



REPUBLIC OF KENYA



**Kariithi v Kariithi (Environment & Land Case 33 of 2015)
[2023] KEELC 18201 (KLR) (16 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18201 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 33 OF 2015**

**JO OLOLA, J
JUNE 16, 2023**

BETWEEN

TABITHA WANJIKU KARIITHI PLAINTIFF

AND

JOHN NDEGWA KARIITHI DEFENDANT

RULING

1. By the Chamber Summons application dated June 20, 2022 Tabitha Wanjiku Kariithi (the Plaintiff) prays for orders that:
 2. This Court be pleased to order pursuant to the provisions of Order 1 Rule 10(2) and (14) of the Civil Procedure Rules that Juliet Wanjiku Kariithi (deceased), who was a daughter of the intestate Zaphan Kariithi Ndegwa, Joyce Wanjiru Kariithi and Kenneth King'ori Kariithi be joined as Co-Plaintiffs and the Public Trustee and the Land Registrar Nyeri be joined as Co-Defendants in the suit herein;
 3. Upon Order No. (2) being granted, the annexed undated Draft Further Amended Plaintiff be dated and deemed as duly filed, upon payment of the requisite Court Fees;
 4. That upon Orders No. (2) and (3) being granted, Summons to Enter Appearance do issue to the 2nd and 3rd Defendants;
 5. Any such further or other orders as this Honourable Court may deem fit and just to grant; and
 6. The costs of this application be provided for.



2. The application which is supported by an Affidavit sworn by the Plaintiff is premised on the grounds, inter alia, that:
 - (i) The Plaintiff is allowed by dint of order 1 rule 10 *of the Civil Procedure Rules* to file an application for joinder of a Co-Plaintiff;
 - (ii) The intended Co-Plaintiffs are two children and one grandchild of the Plaintiff and siblings and a niece respectively to the Defendant;
 - (iii) All the surviving children of Zaphan Kariithi Ndegwa and the surviving issues of his deceased children are entitled to inherit the suit property but they have been excluded and denied their right to inheritance;
 - (iv) The intended 2nd Defendant is answerable to the Plaintiffs in relation to a transfer dated 15th February, 1991 of a parcel of land known as Thegenge/Karia/269 as the transfer was done contrary to a Court Order issued on 19th September 1969;
 - (v) The intended 3rd Defendant is answerable to the Plaintiff for his negligence and breach of statutory duty in the manner in which he handled the various transactions in relation to the suit property; and
 - (vi) The presence of the intended Co-Plaintiffs and the 2nd and 3rd Defendants in this suit is necessary to enable the Court effectively and completely adjudicate upon and settle all the questions involved in the suit and in order to avoid a multiplicity of proceedings.
3. John Ndegwa Kariithi (the Defendant) is opposed to the application. In his Replying Affidavit sworn and filed herein on 25th October 2022, the Defendant terms the Plaintiff's application as misconceived, unmerited and one that is filed in abuse of the Court process.
4. The Defendant asserts that this suit was commenced through a Plaint dated 28th January, 2015 wherein the Plaintiff seeks the cancellation of title Nos. 4432 to 4446 being resultant titles from L.R No. Thegenge/Karia/269. The Plaintiff was by then already aware that the said title was on 22nd February 1991 registered in her name, that of the Defendant as well as one Samuel Thuita Kariuki. It was therefore curious why the amendment is being sought seven (7) years after the suit was filed.
5. The Defendant further avers that the intended amendments are meant to re-open succession proceedings that were conducted in Public Trustee administration Cause No. 130 of 1968 which was completed in 1969. The Defendant contends that the issues being raised herein can only be addressed in the said Succession Cause.
6. I have carefully perused and considered both the Plaintiff's application as well as the response thereto by the Defendant. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the Parties herein.
7. By the application before the Court, the Plaintiff seeks to enjoin three other persons as Co-Plaintiffs and two entities as Co-Defendants. The Plaintiff further urges the Court that upon granting the order for joinder of the said Parties, the undated Draft Further Amended Plaint annexed to her application be dated and deemed to be duly filed upon payment of the requisite Court fees. In addition and pursuant to the grant of the said orders, the Plaintiff prays for an order that summons to enter Appearance do issue to the intended Co-Defendants.



