



REPUBLIC OF KENYA



**Kgambi & 17 others v Gatabaki & 2 others; Kariithi & 3 others (Intended Applicant)
(Environment & Land Case E012 of 2022) [2023] KEELC 18891 (KLR) (13 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18891 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E012 OF 2022**

**LN MBUGUA, J
JULY 13, 2023**

BETWEEN

**TIMOTHY IRIMU KGAMBI 1ST APPLICANT
HERMAN GICHIRA 2ND APPLICANT
GEORGE NJOROGE 3RD APPLICANT
NAOMI NYAMBURA MBURU 4TH APPLICANT
MARGRET W GITAU MUCHINA 5TH APPLICANT
VIPUL SHAHIKNAT BHATT 6TH APPLICANT
DANIEL KIMETHU MBURU 7TH APPLICANT
RICHARD MUNDIA KARIUKI 8TH APPLICANT
FREDRICK MWANGI MUCHOKI 9TH APPLICANT
CHARLES MATHAI MATU 10TH APPLICANT
MONIQUE WANGUI MATU 11TH APPLICANT
MARY WAIRIMU MURIUKI 12TH APPLICANT
JOSEPH MUCHINA MURIUKI 13TH APPLICANT
JOHN GACHANGA KAIGANAINE 14TH APPLICANT
JOSEPH KIMANI KARANJA 15TH APPLICANT
GEORGE NJOROGE KIHANYA 16TH APPLICANT
ROBERT KAMAU KIHANYA 17TH APPLICANT
DOROTHY WANJIKU GUCHU 18TH APPLICANT**

AND



NANCY WANJA GATABAKI 1ST RESPONDENT
SURAYA PROPERTY GROUP LIMITED 2ND RESPONDENT
JACARANDA HOLDINGS PROPERTY LIMITED 3RD RESPONDENT

AND

NGARI KARIITHI INTENDED APPLICANT
RACHAEL NGARI INTENDED APPLICANT
**ALICE MERCY NJERI KINYANJUI (SUING AS AN ADMINISTRATOR AND
PERSONAL REPRESENTATIVES OF THE ESTATE OF JOHNSON JOSHUA
KINYANJUI (DECEASED) INTENDED APPLICANT**
GRACE KAGWIRIA MBIJIWE INTENDED APPLICANT

RULING

1. The Intended 21st and 22nd Applicants' Chamber summons application dated April 20, 2023 is for determination. They seek orders that they be enjoined in the suit herein as the 21st and 22nd Applicants. However, the 19th, 20th and 22nd intended Applicants were joined in these proceedings by consent on May 31, 2023.
2. Therefore, this ruling concerns the issue as to whether the 21st Intended Applicant should be joined in this suit.
3. The application is supported by the annexed affidavit of Alice Mercy Njeri Kinyanjui sworn on April 20, 2023. She avers that she is an administrator of the estate of Joshua Kinyanjui (deceased) who was entitled to 2 plots out of the 40 acre parcel of land that the 1st Respondent and her co-proprietor, Dr Samuel Mundati Gatabaki had sold to the 3rd Respondent.
4. The plots due to Johnson Joshua Kinyanjui (deceased) were identified as LR No 28223/40 and LR No 28223/45 and that just as it is with the 1st to 18th Applicants, the 1st Respondent and her co-proprietor, Dr Samuel Mundati Gatabaki did execute the requisite transfers for the said properties in favour of Johnson Joshua Kinyanjui (deceased), but the 1st Respondent, without any lawful cause refused to release the said transfers to Johnson Joshua Kinyanjui (deceased) to register the said properties in his name.
5. The application is opposed by the 1st Respondent vide her replying affidavit sworn on May 30, 2023. She avers that Johnson Joshua Kinyanjui is not among the individuals who are listed in the deed of indemnity and guarantee dated December 18, 2012 which forms the basis of the Originating summons. She further avers that the 21st Intended Applicant has not laid a basis for being joined to these proceedings as she has not annexed any sale agreement /document to show how the estate of Johnson Joshua Kinyanjui became entitled to any parcel of land belonging to her.
6. She also avers that Johnson Joshua Kinyanjui is the director and majority shareholder of the 3rd Respondent, thus his estate cannot be joined as an Applicant, since it was Johnson Joshua Kinyanjui acting through the 3rd Respondent who took her land and refused to pay the full purchase price.
7. She further states that she sold land to Johnson Joshua Kinyanjui in his individual capacity, but he has never paid the balance. To this end, she has an ongoing case against the Estate of Johnson Joshua



- Kinyanjui (deceased) to wit Nairobi HCCC 137 of 2015 Nancy Wanja Gatabaki v Johson Joshua Kinyanjui where she has sued for the balance of the purchase price of land, thus if the estate has any claim against her, it should channel it through the aforementioned suit as allowing it to join this suit will be a contravention of Section 6 of the *Civil Procedure Act*.
8. On May 31, 2023, the suit against the 2nd and 3rd Respondents was withdrawn.
 9. The sole issue for determination is whether the 21st Intended Applicant should be joined as an Applicant. Her claim is pegged on the alleged interest of Johnson Joshua Kinyanjui (deceased) in the property known as LR No 28223/40 and LR No 28223/45 hived from LR No 28223/3 (formerly LR No 5980/3, originally LR N 5980).
 10. In *Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 others* [2014] eKLR the Supreme Court of Kenya held that;

“... In determining whether the Applicant should be admitted into these proceedings as an Interested Party we are guided by this Court’s Ruling in the Mumo Matemo case where the Court (at paragraphs 14 and 18) held: “[An] interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause...”
 11. The 21st Applicant contends that she desires to protect the interests of Joshua Kinyanjui in respect of the two parcels. The nature and extent of her claim can only be ascertained if she is on board this suit. Any claim that the Respondent has against the said estate can be advanced as a Counter Claim.
 12. It is noted that the case against the 3rd Respondent has already been withdrawn, hence the issue of the estate of Joshua Kinyanjui being conflicted as a party herein does not arise.
 13. For the litigation in Nairobi HCCC 137 of 2015 Nancy Wanja Gatabaki v Johnson Joshua Kinyanjui, I find that indeed the same is pending and concerns a portion of LR No 28223/33 (formerly LR No 5980/3 and originally LR No 5980). However, again it is important that the issue of subjudice be dealt with when the applicant is on board this suit.
 14. In the end, I allow the application dated April 20, 2023 for the joinder of the 21st Applicant as an Applicant in these proceedings. Costs there of shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF JULY, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Muturi for the Respondent

Court Assistant: Eddel

