



REPUBLIC OF KENYA



Awuor & 7 others v Mid Tusks Agencies Ltd (Environment & Land Case 47 of 2007) [2023] KEELC 21852 (KLR) (29 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21852 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 47 OF 2007**

A NYUKURI, J

NOVEMBER 29, 2023

BETWEEN

JARED OMONDI AWUOR 1ST PLAINTIFF
CLAUDI YATTA MASEO 2ND PLAINTIFF
WINFRED NGINA CLAUDI 3RD PLAINTIFF
ZACHARIAH M. WAHOGO 4TH PLAINTIFF
FRANCIS O. JAOKO 5TH PLAINTIFF
GEORGE MUGAMBI 6TH PLAINTIFF
WALTER MORARA MOMANYI 7TH PLAINTIFF
ALFRED MICHAEL MURITHI 8TH PLAINTIFF

AND

MID TUSKS AGENCIES LTD RESPONDENT

RULING

Introduction

1. Before court is a notice of motion dated 7th March 2023 filed by the intended plaintiffs seeking the following orders;
 - a. That the court do allow;
 - i. Martin Kirimi Mwenda
 - ii. Charles Mutua Okello
 - iii. Francis Agutu Otaa



- iv. Rakesh S. Jethva
 - v. Ann Gathoni Theuri
 - vi. David Mwirigi Magiri
 - vii. Ruth Wangare Kahende
 - viii. Carolyne Kigadi Nyabera
 - ix. Marxgad Kahende Njuguna, to be joined to this suit as plaintiffs.
- b. That upon being joined as the plaintiffs, the court do include their names in the order for executing the transfer.
 - c. That the costs of this application be in the cause.
2. The application is premised on the supporting affidavit sworn on 7th March 2023 by Anne Gathoni Theuri. The applicants' case is that they also purchased their properties from the defendant and that the relief sought herein arise from the same series of transaction undertaken by the defendant. She further deponed that there is a consent order between the applicants and the defendant over the same suit property and that since the applicants are not party to the suit, they cannot benefit from the same. Further that to transfer the suit property to the applicants, they ought to be made parties to the orders of this court and that no prejudice will be suffered by any of the parties. That the consent order also referred to the applicants. The applicants attached two sale agreements for Ann Gathoni Theuri and Martin Kirimi Mwenda, order dated 25th September 2008, ownership certificate, the order to the Deputy Registrar dated 28th January 2014.
 3. Despite service, the application was not opposed.
 4. The application was canvassed by way of written submissions. On record are the applicants' submissions dated 12th April 2023.
 5. Counsel for the applicants restated the averments in the supporting affidavit and submitted that the consent order filed on 23rd September 2010 included the names of all the applicants herein but that since they are not parties to this suit, a transfer in their favour cannot be effected and that the Deputy Registrar cannot execute transfers in favour of persons who are not parties in this matter. He maintained that no party would suffer any injustice if the application is allowed.

Analysis and determination

6. I have considered the application herein, the affidavit in support and the submissions of the applicants. The issue for determination is whether the applicants deserve the orders sought.
7. Order 1 Rule 10 (2) of the *Civil Procedure Rules* allows joinder of any person to a suit as interested party, whose presence in a suit is necessary to enable the court to effectually and completely determine all the issues in dispute.
8. For an applicant to be joined to a suit as interested party, they must demonstrate that they have a recognizable stake in the issues before court and that they need to be in the proceedings to protect their interest in the matter. (See the case of *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others* [2014] eKLR).
9. The applicants herein state that while they were included in the consent signed by the defendant's counsel, which consent was filed in this matter, they are not parties herein and that the defendant has



failed to honour that consent. I have considered the record and it is correct that Mr. Mbindyo advocate for the defendant in this matter and Mr. Ochanda advocate for the plaintiffs signed a consent dated 25th September 2008 which stated that the defendant was to transfer some specified portions of land to the applicants herein. A consent is a contract, and the consent herein between the applicants and the defendant has not been set aside and indeed the same provided for transfer of the suit property, also to the applicants herein, a fact not contested by the defendant. That being the case it is my view that the applicants have shown that the consent filed herein and dated 25th September 2008, which settled the dispute herein provided for their interest in the suit property and therefore it is necessary to join them to this matter so as to effectually and completely resolve the same.

10. In the premises, I find and hold that the application dated 12th April 2023 is merited and the same is allowed as prayed. There is no order as to costs.

11. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 29TH DAY OF NOVEMBER, 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of:

No appearance for the applicants

No appearance for the respondent

Josephine - Court assistant