8. In support of her application, the Plaintiff who is the mother to the Defendant relies on the grounds set out on the face of the application as well as her Supporting Affidavit sworn on 20th June, 2022 and the Supplementary one sworn on 29th November, 2022.
9. By the submissions filed herein, the Plaintiff asserts that the dispute herein relates to the parcel of land known as Thegenge/Karia/269 measuring 9 acres or thereabouts which parcel of land was originally in the name of her husband Zaphan Kariithi Ndegwa who died intestate on 2nd December 1968.
10. The Plaintiff contends that her deceased husband left behind a number of beneficiaries and that the Administration of his estate was handed over to the Public Trustee (the intended 2nd Defendant). It is the Plaintiff's case that the Public Trustee was issued with a Grant of Letters of Administration intestate by the High Court at Nairobi in Public Trustee's Cause No. 130 of 1968. It is further her case that on 19th September 1969, the High Court did order that the suit property be held by the Plaintiff and the deceased's brother one Duncan Ndegwa in trust for the minor children of the deceased.
11. The Plaintiff avers that contrary to the said Court Order, by a transfer dated 15th February 1991, the Public Trustee caused the suit property to instead be transferred to herself jointly with the Defendant and one Samuel Thuita Kariithi (now equally deceased) to the exclusion of all other beneficiaries. It is for that reason that the Plaintiff seeks to enjoin in the suit as Parties all the beneficiaries she considers to have been excluded by the transfer.
12. On matters of joinder of Parties, order 1 rule 10(20) of the [*Civil Procedure Rules*](#) provides as follows:

“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 in 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.”
13. As it were, the power given under the Civil Procedure Rules is discretionary and that discretion must be exercised judiciously. In the matter before me, it is not in dispute that the same relates to the inheritance of the parcel of land known as L.R No. Thegenge/Karia/269. That property was initially registered in the name of the Plaintiff's husband the late Zaphan Kariithi Ndegwa who is said to have passed away on 2nd December 1968.
14. According to the Plaintiff, the intended Co-Plaintiffs are among the beneficiaries of the estate of her deceased husband but who were left out during the distribution of the estate. The Intended Co-Defendants are the Public Trustee and the Land Registrar Nyeri to whom the Plaintiff ascribes blame for the manner in which the estate was distributed.
15. From the material placed before me, it was apparent that the Plaintiff was not ignorant of the circumstances under which the suit property was registered jointly in her name and the names of her two sons – the Defendant herein and one Samuel Thuita Kariithi (now equally deceased).
16. It is the Plaintiff's own position that following the death of her husband, the Public Trustee Succession Cause No. 130 of 1968 was instituted. It is her case that as her husband died intestate, the suit property ought to have been shared equally amongst all the beneficiaries. She accused the Public Trustee of failing to observe that principle by proceeding on 28th May, 1991 to transfer the suit property to some and not all the beneficiaries.



17. In support of her case, the Plaintiff has annexed a document titled "A Deed of Family Agreement Arrangement" that is said to have been filed in the said Succession Cause. The Plaintiff asserts that according to the said Deed, the High Court had on 19th September, 1969 ordered that the suit property was to be held by the Plaintiff and her deceased husband's brother Duncan Ndegwa in trust for the minor children of the deceased. She accused the Public Trustee of acting contrary to the order and transferring the property to herself, the Defendant and one of her deceased sons.
18. While that may as well have been the case, it was clear to me that the registration of the Plaintiff and her two sons as the proprietors of the suit property was the direct result of the said Succession Cause No. 130 of 1968 and that the issues sought to be introduced by the intended amendments fall within the realm of the Probate and Administration Division of the High Court.
19. The Plaintiff is herself aware of that position. At Paragraph 7 of her Supplementary Affidavit filed herein on 30th November 2022, she avers as follows:
 - “7. That in response to Paragraphs 9 to 15 of Replying Affidavit, I reiterate the contents of Paragraphs 7 to 15 of my Supporting Affidavit sworn on 20th June, 2022 and specifically state that my Advocates are currently in the process of retrieving the said Succession file in Public Trustee Succession Cause No. 130 of 1968; In the Estate of Zaphan Kariithi Ndegwa, for the purposes of obtaining a copy of the Certificate of confirmation of Grant so as to inter alia, re-open the proceedings and the distribution of the estate of the deceased in the said Family court proceedings.”
20. That in my view ought to have been the first and right step to be taken by the Plaintiff if she has an issue as to how the suit property was distributed and/or inherited by her two sons and herself to the exclusion of other members of her family. The dispute properly before this Court regards her allegations that the Defendant fraudulently sub-divided the suit property into parcel numbers 4432 to 4446 with a view to transferring the same to unknown third Parties.
21. As the Environment and Land Court, this Court cannot be called upon to re-determine the heirs of the late Zaphan Kariithi Ndegwa and/or to redistribute his estate.
22. In the circumstances herein it was clear to me that the persons and entities sought to be enjoined as Parties herein are not necessary Parties to this suit and that the reliefs being sought are incompatible and totally different from the existing cause of action.
23. In the premises, I did not find any merit in the Chamber Summons application dated 20th June, 2022. The same is dismissed with no order as to costs.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI
THIS 16TH DAY OF JUNE, 2023.**

In the presence of:

Mr. Mageto for the Plaintiff/Applicant

Mr. Muhoho for the Defendant/Respondent

Court assistant – Kendi

J. O. Olola

JUDGE

