designated parking space, which belongs to and is under the management of the Defendant, by virtue of being the Planning authority in accordance with the [Physical and Land Use Planning Act](#), 2019.
38. Nevertheless, the critical legal question that needs to be dealt with and highlighted relates to whether the beneficiary of a license accrues any proprietary rights to and in respect of the license; and whether a licensee can maintain a suit as against the licensor for inter-alia revocation of the license.
39. Before delving to render a determination in respect of the isolated issue herein, it is appropriate to discern what is the legal import and tenor of a license. In this respect, the definition of what constitutes a license is provided for in Wikipedia which states as follows;

“A license provides one party with the authority to act on another's land, when such action would typically amount to trespass absent that license. A key distinction between licenses and leases is that a license grants the licensee a revocable non-assignable privilege to act upon the land of the licensor, without granting any possessory interest in the land.^[4] Once a license is agreed upon, the licensee may occupy the land only so far as is necessary to complete the act. Another key distinction between a license and a lease is that leases are generally required to be in writing, where the statute of frauds requires it, while licenses can be made orally.”
40. Furthermore, there is no gainsaying that a license, like the one beforehand is capable of being revoked; and in the event of revocation a licensee would be unsuccessful in bringing a claim for forcible entry or detainer proceedings because the licensee was never granted any possessory interests.



41. As pertains to the remedies, if any, that a licensee can pursue as against the licensor, Wikipedia underlines the following;

If a license is revocable at will by the licensor, courts will be unable to grant specific performance in favor of the licensee.^[4] A licensee would be unsuccessful in bringing forcible entry claims or a detainer proceeding because the licensee was never granted any possessory interest. The Licensee would also not be able to recover damages for money spent unless they are able to show detrimental reliance on the license. In certain cases, however, licenses can be made irrevocable, and specific performance may be granted. Where a license is made with a set term period and valid consideration is transferred, revocation of the license prior to the terms expiration may raise breach of contract claims that could provide damages against the licensor. Furthermore, once the licensor terminates or revokes the license, notice is statutorily required prior to the commencement of any special proceeding to recover possession of the property (e.g., in NY that requirement is 10 days).

42. Other than the foregoing, it is instructive to state and reiterate that the legal import and consequence of a license, if any granted over public land, was also elaborated upon by the Court of Appeal in the case of Faraj Maharus versus J.B. Martin Glass Industries & 3 others [2005] eKLR, where the court stated and held thus;

“It is indeed settled Law in Kenya that a Temporary Occupation Licence to occupy Government Land is not sufficient to create or transfer title to the grantee or his personal representative. As was stated in Runda Coffee Estate Ltd v. Ujagar Singh [1966] E.A. 564:

“It is the essence of a licence of this nature that it is personal to the licensee and creates no interest which can be disposed by the licensee. As has been said well over 100 years ago, it creates nothing substantial which is assignable”.

We would agree therefore, with the learned Judge that the licence to occupy the suit property came to an end upon the death of Effendi Maharus and his widow and as the appellant had nothing to show for the continued occupation of the suit land, his occupation as such amounted to trespass as against the registered proprietor.

43. My understanding of the ratio decidendi espoused and elaborated upon by the Court of Appeal in the decision (*supra*), is to the effect that a license does not vest nor confer on the licensee any proprietary rights to and in respect of the property which is the subject of license.
44. Taking into account the claim at the foot of the instant matter, the question that does arise is whether the Plaintiff herein attracted and/or accrued any proprietary rights and/or interests, to and in respect of the parking space, which can anchor and/or sustain the claim for an order of Mandatory and Permanent injunction, either as claimed by the Plaintiff or otherwise.
45. However, it is my humble view that as a licensee, the Plaintiff herein knew and understands that the permission granted at the foot of the license, can be revoked, unless the license was for a stated duration/ period of time, which is not the case herein.
46. Having come to the conclusion that the Plaintiff was a licensee and further that as a licensee, the Plaintiff did not acquire any possessory rights to and in respect of the designated parking space, it is now imperative to venture and discern whether the Plaintiff has a reasonable cause of action that can be ventilated before the Honorable court.



