



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Environmental & Land Case 330 of 2012**

JANE W. MWANIKI..... 1<sup>ST</sup> PLAINTIFF  
PHILLYS MUSOI LEPAPA.....2<sup>nd</sup> PLAINTIFF  
BEATRICE KARIUKI.....3<sup>RD</sup> PLAINTIFF  
WILSON M. WAITA.....4<sup>TH</sup> PLAINTIFF  
JAMES G. MAINA.....5<sup>TH</sup> PLAINTIFF  
ANNASTACIA N. MUILU.....6<sup>TH</sup> PLAINTIFF  
MERCY W. MAINA.....7<sup>TH</sup> PLAINTIFF  
MANOAH ALELA.....8<sup>TH</sup> PLAINTIFF

**VERSUS**

PETER NJOROGE KANG'ONG'A.....1<sup>ST</sup> DEFENDANT  
SAMUEL MBATIA FREDRICK GICHERU.....2<sup>ND</sup> DEFENDANT  
THE COMMISSIONER OF LANDS.....3<sup>RD</sup> DEFENDANT  
THE CHIEF LAND REGISTRAR.....4<sup>TH</sup> DEFENDANT  
THE REGISTRAR OF TITLES.....5<sup>TH</sup> DEFENDANT

**DISTRICT LAND REGISTRAR**

KAJIADO NORTH REGISTRY.....6<sup>TH</sup> DEFENDANT  
THE DISTRICT LAND SURVEYOR, KAJIADO .....7<sup>TH</sup> DEFENDANT  
THE DIRECTOR OF SURVEY.....8<sup>TH</sup> DEFENDANT  
THE DIRECTOR OF PHYSICAL PLANNING.....9<sup>TH</sup> DEFENDANT

**THE DIRECTOR METROPOLITAN**

**PLANNING AND ENVIRONMENT.....10<sup>TH</sup> DEFENDANT**

**THE CLERK, OLKEJUADO COUNTY COUNCIL.....11<sup>TH</sup> DEFENDANT**

**AND**

**JAMES MUTHIGA ALBERT.....INTERESTED PARTY/APPLICANT**

**RULING**

The Notice of Motion dated 31<sup>st</sup> December 2012 is brought by the Applicant seeking to be enjoined in this suit as an Interested Party. The application is supported by an affidavit sworn by the Applicant sworn on 31<sup>st</sup> December 2012, wherein he stated that he is the registered proprietor of all that piece of parcel of land known as Title Number Ngong/Ngong/9888 being one of the suit premises in the matter hereof, and that the 3<sup>rd</sup> Plaintiff is the owner of an adjacent parcel of land known as Title Number Ngong/Ngong/6464 . Further, that the rest of the Plaintiffs herein are Lessees of the intended Interested Party in the said Title Number Ngong/Ngong/9888.

The Applicant further stated that the 1<sup>st</sup> and 2<sup>nd</sup> Defendant are owners of respective parcels of land adjacent to his land. The Applicant averred that he is directly interested in the matters relating to the suit hereof for reasons that he as the registered proprietor of Title Number Ngong/Ngong/9888 and is aggrieved by the cause of action herein as much as the Plaintiffs. Further, that he is in particular legally and beneficially entitled to the use of the road of access adjacent to his premises which has been encroached by the Defendants, and that any suit touching on the same has a direct consequence and impact upon him.

The Applicant also stated that he had filed a related suit as Plaintiff on the same cause of action as against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in ELC No. 553 of 2007 at the Nairobi High Court, and that the High Court sitting in Machakos has already ordered for the transfer of this Court file to the High Court at Nairobi for a possible consolidation with the said ELC No. 553 of 2007.

The Defendants filed grounds of opposition date 21<sup>st</sup> January 2013 wherein they stated that the Applicant is the Plaintiff in **ELC No. 553 of 2007 – Jesse Muthiga Albert –vs- Peter Njoroge Kang’ong’a ,Samuel Mbatia Gicheru and Land Registrar, Kajiado**. Further, that the Applicant admits that the issues in both suits are the same, and that he should therefore prosecute and conclude his case. The Defendants also allege that the Plaintiff’s herein are the Applicant’s tenants and have no knowledge of the matters set out in the pleadings, and that the Applicant’s application is an attempt to conduct two parallel suits which is an abuse of the court process.

