



**Mukindia v Mutwiri ((Sued as the Legal Representative of Febian Mutwiri
Rugiri - Deceased) (Enviromental and Land Originating Summons
E007 of 2023) [2023] KEELC 22196 (KLR) (13 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22196 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E007 OF 2023
CK YANO, J
DECEMBER 13, 2023**

BETWEEN

LAWRENCE MURORI MUKINDIA PLAINTIFF

AND

LAWRENCE MWORIA MUTWIRI RESPONDENT

**(SUED AS THE LEGAL REPRESENTATIVE OF FEBIAN MUTWIRI RUGIRI -
DECEASED**

RULING

1. The plaintiff, by an application dated 25.9.2023, is asked to allow the amendments of the originating summons and join Isabella Ngugi, Alice Kagwiria Mutwiri, Rosemary Kagendo, Jane Kiende, Kelvin Mwenda Kinyua, and Festus Mbaabu Mbajo as a defendant in this suit.
2. Further, the court is asked to inhibit any dealings with LR No's. Abothuguchi/Igane/3537, 3538, 3539, 3540, and 3541 pending hearing and determination of this suit. The grounds are on the face of the application and the affidavit of Lawrence Murori Mukindia sworn on 25.9.2023. He avers that on 24.5.2023, the defendant/respondent subdivided, transferred, and registered LR No. Abothuguchi/Igane/783 into L.R No.3537, 3538, 3539, 3540, and 3541 to Isabella Ngugi, Alice Kagwiria Mutwiri, Rosemary Kagendo and Jane Kiende.
3. Further, it was averred that on 24.7.2023, the defendant/respondent transferred L.R No. Abothuguchi/Igane/3540 and 3541 to Festus Mbaabu Mbajo, while 27.7.2023 L.R No. 3539 was transferred to Kelvin Mwenda Kinyua.He attached copies of the official search, affidavit of service, and order issued on 11.8.2023 for the subdivisions as annexures marked LMM 1 (a-c), LMM 2 (a) & (b), LMM 3 (a & b), LMM ("4") and the draft proposed amended originating summons as annexure marked LMM ("5"). The applicant averred that the proposed amendments did not introduce a new or an inconsistent cause of action and were unlikely to prejudice, harm, or injure the respondent.



4. The application is opposed by a replying affidavit of Lawrence Mworira Mutwiri sworn on 11.10.2023. The respondent avers that before this suit was instituted, he had undertaken his administrative duties as the legal representative of his late father's estate by effecting subdivisions on LR No. Abothuguchi/Igane/783, as per the confirmed grant and submitted the registration documents. He attached a copy of the grant as an annexure marked LM – 1.
5. Further, the respondent avers he was not served with any court order and directives, though upon delivery of the ruling on 12.7.2023, he duly complied with the court orders since he resides on the suit land with his family, whom the court directives have not prejudiced.
6. The respondent avers that the allegations contained in the application are baseless since no green card has been annexed to show the resultant subdivisions of LR No. 783. Additionally, the respondent avers he was not party or privy to any dealings and transactions with any beneficiaries undertaken after the delivery of the ruling on 12.7.2023.
7. Additionally, respondent avers that the resultant subdivisions were established, and boundaries set way before the issuance of the court orders. As to the court order, the respondent avers that it was extracted and issued on 11.8.2023, though it has never been served upon him in person or through his advocate on record. He urges the court to expedite the suit, for the applicant has maliciously dragged him into the suit on fabricated facts.
8. By written submissions dated 11.10.2023, the applicant urges the court to grant the orders sought since the changes to the initial title by the respondent were a planned scheme executed in secrecy to defeat, evade, and avoid the temporary injunctions given on 12.7.2022 and by extension, the entire claim on adverse possession. Reliance was placed on *Eunice Mwangi Mbogo and another vs. Margaret Mbuu Mutburi & 2 others (2022)* eKLR, where the court cited Central Kenya Ltd vs Trust Bank of Kenya others C. A. No. 222 of 1998, and *Halsbury's Laws of England 4th Edition* Vol 36 paragraph 66.
9. The applicant submitted that the amendment was necessary since the substratum of the suit had been subdivided, the application was made in good faith, and the proposed amendment would help determine the issues in controversy by aligning the pleadings to reflect the correct position. On prejudice to the defendant, the applicant submitted that none would be occasioned since the subdivisions are not disputed. Reliance was placed on *Rebeccah Masese Onchwera vs Christine Cheruto Kasongo and 2 others (2009)* eKLR. Regarding the delay, the applicant submitted this application, which was filed immediately upon learning of the new changes to the title following official searches on 18.8.2023.
10. Concerning the inhibition, the applicant submitted he had been on the land for over 12 years before the subdivisions occurred, whose implication was that the defendant's title before the subdivisions had been extinguished; otherwise, there was a need to safeguard or preserve the substratum of the suit by issuing the orders. Reliance was placed on *Kagunda vs Stanley Kagunda Njogo & others (2022)* KEELC 3482 (KLR) (19th May 2022) (Ruling).
11. In *Civicon Ltd vs Kivuwatt Ltd & others (2015)* eKLR, the court observed that the power to allow for amendments to pleadings and join new parties is discretionary and exercised judicially, to bring on board all the persons who are not parties to the dispute relating to the subject matter so that the dispute may be determined in their presence at the time, without any protraction, inconvenience and to avoid multiplicity of proceedings. The court said any party affected by the pending litigation was a necessary and proper party who should be joined.