47. In this respect, it is also appropriate to consider what a cause of action denotes. For good measure, what constitutes a cause of action was elaborately explained by the Honorable Court of Appeal in the case of Kigwor Company Ltd versus Samedy Trading Company Ltd (2021)eKLR, where the court of appeal stated and observed as hereunder;

36. In the Court of Appeal case of Attorney General & another v Andrew Maina Githinji & Another [2016] eKLR Justice Waki held that:-

“A cause of action is an act on the part of the defendant, which gives the plaintiff his cause of complaint.”

That definition was given by Pearson J. in the case of Drummond Jackson vs. Britain Medical Association (1970) 2 WLR 688 at pg 616. In an earlier case, Read vs. Brown (1889), 22 QBD 128, Lord Esher, M.R. had defined it as:-

“Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court.”

Lord Diplock, for his part in Letang vs. Cooper [1964] 2 All ER 929 at 934 rendered the following definition:-

“A cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person.”

When did the cause of action in this case arise? Put another way, when did the respondents become entitled to complain or obtain a remedy ...”

48. Having found and held that the Plaintiff has no proprietary or possessory rights to and in respect of the parking space and having found that a license cannot be relied upon to maintain a suit against the licensor (unless the license was for a particular duration); what then remains is whether the instant suit has any semblance of a cause of action.
49. To my mind, the nature of reliefs that are being sought by the Plaintiff can only be ventilated and claimed by the beneficiary of a lease or better still a licensee, albeit with a fixed duration. However, where the license beforehand is an ordinary license, the nature of reliefs, inter-alia, permanent injunction, cannot issue and/or be granted at all.
50. Finally, I am alive to the fact that striking out of a suit on the basis of want of disclosure of a reasonable cause of action, is a drastic measure and/or step. Furthermore, I am alive to the position that it behooves the court to sustain a suit, provided that same espouses some semblance of a cause of action and can thus be remedied by way of amendment.
51. Nevertheless, there is no gainsaying that the claim by the Plaintiff herein, which is premised and anchored on a license and which in any event, does not create any proprietary rights; cannot be remedied by any amount of amendment.
52. Suffice it to point out that as a licensee, the Plaintiff herein cannot approach this Honorable Court and seek to impress upon the court to issue Declaratory orders and also to grant, inter-alia, orders of permanent injunction, either as sought or otherwise.
53. In the premises, and despite the caution alluded to in the famous case of D.T Dobbie Ltd v Muchina (1982)eKLR; I come to the conclusion that the suit before the court does not disclose and/or espouse a reasonable cause of action, capable of being canvassed and/or pursued before the court.



54. For good measure, where a particular suit does not raise and/or disclose a reasonable cause of action, there would be no basis to postpone the day of reckoning, merely because striking out of a suit is a drastic measure.
55. In my humble view, there are instances where the striking out of a suit would enable the court to maximize the use of time, which is the only resource available to a judicial officer and which in any event, must be used diligently, efficiently and with a view to propagating the National Values and Principles of Governance, as espoused vide Article 10(2) of *The Constitution*, 2010.
56. In a nutshell, I come to the conclusion that the suit beforehand, (which is anchored on a license) does not raise and/or disclose any reasonable cause of action, capable of being ventilated in a conventional hearing or at all.
57. Consequently and in the premises, this is a suit that merits striking out.

Issue Number 2

Whether the proposed 2nd Defendant has an Interests and/or stake in the subject suit and if so; whether the Joinder thereof will enable the court to determine all the issues in controversy once and for all.