The parties filed written submissions. The Applicant’s counsel in submissions dated 30<sup>th</sup> January 2013 argued that the subject Notice of Motion has merit, for reasons that Order 1 Rule 10(2) of the Civil Procedure Rules allows parties to be enjoined in a suit where the presence of such parties is necessary to enable the court to effectually and completely adjudicate upon and settle all questions in this suit. He relied on the decisions of this Court in **Pamela Achieng Oluoch (Suing through Christine Ochieng Apollo T/A Intro Networks) vs George Wanyoike (2011) e KLR** and **Nyweri Development Group and 16 Others vs Matumaini Invetment Ltd and Another(2012) e KLR** in this regard. It was further submitted that the parties will suffer no prejudice if the Applicant is enjoined in this suit.

The Defendant’ counsel in submissions dated 6<sup>th</sup> February 2013 reiterated the arguments made in the grounds of opposition.

After consideration of the pleadings and submissions made by the parties, I find that the main issue before the court is whether the Applicant can be joined as a necessary party to this suit. The Notice of Motion under consideration is brought pursuant to the provisions of section 3A of the Civil Procedure Act (Cap 21), and Order 1 Rules 3 and 10(2) and Order 51 Rule 1 of the Civil Procedure Rules. Order 1 Rule 3 of the Civil Procedure Rules provides as follows:

**“All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.”**

Order 1 Rule 10(2) provides as follows:

**“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 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.”**

In the present application the Applicant states that he is the registered owner of the parcel of land known as Ngong/Ngong/9888. I note from perusing the Plaintiff filed herein dated 30<sup>th</sup> August 2012 that the said parcel of land is one of the parcels of land that is the subject matter of this suit, and that some of the Plaintiff are tenants and business people on premises built on the said land. The dispute herein involves an access road used by the Plaintiffs in the said land that is alleged to have been encroached and taken over by the Defendants.

The Defendants allege that the Applicant has filed another suit namely ELC No. 553 of 2007 in the High Court at Nairobi, and should proceed with the suit instead of being enjoined in the present suit. The existence of another suit in which an applicant is a party is not a bar to joinder, and all that needs to be established are the conditions stated in Order 1 of the Civil Procedure Rules for the joinder of a party. Other remedies exist to deal with the issue of multiplicity of suits, and denial of joinder is not one of them. I have also perused the Amended Plaintiff dated 18<sup>th</sup> March 2009 filed in ELC No. 553 of 2007 which was annexed by the Applicant to his affidavit, and note that he is seeking the same relief as is sought by the Plaintiffs herein with respect to his aforesaid parcel of land.

It is therefore plain that the Applicant herein is seeking the same relief sought by the Plaintiffs herein, against the same Defendants and arising from the same facts. It is also evident that the outcome of the suit filed herein will also affect the Applicant who is the registered proprietor of one of the parcel of lands that is alleged to be served by the disputed access road. It is thus my finding that the Applicant is not only a proper party to be joined under Order 1 Rule 1 of the Civil Procedure Rules, but also necessary party under Order 1 Rule 10(2) of the said rules. Order 1 Rule 1 provides as follows:

**“All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise.”**

For the foregoing reasons I accordingly join Jesse Muthiga Albert as the 9<sup>th</sup> Plaintiff in the suit filed herein. The 9<sup>th</sup> Plaintiff is at liberty to amend the Plaintiff in such manner as may be necessary, and to serve the amended Plaintiff and summons on the Defendants within 15 days of today's date.

In relation to the suit already filed by the now joined 9<sup>th</sup> Plaintiff in ELC No. 553 of 2007, I hereby order pursuant to the provisions of section 1A, 1B and 3A of the Civil Procedure Act and Order 11 of the Civil Procedure Rules, that the Deputy Registrar of the Environment and Land Division of the High Court at

Nairobi to bring up the file for ELC No. 553 of 2007 in the High Court at Nairobi within 15 days of the date of this ruling for perusal and directions as to consolidation. Lastly, I direct that the suit herein be given a new case number in the Environment and Land Division of the High Court at Nairobi to facilitate such consolidation, and that the 9<sup>th</sup> Plaintiff takes a mention date for this suit within 30 days for further directions.

The costs of the Notice of Motion dated shall be in the cause.

Orders accordingly.

Dated, signed and delivered in open court at Nairobi this \_\_\_29<sup>th</sup>\_\_\_ day of \_\_\_April\_\_\_, 2013.

**P. NYAMWEYA**

**JUDGE**