



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**MISCELLANEOUS APPLICATION NUMBER 33 OF 2016**

**ELIZABETH WANJIKU NJOKA (Suing as the legal  
representative of ALICE KAHAKI NJOKA (Deceased).....PLAINTIFF**

**-VERSUS-**

**JUMA KIPLERGE (Sued as the Legal Representative  
of Philip Njoka Kamau (Deceased).....1<sup>ST</sup> DEFENDANT**  
**TERESIA NJERI.....2<sup>ND</sup> DEFENDANT**  
**MARGARET DAMAT.....3<sup>RD</sup> DEFENDANT**  
**LUCY WANJIRU.....4<sup>TH</sup> DEFENDANT**  
**JAMES GICHERU.....5<sup>TH</sup> DEFENDANT**  
**PETER NJOROGE.....6<sup>TH</sup> DEFENDANT**  
**GILBERT KABAGE T/A PATA AGENCIES.....7<sup>TH</sup> DEFENDANT**  
**JOSEPH NJUGUNA NJOKA.....8<sup>TH</sup> DEFENDANT**  
**SOMOIRE KEEN.....9<sup>TH</sup> DEFENDANT**  
**FAMILY BANK LIMITED.....10<sup>TH</sup> DEFENDANT**  
**SAMUEL GITIMU.....11<sup>TH</sup> DEFENDANT**  
**ERIC KAMAU.....12<sup>TH</sup> DEFENDANT**  
**PINKAM HOLDINGS LIMITED.....13<sup>TH</sup> DEFENDANT**

**RULING**

1. The ruling is in respect of the application by the 4<sup>th</sup> defendant dated 21/2/2019 and which seeks orders;

1. **THAT** JOHNSON KIBUNJA NJOKA & CHRISTINE NYAGITHA NJOKA be enjoined as necessary parties/respondents in this suit for purposes of hearing and determination of application by the 4<sup>th</sup> defendant herein dated 18<sup>th</sup> February, 2019.

2. **THAT** the costs of this proceedings be provided for.

2. The application is premised on three (3) grounds viz;

a) THAT JOHNSON KIBUNJA NJOKA & CHRISTINE NYAGITHA NJOKA are not parties in this suit but are beneficiaries and interested parties both to the Estate of Alice Kahaki Njoka and Philip Njoka Kamau.

b) THAT the intended Respondents being beneficiaries are interested parties to these proceedings have willfully and intentionally with clear intention of interfering with administration of justice interfered and transferred to themselves title numbers Nakuru Municipality Block 27/69, 27/70 and 27/73 which are part of the suit properties in dispute and under the custody of the court.

c) THAT the orders sought shall directly and substantially affect the rights of the intended respondents and its necessary, that they be enjoined in these proceedings as parties to account for their illegal actions.

3. It is further supported by the affidavit of Lucy Wanjiru Njoka sworn on the 21/2/2019.

4. The substance of the application in a nutshell is that Johnson Kibunja Njoka and Christine Nyagitha Njoka are not parties to this suit but are beneficiaries and interested parties both to the estate of Alice Kahaki Njoka and Philip Njoka Kamau.

5. The said Johnson Kibunja Njoka and Christine Nyagitha Njoka are accused of transferring to themselves title numbers Nakuru/Municipality Block 27/69, 27/70 and 27/73 which properties are part of the suit properties in this matter.

6. It is urged that the orders sought shall directly and substantially affect the rights of the intended respondents and it is necessary that they be enjoined in these proceedings as parties.

7. Evidence is exhibited under annexures to the affidavit of Lucy Wanjiru Njoka sworn on 18/2/2019 in support of yet another application of even date showing that Johnson Kibunja Njoka (ID. No. xxxx) and Christine Nyagitha Njoka (ID No. xxxx) are the registered proprietors of;

i) Nakuru Municipality Block 27/69 (Entry in register is dated 26/3/2018 and certificate of lease issued the same day).

ii) Nakuru Municipality Block 27/70 (entry made on 25/5/2016).

iii) Nakuru Municipality Block 27/73 (entry made on 22/4/2014).

8. The application is opposed and Elizabeth Wanjiku Njoka has sworn a replying affidavit on 16/3/2019 and filed in court on 18/3/2019.

9. It is the plaintiff's case that Johnson Kibunja Njoka and Christine Nyagitha Njoka who are sought to be enjoined in this suit are her (plaintiff's) siblings. They are not parties to this suit and have no need to be.