58. On one hand, the Plaintiff herein contends that same was issued with a license/permission by the Defendant herein to use the named portion as a parking space/area. Consequently and in this regard, the Plaintiff avers that same proceeded and developed the disputed area as a parking bay.
59. On the other hand, the proposed 2nd Defendant contends that same owns the adjoining parcel of land and that because of her ownership of the adjoining parcel of land, same approached the Nairobi Metropolitan Services and National Environment Management Authority to give her permission to do landscaping and beautification at onset of the property owned by herself (proposed 2nd Defendant).
60. In particular, the proposed 2nd Defendant also contends that same procured and was issued with a license/permissions to undertake the landscaping and beautification exercise, in respect of the same ground.
61. Be that as it may, the proposed 2nd Defendant further avers that despite the license issued in her favor for purposes of landscaping and beautification, the Plaintiff herein moved onto the said area and started constructing a parking lot at the frontage of the property owned by the proposed 2nd Defendant.
62. From the foregoing, what arises is that both the Plaintiff and the proposed 2nd Defendant are indeed tussling over who has the requisite license/permission pertaining to the disputed portion, which no doubt belongs to the Defendant herein.
63. Given the nature of claims that the proposed 2nd Defendant is raising, there is no doubt that the proposed 2nd Defendant would have a stake and/or interests in the suit and by extension the suit property.
64. Nevertheless, it is not lost on the court that both this Parties are tussling over licenses, which do not vests and/or confer any proprietary rights to and in respect of the named portion/area.
65. Notwithstanding the foregoing, what I need to deal with and address is whether the proposed 2nd Defendant ought to be joined as a Party and in particular, as a co-Defendant.



66. Suffice it to point out, that the law on joinder, whether as an Interested Party, necessary party or as a co-Defendant (the latter which is provided for under Order 1 Rule 3 of the Civil Procedure Rules, 2010), was elucidated in the case of Pravin Bowry versus John Ward & another [2015] eKLR.

67. For coherence, the Court of Appeal stated and observed as hereunder;

“The exercise of this jurisdiction is pegged upon the discretion of the court in making a determination as to whether the party sought to be added will facilitate the effectual and complete settlement of all the questions in the suit.

This Court sitting at Mombasa in Civicon Limited v. Kivuwatt Limited & 2 others [2015] eKLR (Civil Appeal No. 45 of 2014) identified that the provisions of Order I of the Civil Procedure Rules call for the exercise of discretion and had this to say of the same:

“Again the power given under the Rules is discretionary which discretion must of necessity be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined.”

.....

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.”

68. Arising from the foregoing, it is explicit that before directing and/or decreeing joinder, the court is called upon to discern whether the party sought to be joined has an identifiable claim in respect to the suit property; or shall be affected by the subject proceedings.

69. In respect of the instant matter, I have endeavored to point out that both the Plaintiff and the proposed 2nd Defendant are all contending that same have licenses to use and utilize the disputed area.

70. Consequently and in the circumstances, there is no gainsaying that the proposed 2nd Defendant, certainly has a stake/claim in the subject dispute. In this regard, it would have been prudent to join and implead the proposed 2nd Defendant.

71. Nevertheless, whilst dealing with issue number one herein before, this court has found and held that the impugned license upon which the Plaintiff seeks to procure the named orders before the court, is incapable of originating and/or mounting the subject suit.

72. Further and in addition, the court has also found that the Plaintiff's suit does not disclose nor espouse any reasonable cause of action. In this regard, it thus means that the intended joinder cannot be decreed and/or allowed, if the suit is non-existent.



Final Disposition

73. Whereas the Environment and Land court is conferred and/or vested with wide Jurisdiction pursuant to and by dint of Section 13(2) of the *Environment and Land Court Act*, it is instructive to note that the said jurisdiction can only be exercised over and in respect of a suit that discloses a reasonable cause of action.
74. To the contrary, where a suit does not disclose a reasonable cause of action, then there would be no basis for continuation with the suit or otherwise.
75. Consequently and having come to the conclusions, (whose details I have endeavored to highlight in the preceding paragraphs), I come to the conclusion that the Plaintiff's suit does not disclose any reasonable cause of action or at all.
76. In the premises, the Plaintiff's suit vide Plaint dated the 11th October 2022, be and is hereby struck out, albeit with no orders as to costs.
77. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29th DAY OF JUNE, 2023.

OGUTTU MBOYA

JUDGE

In the presence of:

Benson – court assistant

Mr. Keaton for the Plaintiff.

Mr. Obwogi for the Defendant.

Mr. Gisemba for the Proposed 2nd Defendant

