



REPUBLIC OF KENYA



Laton & 2 others v Konchellah & 3 others; Sialo (Proposed Defendant) (Environment & Land Case 26 of 2021) [2023] KEELC 20746 (KLR) (17 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20746 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE 26 OF 2021**

EM WASHE, J

OCTOBER 17, 2023

BETWEEN

ERICK SAITOTI LATON 1ST PLAINTIFF

VALENTINE NAMOO LATON 2ND PLAINTIFF

SAMPAYIAN LATON 3RD PLAINTIFF

AND

JAMES LATON KONCHELLAH 1ST DEFENDANT

ABDIHAKIM MOHAMUD JUBAT 2ND DEFENDANT

JUMBA & COMPANY, ADVOCATES 3RD DEFENDANT

LAND REGISTRAR, TRANSMARA 4TH DEFENDANT

AND

ANNE NJOKI SIALO PROPOSED DEFENDANT

RULING

1. The proposed 5th Defendant (hereinafter referred to as “the Applicant”) filed a Notice of Motion dated 8th May 2023 (hereinafter referred to as “the present Application”) seeking the following Orders; -
 - a. That the application be certified urgent and heard in the first instance.
 - b. That pending hearing of this application inter-partes, this Court be pleased to order that there be a stay of execution of the judgement and decree of this court arising from the judgement on the 23rd of March 2023.



- c. That the judgement herein dated 23rd of March 2023 as regards cancellation of sub-division and title to L.R.No.Transmara/Enanyieny/671 be reviewed and/or set-aside with all consequential orders.
 - d. That the proposed 5th Defendant herein be enjoined as a party to the suit.
 - e. That the Court also makes any other or further orders in the interest of justice.
 - f. That the costs of this application be provided for.
2. The grounds in support of the prayers hereinabove were provided for in the body of the present Application as well as the supporting Affidavit sworn by the Applicant on the 8th May 2023 which are summarised as follows:-
 - i. The Applicant is the registered owner of the property known as LR.No.Transmara/Enanyieny/671.
 - ii. The Applicant purchased the said property known as L.R.No.Transmara/Enanyieny/671 through an Agreement For Sale dated 25th October 2014.
 - iii. Ever since 25th October 2014, the Applicant has been in occupation of the said property known as L.R.No.Transmara/Enanyieny/671 up to date.
 - iv. However, on the 23rd of March 2023, this Honourable Court pronounced a judgement cancelling all sub-divisions created from LR.No.Transmara/Enanyieny/200 including the Applicant's property known as L.R.No.Transmara/Enanyieny/671.
 - v. The Applicant states that the judgement pronounced on the 23rd of March 2023 affected other properties including L.R.No.Transmara/Enanyieny/671 which were not part of the suit properties during the hearing.
 - vi. The Applicant further states that she was never given an opportunity to participate and/or was a party in the proceedings which resulted to the judgement of 23rd March 2023 and therefore the said judgement is punitive to the ownership of the property known as L.R.No.Transmara/Enanyieny/671 registered in her name.
 - vii. In the circumstances, the Applicant is seeking to stay the orders issued in the judgement pronounced on the 23rd of March 2023 and thereafter set-aside of the same.
3. The present Application was served on the Plaintiffs (hereinafter referred to as "the Respondents") who opposed the same by filing a Replying Affidavit sworn by the 1st Plaintiff/Respondent on the 7th of June 2023.
4. The Respondents relied on the following grounds to oppose the present application herein:-
 - i. The Applicant is a complete stranger to the Respondents as she does not occupy the property known as L.R.No.Transmara/Enanyieny/671.
 - ii. The Applicant herein procured her title to the property known as L.R.NO.Transmara/Enanyieny/671 in the year 2022 which was during the pendency of this suit.
 - iii. The property known as L.R.No.Transmara/Enanyieny/671 which is registered in the name of the Applicant was created by the 1st Defendant who did not have the authority and/or legal capacity to alienate the same to any other third party.