10. The plaintiff avers at **paragraph 20** of her affidavit thus;

“20 a) the said application is an abuse of the process of this Honourable Court because it is not made honestly and for a proper purpose, but instead for oppressing me and my siblings and to delay the trial of this suit because the applicant wants to continue enjoying rent yielded by the three properties which are the subject matter of the said application;

b) that is it open to the fourth defendant to make against me whatever claims she wants to do without joining my siblings because I am the one seeking a declaration that these properties belong to my late mother's estate.

c) my said siblings have informed this Honourable Court that they hold the properties upon trust of our late mother's estate.

d) this court has jurisdiction to dismiss summarily applications which are an abuse of the court and the said application dated 20th February, 2019 falls under that category.

11. In a reply to the replying affidavit, Lucy Wanjiru Njoka has stated *inter alia* that the affidavits by Elizabeth Wanjiku Njoka, Johnson Kibunja Njoka and Christine Nyagitha Njoka all sworn on 16/3/2019 are incompetent and should be struck out as they relate to a reply to a non-existent notice of motion dated 20/2/2019.

12. I am quick to note this anomaly but I am of the considered view that the same is a curable typographical error as it is quite clear that the affidavits are replies to the applications dated 18/2/2019 and 21/2/2019.

13. The application was canvassed by way of written submissions.

14. I have considered the application dated 21/2/2019, the supporting affidavit and the reply thereto. I have had due regard to counsel's submissions on record.

15. Of determination is whether the applicant has achieved the necessary legal threshold for joinder of Johnson Kibunja Njoka and Christine Nyagitha Njoka as parties in the suit herein.

16. The law on joinder of parties is well settled. The applicable principles were ably summarized in the case of **KINGORI vs. CHEGE & 3 OTHERS** where the court outlined the guiding principles for joinder of parties who are proper/or necessary parties. These are;

1. He must be a necessary party.
2. He must be a proper party.
3. In the case of a defendant there must be a relief flowing from the defendant to the plaintiff.
4. The ultimate order or decree cannot be enforced without his presence in the matter.
5. His presence is necessary to enable the court to effectively and completely adjudicate and settle all questions involved in the suit.

20. In our instant suit, the plaintiff claim against the against the 4<sup>th</sup> defendant, among other claims, seeks orders;

1. That the 4<sup>th</sup> defendant accounts for all the rent collected from Nakuru Municipality (Mwariki) Block 27/70 since August, 1993.
2. That the 4<sup>th</sup> defendant accounts for all the rent collected from Nakuru Municipality (Mwariki) Block 27/73 since they were constructed.
3. Mesne profit in respect of Nakuru Municipality Block 27/69.

21. These properties are thus directly subject to these proceedings.

22. It now transpires that the said three (3) properties are registered in the names of Johnson Kibunja Njoka and Christine Nyagitha Njoka.

23. It follows naturally then that any orders made in respect of the said properties would directly affect Johnson Kibunja Njoka and Christine Nyagitha Njoka. Without enjoining the 2 in these proceedings, that would mean that the two (2) would be condemned unheard.

24. Secondly, the ultimate order or decree of court cannot be enforced without the presence of Johnson Kibunja Njoka and Christine Nyagitha Njoka in this matter in so far as parcel numbers; Nakuru Municipality Block 27/69, Nakuru Municipality Block 27/70 and Nakuru Municipality Block 27/73 are concerned.

25. More importantly, the presence of these two (2) parties in this suit is necessary to enable the court to effectively and completely adjudicate and settle all questions involved in this suit.

26. It is self defeatist for the plaintiff to state in paragraph 20(b) of her affidavit that it is open to the fourth defendant to make against her whatever claims she wants to do without joining her siblings because she is the one seeking a declaration that these properties belong to her late mother's estate.

27. How do the properties belong to her mother's estate yet she acknowledges they are now registered in the names of Johnson Kibunja Njoka and Christine Nyagitha Njoka?

28. This averment is, on the face of it, made in ignorance of the law on title to land.

29. From the foregoing, I am satisfied that the applicant has been able to show that Johnson Kibunja Njoka and Christine Nyagitha Njoka are proper and necessary parties to the suit herein. The application dated 21/2/2019 is thus wholly successful. I allow the same and make the following orders;

**1. That Johnson Kibunja Njoka and Christine Nyagitha Njoka be and are hereby enjoined as parties to this suit.**

**2. The applicant shall have costs of the application.**

**Dated and Signed at Nakuru this 22<sup>nd</sup> day of May, 2019.**

**A. K. NDUNG'U**

**JUDGE**