



Markroscar Kenya Limited v Good Hope Christian Church Kasarani & 12 others (Environment and Land Case Civil Suit 107 of 2010) [2022] KEELC 2379 (KLR) (23 June 2022) (Ruling)

Neutral citation: [2022] KEELC 2379 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 107 OF 2010
SO OKONG'O, J
JUNE 23, 2022**

BETWEEN

MARKROSCAR KENYA LIMITED PLAINTIFF

AND

**GOOD HOPE CHRISTIAN CHURCH KASARANI & 12
OTHERS DEFENDANT**

RULING

1. What is before this court is an application brought by way of Notice of Motion dated 23rd October 2018 by the officials of a group calling itself Quarry Village Development Group seeking the following orders;
 - a. Spent;
 - b. That leave be granted to Macharia Njuguna, David Mutua Masaku and Elijah Kaniu Chege, the officials of Quarry Village Development Group to be joined in this suit as interested parties;
 - c. That upon joinder as a foresaid, leave be granted the interested parties to respond to the pleadings filed in the suit within 14 days from the date of service;
 - d. That the costs of the application be in the cause.
2. The application was brought on the grounds set out on the face thereof and on the affidavit of David Mutua Masaku sworn on 23rd October 2008. Macharia Njuguna, David Mutua Masaku and Elijah Kaniu Chege (hereinafter referred to only as “the applicants”) averred that members of Quarry Village Development Group (hereinafter referred to only as “the group”) had resided on a parcel of land measuring 18 acres within L.R No. 8469/4/6, I.R No. 110336 (Original Number L.R No. 8469/4, I.R No. 36766/16) Kasarani, Nairobi (hereinafter referred to as “the suit property”) since 1930s and had put up homes thereon. The applicants averred that in 1980s the suit property was registered in the name



- of a company known as Mukinye Enterprises Limited (hereinafter referred to only as “Mukinye”). The applicants averred that they filed a suit against Mukinye in the High Court namely HCCC No. 3403 of 1993 which suit stalled after Mukinye’s advocates lost contact with the directors of Mukinye.
3. The applicants averred that without their knowledge, Mukinye sold the suit property to the plaintiff herein (hereinafter referred to only as “the respondent”) while the members of group were in possession. The applicants averred that they lodged a complaint against the plaintiff with the National Land Commission which advised them to pursue their claim with the commission under historical land injustices. The applicants averred that there was no doubt that the members of the group were in possession of the suit property and that they had acquired proprietary rights to the portion thereof in their occupation by adverse possession. The applicants averred that any decision made by the court regarding the suit property would affect the members of the group. The applicants averred that the members of the group risk being evicted from the suit property.
 4. The applicants averred that their joinder to the suit was necessary as it would enable the court to properly determine the suit as between all parties interested in the suit property and would also avoid multiplicity of suits thereby saving the court’s time. The applicants averred that nobody would suffer prejudice by their joinder to the suit.
 5. The application was opposed by the respondent through grounds of opposition dated 31st October 2018, further grounds of opposition dated 12th November 2018 and a replying affidavit sworn by the respondent’s advocate, Simeo Mugalavai Keyonzo on 19th September 2019. In the grounds of opposition, the respondent contended that there was a suit before this court namely, ELC No. 693 of 2012 between the respondent and the applicants in which the applicants claimed the suit property by adverse possession. The respondent averred that the said suit was dismissed. The respondent contended that the present application was an abuse of the process of the court.
 6. The respondent contended further that the group was not a legal entity and as such could not sue and be sued. The respondent contended that the applicants could file a separate suit. The respondent contended that the suit herein seeks an order of eviction against the defendants who have not filed a counter-claim. The respondent contended that joinder of the applicants to this suit would be futile as they would not be able to pursue their claim to the suit property in this suit. The respondent averred that this suit was part heard and that the joinder of the applicants to the suit would cause considerable delay and injustice to the respondent. The respondent contended further that the applicants could pursue their rights in ELC No. 1403 of 1993 which they claimed to be existing but had stalled. The respondent averred that the applicants were aware as far back as 1993 that the suit property had been sold to the respondent and that they took no action. The respondent averred that the applicants had been indolent.
 7. In the replying affidavit, the respondent averred that Macharia Njuguna, David Mutua Masaku and Elijah Kaniu Chege (the applicants) on behalf of a group calling itself Kasarani Village Squatters had filed ELC No. 693 of 2012(O.S) against the respondent claiming the suit property by adverse possession. The respondent averred that ELC No. 693 of 2012(O.S) was dismissed for want of prosecution on 21st June 2017. The respondent averred that the present application brought in the name of Quarry Village Development Group had been brought by the same people whose suit was dismissed. The respondent averred that it amounted to an abuse of the process of the court for people whose suit was dismissed for want of prosecution to try to join the present suit as interested parties.
 8. The application was heard on 11th November 2021 when Mr. Kariuki advocate for the applicants relied entirely on the affidavit in support of the application. On his part, Mr. Keyonzo relied on the respondent’s grounds of opposition and replying affidavit filed in opposition to the application.



