



REPUBLIC OF KENYA



**Kungu v Gichuhi & another (Environment and Land Appeal E036 of 2022)
[2023] KEELC 19988 (KLR) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 19988 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E036 OF 2022
AA OMOLLO, J
SEPTEMBER 21, 2023**

BETWEEN

JOHN WAICUA KUNGU APPELLANT

AND

GEOFFREY GICHUHI 1ST RESPONDENT

TAKIM GENERAL AGENCIES LTD 2ND RESPONDENT

(An appeal from the Ruling of the Hon Cyprian Mugambi Nguthari- the Chairperson delivered on 6th July 2022 in BPRT at Nairobi Tribunal case No 381 of 2020 between John Waicua vs Geoffrey Gichuhi and Takim General Agencies)

JUDGMENT

1. The appellant challenged the entire ruling on the following grounds
 - a. The Learned Trial Chairman was openly and out rightly biased towards the Appellant herein principles that are unknown, unacceptable and unestablished in Law.
 - b. The Learned Trial Chairman erred in Law and in fact by failing to take into consideration that the Appellant herein who was the Applicant in the matter had not opposed the Application for Joinder of the proposed Interested Party
 - c. The Learned Trial Chairman erred in law and in fact by failing to abide by the Legal and/or statutory provisions guiding joinder of Parties in Matters subsisting in court or Tribunals.
 - d. The Learned Trial Chairman erred in Law and fact the by failing to exercise his Authority in a Judicious Manner and appreciate that there was a nexus between the matter and the Proposed Interested Party.



- e. The Learned Trial Chairman erred in Law and in fact the by failing to appreciate that the proposed Interested Party had a clear, identifiable and substantial interest in the outcome of the suit hence a Necessary Party for complete adjudication of the dispute at hand.
 - f. The Learned Trial Chairman erred in Law and in fact the by failing to appreciate the Prejudice to be suffered to the Tenant/Applicant if the proposed Interested Party was not enjoined in the Suit.
 - g. The Learned Trial Chairman erred in law and in fact the by failing to appreciate that the proposed Interested Party would have aided the Tribunal in establishing Legality of the Landlord's Notice to Terminate Tenancy dated 28th june,2021 seeking to evict from a Premises owed by the Third Party.
 - h. The Learned Trial Chairman erred in law and in fact by failing to appreciates the inherent jurisdiction of the Court to do Justice to the Appellant in without due regard to technicalities.
 - i. The Learned Trial Magistrate failed to thoroughly meticulously, and scrupulously check the contents of the case based on material before her and all the facts raised therein by the Appellant.
 - j. The learned Trial Magistrate took into account irrelevant considerations that had no factual basis therefore reaching wrong conclusions in law thereby causing a miscarriage of justice.
2. The appellant filed the record of appeal and directions were taken for prosecuting the appeal by way of written submissions. The appellant filed his submissions dated 28th February 2023 which addressed these three issues;
- i. Joinder of parties and the criteria thereof
 - ii. The unfair consideration of the learned judge
 - iii. Orders sought
3. The Appellant cited the provisions of order 1 rule 10(2) of the Civil Procedure Rules and the case of *Francis Kaioki Muruatetu & Another vs Republic and 5 Others (2016)* eKLR where the Supreme Court held thus;

“From the foregoing legal provisions and from the case law, the elements that emerge as applicable where a party seeks to be enjoined in proceedings as an interested party;

- i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough to stand apart from anything that is merely peripheral
- ii. The prejudice to be suffered by the intended interested party in case of non-joinder must also be demonstrated to the satisfaction of the court. It must be clearly outlined
- iii. A party must in its application set out the case and submissions it intends to make before the court, and demonstrate the relevance of those submissions and that the said submissions will not be a replication of what the other parties will be making before the Court”



4. The Appellant faulted the Chairman for failing to take into consideration the case law and legal principles that the Appellant had relied on to buttress their case. He also faulted the chairman for not acknowledging that the proposed interested party had established an interest in the demised premises and cited the provisions of section 3A of the *Civil Procedure Act* on the inherent powers of the Court. He urged this court to grant the orders sought.
5. The Respondents filed submissions dated 10th April 2023 raising similar issues for determination inter alia, whether the proposed interested party ought to have been joined in the suit. They cited Rule 2 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 thus;

The test is not whether the joinder of the person proposed to be added as an interested party would be according to or against the wishes of the Petitioner or whether the joinder would involve an investigation into a question not arising on the cause of action averred by the petitioner. It is whether the intended interested party has an identifiable stake, or a legal interest or duty in the proceedings.

