



REPUBLIC OF KENYA



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**Mwangi v Mureithi & 2 others (Environment & Land Case 82 of 2018)
[2023] KEELC 19931 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 19931 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ENVIRONMENT & LAND CASE 82 OF 2018

EO OBAGA, J

SEPTEMBER 21, 2023

IN THE MATTER OF ARTICLE 40, 47 AND 50 OF THE CONSTITUTION OF KENYA, 2010

AND

**IN THE MATTER OF SECTION 76 AND 78 OF
THE LAND REGISTRATION ACT NO. 3 OF 2012**

AND

**IN THE MATTER OF SECTION 76 OF THE
REGISTRATION OF TITLES ACT CAP 281 (REPEALED)**

AND

**IN THE MATTER OF LAND PARCEL ELDORET
MUNICIPALITY BLOCK 23 (KING'ONG'O)/823**

BETWEEN

MARY WAIRIMU MWANGI PLAINTIFF

AND

ANN WANJIRU MUREITHI 1ST DEFENDANT

COUNTY LAND REGISTRAR, UASIN GISHU COUNTY 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

RULING

Introduction

1. This is a ruling in respect of notice of motion dated February 27, 2023 in which the 1st defendant Anne Wanjiru Mureithi seeks the following orders:-



1. The pleading be amended to include Jane Wanjiku Mureithi as a co-defendant or interested party.
2. Alternatively, Jane Wanjiku Mureithi be included as a 2nd defendant in a counter-claim to be filed by the 1st defendant.
3. Costs of this application be in the cause.

Background

2. The property known as LR No Eldoret/Municipality Block 23 (King'ong'o)/823 (suit property) was originally owned by Thomas Kipkosgei Yator who died on July 2, 2004. Grant of letters of administration in respect of his estate was confirmed on April 28, 2024. Prior to the death of Thomas Kipskosgei Yator, he had sold the suit property to Jane Wanjiku Mureithi. The suit property was later registered in the name of Jane Wanjiku Mureithi on July 16, 2014 who in turn transferred it to the Plaintiff on August 29, 2014.
3. The applicant moved and registered a caution on the title to the suit property on January 29, 2015 claiming interest on the same as co-widow of Jane Wanjiku Mureithi. The respondent petitioned the land registrar to remove the caution lodged against the suit property. The land registrar removed the caution but the entry removing the caution was later cancelled upon complaint from the cautioner. This is what prompted the applicant to move to court and filed an originating summons seeking removal of the caution.

Applicant's Contention

4. The applicant contends that the suit property was purchased by the late Peter Mureithi Mbugua who was her husband as well as the husband of Jane Wanjiku Mureithi. She further argues that the registration of the suit property in the name of Jane Wanjiku Mureithi and subsequent transfer to the plaintiff/respondent was fraudulent. She further argues that the suit property is part of the estate of the late Peter Mureithi Mbugua.
5. The applicant therefore argues that Jane Wanjiku Mureithi is a necessary party in the suit as the title held by the plaintiff/respondent is being challenged. The applicant contends that the person who sold the suit property to Peter Mureithi Mbugua has sworn an affidavit to that effect.

Respondent's Contention;

6. The plaintiff/respondent opposed the applicants' application based on a replying affidavit sworn on April 24, 2023. The respondent contends that she is the registered owner of the suit property as confirmed by an affidavit sworn by the land registrar in response to the originating summons filed herein. She further contends that the person sought to be joined in these proceedings is listed as one of her witnesses and has duly recorded a witness statement which has been served upon the applicant.
7. The respondent states that the allegations by the applicant that the suit property was purchased by Peter Mureithi Mbugua is not supported by any documents from the lands office unlike her title which is supported by documents from the lands office. She further states that the applicant had already divorced Peter Murithi Mbugua in 1989 and that if she has any claim over the suit property she should file her claim in the family division of the High Court.
8. The respondent states that the applicant and the land registrar are out to delay this matter and unnecessarily prevent her from utilizing the title to obtain financial facilities.



Analysis And Determination;

9. The parties were directed to file written submissions. The applicant filed submissions on May 17, 2023. The respondent filed her submissions on May 25, 2023. The applicant submits that order 1 rule 10(2) of the Civil Procedure Rules mandates the court to allow joinder of any party who may be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit.
10. The applicant also submits that the amendment sought will not prejudice the respondent. On her part the respondent submits that joinder of the intended defendant or interested party will not assist the court to decide on the issue in dispute and that the applicant has not met the threshold for joinder of the intended party.
11. In support of her submissions, the respondent relied on the case of Amon v Raphael Trick and Sons (1956) 1 ALL ER 273, where Devlin J. at page 286,297 stated as follows: -

“What makes a person a necessary party” It is not of course, merely that he has relevant evidence to give on some of the question involved: that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance and is afraid that the existing parties may not advance them adequately... the court might often think it convenient or desirable that some of such persons be heard so that the court could be sure that it had found the complete answer, but no one would suggest that it would be necessary to hear them for that purpose. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action, and the question to be settled, therefore must be a question in the action which cannot be effectually and completely settled unless he is a party.”
12. The respondent also relied on the case of Technomatic Limited T/A Promopack Company v Kenya Wine Agencies Limited & another (2014) eKLR where the court stated as follows:-

“It is clear that the guiding principles when an intending party is to be joined are as follows: he must be a necessary party, he must be a proper party, in the case of a defendant there must be a relief flowing from that defendant to the plaintiff, the ultimate order or decree cannot be enforced without his presence in the matter, his presence is necessary to enable the court to effectively and completely to adjudicate upon and settle all questions involved in the suit.”
13. Lastly, the respondent relied on the case of Carol Construction Engineers Ltd v Naomi Chepkorir Langat (2019) eKLR eKLR where Justice Munyao stated as follows:-

“It will be wrong for this court to impose upon the plaintiff some persons as defendants when in fact the plaintiff has no issue with such persons.”
14. I have carefully considered the applicant’s application, the opposition thereof by the respondent as well as the submissions by the parties. The only issue for determination in this matter is whether the applicant has met the threshold for joinder of Jane Wanjiku Mureithi either as a defendant or an interested party. Though the applicant has couched her application as for amendment, the ultimate aim of the application is joinder of the said Jane Wanjiku Mureithi.
15. The originating summons herein was brought seeking removal of a caution lodged against the title to the suit property by Anne Wanjiru Mureithi. Though Anne Wanjiru Mureithi claims to be a co-widow



to Jane Wanjiku Mureithi, the documents filed herein show that she divorced Peter Mureithi Mbugua in the 80's. There is a decree absolute which was given on August 27, 1989 dissolving her union with Peter Mureithi Mbugua. She therefore has no business purporting to call herself a co-widow with Jane Wanjiku Mureithi who sold the suit property to the respondent.

16. Joinder of Jane Wanjiku Muriethi will not assist this court to resolve what is at stake in these proceedings. In any case, the said Jane Wanjiku Mureithi is listed as one of the witnesses of the respondent. There is no relief which the respondent is seeking from the said Jane Wanjiku Mureithi. If the applicant was seeking any stake in the suit property on allegations that it belonged to the estate of Peter Mureithi Mbugua, she should have filed her claim in the Family Division of the High Court or the succession court and not to seek joinder of Jane Wanjiku Mureithi in these proceedings.

Disposition;

17. From the above analysis, it is clear that the applicant's application is devoid of merit. The application is dismissed with costs to the plaintiff/respondent.

It is so ordered.

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

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Angu for Plaintiff/Respondent.

Mr. Momanyi for 1st Defendant/Applicant.

Court Assistant –Laban

E. O. OBAGA

JUDGE