- iv. In any event, the Applicant cannot be joined in this suit or granted any of the orders sought in the present Application as the Honourable Court is not functus officio.
 - v. The Respondents stated that it was stranger for the Applicant to allege not being aware of these proceedings yet this suit had been pending in Court since 2016 when the 1st Defendant's actions were challenged.
 - vi. The Respondents were of the view that if the Applicant wanted to participate in the hearing of this suit, they should have filed an application to be joined and can not now seek to review and/or set-aside a judgement that it did not participate in.
5. Upon service of the Replying Affidavit by the Respondents, the Applicant filed a Further Affidavit sworn on the 3rd of July 2023.
 6. The Applicants reiterated their grounds in their supporting affidavit and further stated as follows;-
 - i. The property known as L.R.No.Transmara/Enanyieny/671 was purchased from one LOrna Reteti Sosio who was the registered owner on the 25th of October 2014 pursuant to a Title Deed issued to her on 5th March 2014.
 - ii. Consequently, the Applicant was an innocent purchaser for value without notice of any defect in the title owned by Lorna Reteti Sosio.
 - iii. Further to that, the Applicant stated that the judgement pronounced on the 23rd of March 2023 was devoid of an opportunity to be heard and therefore failed the test of natural justice.
 - iv. The Applicant stated that the judgement pronounced on the 23rd of March 2023 had an error on the face of the record as it included a property that was not part of the proceedings which were being adjudicated and therefore, this Honourable Court has jurisdiction to review and/or rectify the said error on the face of it.
 - v. In conclusion thereof, the Applicant sought to be granted the orders in the present application.
 7. The parties then filed their submissions with the Applicant filing her submissions on 13th July 2023 while the Respondents filed theirs on the 24th of July 2023.
 8. The Honourable Court has indeed perused the pleadings as well as the submissions and identified the following issues for determination.

Issue No.1- Is The Applicant Entitled To A Joinder In This Suit?

Issue No.2-is The Applicant Entitled To The Reliefs Sought In The Present Application?

Issue No.3- Who Bears The Costs Of The Present Application?

9. This Honourable Court having identified the various issues for determination in the present application, the same will now be discussed hereinbelow.

Issue No.1- Is The Applicant Entitled To A Joinder In This Suit?

10. The first issue for determination is whether or not the Applicant can be joined in this suit.
11. The Applicant is seeking for joinder on the grounds that the judgement pronounced on the 23rd of March 2023 affected her property known as LR.No.Transmara/Enanyieny/671 yet she was not a party during the hearing thereof.



12. The Applicant's prayer is therefore to be joined in this suit so that she may be given a hearing before a judgement affecting her property known as LR.No.Transmara/Enanyieny/671 can be pronounced.
13. The Applicant states that she purchased the property known as L.R.No.Transmaea/Enanyieny/671 from one Lornah/Enanyieny/671.
14. The law relating to joinder of parties is provided for Order 1 Rule 10(2) & (4) of the Civil Procedure Rules, 2010 which provides as follows;-

“(2)The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as a Plaintiff or Defendant be struck out, and that the name of any person who ought to have been joined, whether as Plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.

4. Where a Defendant added or substituted, the Plaintiff shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the Plaintiff shall be served on the new defendant and, if the court thinks fit, on the original defendants.”

15. A plain reading of the provisions of Order 1 Rule 10(2) and (4) of the Civil Procedure Rules, 2010 provides for the joinder and/or striking out of either a Plaintiff or Defendant during the subsistence and before the determination of proceedings.
16. However, in the present Application, the Applicant is seeking to be joined as a Defendant after the conclusion of the substantive suit herein.
17. In the case of Lilian Wairumu Ngatho & Another -versus- Moki Savings Co-operative Society Limited & Another (2014) eKLR, the Honourable Court expressed itself as follows;-

“The provisions of Order 1 Rule 10(2) state that joinder of a party can be made “at any stage of the proceedings”. “Proceedings” are defined in Black's Law Dictionary Ninth Edition at page 1324 as “the regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment”. A party can therefore only be joined to a suit at any time during the pendency of the suit, but not after the same has been concluded. This finding is premised on the basis that the purpose for joinder is to enable the court effectually and completely adjudicate upon and settle all questions involved in a suit. It is therefore of no use if a party seeks to be joined when the court has already made its findings on the issues arising.