9. I have considered the applicants' application together with the affidavit filed in support thereof. I have also considered the grounds of opposition and replying affidavit filed by the respondent in opposition to the application. The following is my view on the matter. In their application, the applicants have sought their joinder to this suit as interested parties and for leave to file a response to the pleadings filed in the suit. Joinder of new parties to the suit would require amendment to the existing pleadings.
11. The law on joinder of parties and amendment of pleadings is now settled. The rules do not provide for joinder of parties to a suit as interested parties. Under the Civil Procedure Rules, parties can be joined to a suit either as plaintiffs or defendants. I believe however that in appropriate cases, the court can join a party to a suit as an interested party in exercise of its inherent jurisdiction. The applicants' application was brought under Order 1 Rule 10 of the *Civil Procedure Rules* which deals with joinder. Although they have sought joinder as interested parties, I am of the view that the applicants are essentially seeking to join this suit as defendants since they are challenging the plaintiff's title to the suit property.
12. 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."
13. Order 1 rule 10 (2) and (4) of the *Civil Procedure Rules* 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 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 is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants.
14. Order 1 rule 3 of the *Civil Procedure Rules* provides for the persons who may be joined as defendants to a suit while Order 1 rule 10(2) empowers the court to substitute and add parties to an existing suit like in the present case. In my view, under Order 1 rule 10(2) of the Civil Procedure Rules, the court can only join a person as a defendant to an existing suit in two instances; first, where such person ought to have been joined as a defendant under Order 1 rule 3 of the *Civil Procedure Rules* aforesaid and was not so joined and secondly, where the presence of such person before the court may be necessary in order to enable the court to adjudicate and settle all questions involved in the suit. The power is discretionary.
15. The onus was upon the applicants to bring themselves within the provisions of Order 1 rule 10(2) of the *Civil Procedure Rules* and also to satisfy the court that they deserve the exercise of the court's discretion in their favour. After considering the issues raised in the affidavit in support of the application, I am not satisfied that the applicants have met the threshold for joinder set out in Order 1 rule 10(2) of the Civil Procedure Rules. The applicants have also not demonstrated that they deserve the exercise of this court's discretion in their favour.
16. The applicants have claimed that they have acquired a portion of the suit property by adverse possession. This means that the applicants have a substantive claim against the respondent which is



said to be registered as the owner of the suit property. I am unable to see how the applicants' adverse possession claim can be determined in this suit should they be joined in the suit as interested parties. I am also not persuaded that the joinder of the applicants in this suit as interested parties would assist the court in any way in resolving the dispute between the respondent and the current defendants. I also doubt if the joinder of the applicants to the suit would prevent multiplicity of suits. I have noted that while this suit was pending, the applicants proceeded to file HCCC No. 48 OF 2012(O.S) (ELC NO. 693 OF 2012 (O.S)).

17. I am also of the view that the applicants are not deserving of a discretionary order. I have noted that the applicants concealed to the court the fact that they had filed ELC NO. 693 OF 2012 (O.S) against the respondent claiming the suit property by adverse possession and that the suit was dismissed on 21st June 2017 for want of prosecution before they rushed to this court to be joined in the suit as interested parties. I am in agreement with the respondent that it is an abuse of the process of the court for a party whose suit has been dismissed for want of prosecution to seek to join another suit over the same subject matter and purport to pursue the same claim against the same party in the dismissed suit without disclosing the existence of the earlier suit and its dismissal.
18. I am also in agreement with the respondent that the orders sought by the applicants if granted would cause undue delay in the prosecution of this suit that has been pending in court for the last 12 years. I am unable to see any prejudice that would be occasioned to the applicants if they are not joined in this suit as interested parties. They are at liberty to file an application for the reinstatement of their dismissed adverse possession claim if they have a good reason for doing so. They are also at liberty to pursue HCCC No. 3404 of 1993 which they claimed to have stalled.
19. The upshot of the foregoing is that I find no merit in the Notice of Motion dated 23rd October 2018. The application is dismissed with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JUNE 2022

S. OKONG'O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Keyonzo for the Plaintiff

Mr. Kariuki G.E for the Defendant and Applicants

Ms. C. Nyokabi-Court Assistant

