



**Muchai & another v Kigwe & 3 others (Environment & Land Case 536 of 2017) [2023] KEELC 19022 (KLR) (19 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19022 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 536 OF 2017**

**BM EBOSO, J  
JULY 19, 2023**

**BETWEEN**

**PAUL NGUGI MUCHAI ..... 1<sup>ST</sup> PLAINTIFF**

**PAUL MWANGI GITAU, JOSEPH WAINAINA NJOROGE, PAUL NGUGI  
MUCHAI (AS OFFICIALS OF IGEANIA RURA INVESTMENTS  
LTD) ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**CHRISTOPHER KANG’ETHE KIGWE ..... 1<sup>ST</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**KIGWE LIMITED ..... INTENDED DEFENDANT**

**AND**

**THE HON. ATTORNEY GENERAL ..... DEFENDANT**

**RULING**

1. The plaintiffs brought this suit through a plaint dated 4/8/2015. They amended the plaint pursuant to an order made by Gacheru J at Milimani Environment and Land Court on 3/10/2019. Through the said order, the plaintiffs’ alternative prayer for refund of the purchase price paid to the 1st defendant was incorporated into the plaintiffs’ statement of claim.
2. Subsequently, on 20/5/2022, the plaintiff brought yet another application dated 24/3/2022, seeking leave of the court to further amend the amended plaint by joining M/s Kigwe Limited as a 4th defendant in this suit. The said application is the subject of this ruling.



3. The application is premised on the grounds set out on the face of the motion. It is supported by an affidavit sworn on 24/3/2022 by Paul Ngugi Muchai. It was canvassed through written submissions dated 4/4/2023, filed by M/s Harrison Kinyanjui & Co Advocates.
4. Mr Christopher Kang'ethe Kigwe swore a replying affidavit dated 14/2/2023, opposing the application. Whereas he deposed that he was the 1st defendant and also a director of Kigwe Limited, he did not expressly disclose whether he had instructions to swear the affidavit on behalf of Kigwe Limited. He said nothing about the allegations that he sold land to the plaintiffs and that the land he sold to the plaintiffs is alleged to be registered in the name of Kigwe Limited. He also said nothing about the allegation that he received the purchase price in furtherance of the alleged sale. The firm of Githii & Co Advocates filed written submissions dated 15/5/2023 in opposition to the application.
5. I have considered the application; the response to the application; and the parties' respective submissions. I have also read the draft further amended plaint exhibited by the applicants. Two questions fall for determination in the application. The first question is whether the application satisfies the criteria upon which our courts exercise jurisdiction to grant leave to a party to amend pleadings. The second question is whether the criteria for joinder of a new party to a suit has been satisfied. I will be brief in my disposal of the two issues.
6. The case of the plaintiffs is that the 1st defendant is "the controlling and singular director" of Kigwe Limited. In that capacity, he sold to them the respective portions of Land Reference Number 10823/5 which is registered in the name of Kigwe Limited. It is their case that as the registered proprietor of the land which the 1st defendant sold to them, Kigwe Limited is a necessary party in this suit.
7. The case of the 1st defendant is that the proposed amendment seeks to introduce an alternative prayer for refund of the purchase price, which prayer is statute-barred. They further contend that there is no cause of action disclosed against Kigwe Limited. Further they oppose the application on the ground that the delay in seeking leave to further amend the plaint has not been explained.
8. The principle which guides our courts when exercising jurisdiction to grant leave to a party to amend pleadings was outlined by the *East African Court of Appeal in Eastern Bakery v Castelino* [1958] EA 461 as follows:

"Amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side, and there is no injustice if the other side can be compensated by costs."
9. In *Central Kenya Ltd v Trust Bank Ltd & 5 others* [2000] eKLR the Court of Appeal of Kenya outlined the principle as follows:

"The policy of the law is that amendments to pleadings are to be freely allowed unless by allowing them the opposite side would be prejudiced or suffer injustice which cannot properly be compensated for in costs."
10. At this point, trial has not commenced. The defendants will have ample opportunity to respond to the further amended pleading. Secondly, whereas the 1st defendant contended in his replying affidavit that the plaintiffs seek to introduce a claim for refund of the purchase price, a perusal of the record in this suit reveals that the claim for refund of purchase price was incorporated in the plaintiffs' statement of claim as prayer (ee) in the amended plaint dated 24/3/2016. Gacheru J admitted the said amended plaint on 3/10/2017. It is therefore not true that the prayer for refund of the purchase price is a new cause of action or a new prayer that is statute-barred.



11. The 1st defendant further deposed that there is no cause of action disclosed against Kigwe Limited. None other than the 1st defendant has placed before this court a certificate of title showing that the suit property is registered in the name of Kigwe Limited. The plaintiffs contend that as a director of Kigwe Limited, the 1st defendant entered into sale agreements with them and received purchase prices from them. Kigwe Limited is the registered proprietor of the land its director sold to them. They want the 1st defendant to cause the portions that he sold to them to be conveyed to them. In the alternative they want refund of the purchase prices from the 1st defendant.
12. Given the above allegations and circumstances, under order 1 rule 10(2) of the Civil Procedure Rules, Kigwe Limited, as the registered proprietor of the land which the 1st defendant sold to the plaintiffs is a necessary party to these proceedings, for the complete and effectual settlement of the question as to whether the 1st defendant should be made to convey the portions which he is alleged to have sold to the plaintiffs Kigwe Limited is similarly a necessary party in determining the question as to whether the 1st defendant should be ordered to refund the purchase price he is alleged to have received as purchase price for the portions of land that was registered in the name of Kigwe Limited.
13. For the above reasons, I find that the criteria for leave to amend and the criteria for joinder of a new party to a suit under order 1 rule 10(2) have both been satisfied.
14. The result is that the notice of motion dated 24/3/2022 is allowed in the following terms:
  - a. The plaintiffs are granted leave to further amend their pleadings. The further amended plaint shall be filed and served within 14 days.
  - b. Costs of the application shall be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 19TH DAY OF JULY 2023**

**B M EBOSO**

**JUDGE**

**In the presence of:-**

Mr Harrison Kinyanjui for the Plaintiffs/Applicants

Ms Mutinda for the 1st Defendant

Court Assistant: Hinga