6. The Respondents also relied on the Supreme Court decision of the Muruatetu case supra and submitted that the Appellant has not in any sentence proved that the joining of the intended interested party would alter the outcome of the case in the Tribunal or, his denial to be joined would benefit him. They added that the Business Premises Rent tribunal is established to deal with conflicts that arise from tenancy relationships over business premises. That the intended interested party is not the tenant, landlord or agent with regards to the foregoing suit hence he has no basis for joining the suit.
7. I have perused through the grounds raised in the appeal, the proceedings in the Tribunal as contained in the Record of Appeal and the submissions rendered by the parties. The only issue for determination which the parties have agreed to is whether or not the honourable Chairman erred in law in refusing the application for joinder by the interested party.
8. Both the Appellant and the Respondents have cited case law that outlined the principles to be considered by a court for joinder of parties. The key among the principles is that the intended interested party must establish that he has an identifiable stake in the matter before the Court. The matter before the Tribunal was filed to challenge the notice dated 28th June, 2021 which gave the Appellant John Kungu Waicua notice to vacate the suit land Dagoretti/Riruta/5059 by the 1st September 2021.
9. The impugned application for joinder was dated 12th October 2021 and the intended proposed party argued that he is the registered proprietor of Dagoretti/Riruta/5059 and annexed a copy of title deed in his name. He stated that he has never given anyone authority to lease the suit. He deposed in his affidavit in support of the application that he was called by the Appellant who after doing search had discovered that he was the owner of the suit title. The intended interested party did not plead that the Appellant was his tenant and having disposed not leasing out the land to anyone confirms that no landlord tenant existed between him the Respondents.
10. In opposing the application, the Respondent stated that the portion in dispute is part of L.R No Dagoretti/Riruta/1222 which was undergoing subdivision. That the intended interested party is a family member and that he confused their title number with his but he confirmed that the Appellant has been his tenant on his part of the land which he has developed. That the Appellant has been paying rent to his agent who is named as the 2nd Respondent and he annexed statement of rent reconciliation. According to the 1st Respondent, the Appellant was up to date with rent payments (December 2021) and he did not understand where the property ownership dispute was arising from.



11. The Chairman having considered the pleadings before him, made a determination dismissing the application dated 12th October 2021. At paragraph 8 of the ruling, the hon chairman said thus;

“The tenant herein admits to the 1st Respondent being his landlord, he admits paying rent to the 1st Respondent at paragraph 8 of the affidavit sworn by the tenant on 3rd July 2021”
12. The Honorable chairman added at paragraph 10 that although the intended interested party was the registered owner of the suit premises shown in the notice to terminate, he is clearly not the landlord of the tenant. The Chairman wondered that if the intended interested party were to be admitted to the suit, what would be his claim against the parties, particularly with respect to the jurisdiction of the Tribunal as governed by Cap 301.
13. I pick the question raised by the Chairman on what the claim of the intended interested party would be vis a vi the jurisdiction of the tribunal as holding the key in determining this dispute. From the name of the Act (Cap 301) given as “An Act of Parliament to make provision with respect to certain premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected therewith and incidental thereto” the jurisdiction of the Tribunal is limited to controlled tenancies whose meaning is described under section 2.
14. The intended interested party had no tenancy relationship either with the appellant or the Respondents. The 1st Respondent in his replying affidavit opposing the application stated that what he had leased to the appellant besides other tenants was comprised on the part of L.R 1222 which was family land. He also stated that the intended interested party was party of that family having a share in L.R No 1222 and that he had confused intended interested parties number with his parcel number.
15. The fact that the tenancy relationship between the Appellant and the 1st Respondent was not disputed, and the fact that the intended interested party was not laying any claim to the tenancy, then his stake in the claim was not brought out. Any stakes he would have either on ownership of the land or trespass are issues that could not be determined in a claim challenging termination before the Tribunal on the basis that the Tribunal is not clothed with jurisdiction to deal with such issues.
16. I do not find any error committed by the honourable chairman when he concluded in his findings that the issues of land ownership do not fall within the Tribunal’s jurisdiction. There was no basis laid to join the intended interested party in proceedings which was purely between a tenant and a landlord.
17. Consequently, I also reach the same conclusion that the intended interested party’s stake in the matter if any was outside the jurisdiction of the Tribunal. The issues in dispute before the Tribunal can be adequately resolved without joinder of the intended interested party. The result is that there is no merit in this appeal and it is hereby dismissed with costs to the Respondents

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF SEPTEMBER, 2023.

A. OMOLLO

JUDGE