Similarly, the main purpose for joining a party as a Defendant under Order 1 Rule 3 of the Civil Procedure Rules is to claim some relief from the said party, and therefore such joinder can only be made during the pendency of a suit. As this court has declined to set aside the judgment herein, there is no suit pending before this court, and the Applicants cannot therefore be joined as parties at this stage.”



18. In another cited case from The Court of Appeal in J M K vs M W M & Another [2015] eKLR, while concurring with the decision of the Trial Judge to decline adding a party after conclusion of proceedings, further elaborated on the provision of Order 1 Rule 10 (2) thus:

“We would however agree with the respondent that Order 1 Rule (10) (2) contemplates an application for amendment or joinder of parties where proceedings are still pending before the Court. Sarkar’s Code, (supra) quoting as authority, decisions of Indian Courts on the provision, expresses the view that an application for joinder of parties can be filed only in pending proceedings.”

19. Lastly, in the case of Boaz Kipchumba Kaino-versus- G.h.tanna & Sons; Isaiah Wanyonyi & 47 Others & Another (Proposed Interested Parties) (2021) eKLR, the Honourable Court stated as follows:-

“In the instant application, the court has already pronounced its judgment thus it is *functus officio*. There is no pending suit.

The applicants seek to be enjoined to a suit which has already been heard and determined. It is their claim that they have an interest in the suit for the reason that they have titles to the property which was sold to them by the Plaintiff who lost the case.

This court is alive to the fact that the titles the interested parties have annexed to their application formed part of the material evidence at the trial.

Therefore, the court considered the fact that those titles were in existence at the time the matter was heard and before reaching its conclusion.

Of what relevance then should the interested parties be enjoined to this suit when all the evidence they intend to rely on if enjoined formed part of that which had already been considered by the court when passing its judgment? In my considered view, there is not much that the joinder, if allowed, can salvage at this stage.”

20. This Honourable Court on the premise of the express provisions of Order 1 Rule 10(2) and (4) and in concurrence with the observations contained in the authorities hereinabove is of the view that the Applicant’s prayer for joinder after the conclusion of the substantive suit cannot be granted.
21. There is nothing to be heard and/or determined after a judgement is pronounced as the Court has become *functus officio*.

Issue No.2-is The Applicant Entitled To The Reliefs Sought In The Present Application?

22. The second issue for determination is whether or not the Applicants herein are entitled to the prayers of stay of execution against the Judgement pronounced on 23rd of March 2023 or the setting-aside and/or review of the said judgement pronounced on the 23rd of March 2023.
23. To be able to make such determinations as sought in the present Application, the Applicant must be a person with a *locus standi* to move the Honourable Court appropriately.
24. In the present application, the reliefs sought by the Applicant would only be considered if the joinder had been successful.
25. Unfortunately, the Applicant was not successful in the prayer of joinder and therefore does not have the legal *locus standi* as a party to the suit to be granted the reliefs of stay of execution and/or setting-aside and/or review of the judgement pronounced on the 23rd of March 2023.



Issue No.3- Who Bears The Costs Of The Present Application?

26. The last issue for determination is who bears the costs of the present application.
27. The general rule is that costs follow the event and in the present Application, the Applicants will bear the costs.

Conclusion.

In conclusion therefore, this Honourable Court hereby makes the following Orders in determination of the present Application; -

A. The Notice of Motion Dated 8th of may 2023 be and is hereby Dismissed.

B. The Costs of The Application will be borne by The Applicant.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON THE 17TH OCTOBER 2023.

EMMANUEL.M.WASHE

JUDGE

In The Presence Of:

Court Assistant: Mr. Ngeno

Advocates For The Applicants: Mr. Opar

Advocates For The Defendant: Mr. Okemwa H/b Mr. Nyambati