12. In *Zephir Holdings Ltd vs. Mimosa Plantation Ltd and others (2014)* eKLR, the court said a proper party was one qualifying as a plaintiff or defendant whose presence was necessary or relevant for the determination of the fundamental matter in dispute and to enable the court wholly and effectually adjudicate upon and settle all questions involved in the suit.
13. In *Central Kenya Ltd vs Trust Bank Ltd (2002) 2 E. A 365*, the court held that amendments of pleadings and joinder of parties was aimed at allowing a litigant to plead the whole of the claim he was entitled to make in respect of his cause of action, and a party should always be allowed to make such amendments as are necessary for determining the real issues in controversy, or avoiding a multiplicity of suits.
14. In exercising that power, some of the parameters a court will consider are;- the delay, vested interests or accrued rights likely to be affected, prejudice or injustice likely to be occasioned to the other side, and if costs can compensate for such prejudice.
15. Regarding inhibition orders, Section 68 of the *Land Registration Act* grants the court the power to restrict title for a given period or until the occurrence of an event to stop registration of any dealing with any land, lease or charge. In *Daniel Gitau Kuria vs Muthoni Mbugua Ndumo and others (2021)* eKLR, the court cited with approval *Dorcas Muthoni & 2 others vs Michael Ireri Ngari (2016)* eKLR, that an inhibition was similar to a prohibitory injunction barring a registered owner of the property under dispute from registering any transaction over the said property, until further orders or until the subject suit was disposed off, where there are reasonable grounds to preserve the property in dispute pending trial.
16. Applying the forgoing caselaw, does the plaintiff/applicant deserve the orders sought? I think he does. First, the respondent has admitted that he undertook changes to the initial suit land, contrary to the order issued on 17.4.2023. The affidavit of service by Mutuma James Kagela dated 18.4.2023, shows service was effected upon the defendant on 18.4.2023 in person, at Maundu Village Imenti Central District. He immediately appointed his advocates M/s DMK Advocates, the following day on 19.4.2023. In the replying affidavit sworn on 25.4.2023, the respondent confirmed he had obtained the title deeds per the confirmed grant for the beneficiaries.
17. Following the ruling, an inhibition order was issued on 11.8.2023. As of 28.7.2023, when the respondent filed a witness statement dated 27.7.2023, he did not mention the alleged subdivisions or the issuance of new titles to the suit land(s). Therefore, given the new changes to the suit land, I find it is in the interest of justice to bring all the new beneficiaries to the suit land on board.
18. Further, I find the plaintiff has made up a prima facie case with a probability of success to be entitled to an order of inhibition. I grant the prayers sought. The amended originating summons shall be filed and served upon all the defendants within 21 days from the date hereof.
19. Mention on 18.1.2024 for further directions.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 13TH DAY OF DECEMBER 2023

In presence of

C.A Kananu/Mukami

Parties

Wambua for plaintiff/applicant

Mwirigi for defendants/respondent



HON. CK NZILI
JUDGE

