



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kipkulei & another v Chief Land Registrar & 10 others; Agricultural Development Corporation & 4 others (Interested Parties) (Land Case E12 of 2022) [2022] KEELC 3741 (KLR) (9 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 3741 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**  
**LAND CASE E12 OF 2022**  
**FM NJOROGE, J**  
**JUNE 9, 2022**

**BETWEEN**

**BENJAMIN KIPKECH KIPKULEI ..... 1<sup>ST</sup> PLAINTIFF**

**DAVID KAHURIA MBUGUA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**CHIEF LAND REGISTRAR ..... 1<sup>ST</sup> DEFENDANT**

**WILSON KIGUTU MACHARIA ..... 2<sup>ND</sup> DEFENDANT**

**KIBII BOIYO ..... 3<sup>RD</sup> DEFENDANT**

**JAMES MALAKWEN ..... 4<sup>TH</sup> DEFENDANT**

**JAMES M. CHEMJOR ..... 5<sup>TH</sup> DEFENDANT**

**LUKE KIPKEMOI CHEMWENO ..... 6<sup>TH</sup> DEFENDANT**

**DAVID KIMANI GACHARU ..... 7<sup>TH</sup> DEFENDANT**

**FRANCIS K. CHANGWONY ..... 8<sup>TH</sup> DEFENDANT**

**DAVID BIWOT ..... 9<sup>TH</sup> DEFENDANT**

**DAVID BOIYO ..... 10<sup>TH</sup> DEFENDANT**

**DAVID MAINA ..... 11<sup>TH</sup> DEFENDANT**

**AND**

**AGRICULTURAL DEVELOPMENT CORPORATION ..... INTERESTED PARTY**

**JOSEPH KIANGOI OMBASA ..... INTERESTED PARTY**

**NOORDIN MOHAMMED HAJI ..... INTERESTED PARTY**



**MONAZ COMPANY LIMITED ..... INTERESTED PARTY**

**SAMUEL NDICHU KURIA ..... INTERESTED PARTY**

## **RULING**

1. The applicant filed an application dated April 25, 2022 seeking the following prayers:
  - a. Pending the hearing and determination of this application, the court be pleased to stay further proceedings in this suit.
  - b. The court be pleased to join Samuel Ndichu Kuria, as the 5<sup>th</sup> interested party in this suit.
  - c. An order directing that the 3<sup>rd</sup> and 4<sup>th</sup> interested parties be served through substituted mode of service by publication of an advertisement through a daily newspaper with wide national circulation.
  - d. The costs of this application abide the outcome of the suit.
2. This is a ruling on application dated April 24, 2022 filed by the proposed 5<sup>th</sup> interested party. The same is supported by the proposed interested parties' sworn affidavit of the same date and his supplementary affidavit dated May 23, 2022. While the said application is not opposed by the rest of the parties who have appeared in this matter, the plaintiffs have opposed this application by filing a replying affidavit sworn by the 1<sup>st</sup> plaintiff on May 1, 2022 since the need for this ruling.
3. The court ordered that the application shall be heard by way of written submissions. The proposed 5<sup>th</sup> interested party filed his on May 13, 2022. The plaintiff filed his submission on May 25, 2022.
4. According to the application and the supporting affidavit, the grounds on which the motion is based are as follows: that since September 2000 the 5<sup>th</sup> interested party has been in exclusive, peaceful, open, continuous and uninterrupted occupation and use of LR 20591/20 and LR no 20591/21 – Naivasha registered in the 3<sup>rd</sup> and 4<sup>th</sup> interested parties names and therefore the latter's respective titles have been extinguished by operation of law on account of limitation; that recently armed persons purporting to act at the behest of the 3<sup>rd</sup> and 4<sup>th</sup> interests parties have attempted to forcefully evict the 5<sup>th</sup> interested party from the suit lands and therefore he needs to protect his interest in the land; that there are proceedings in Nakuru ELC no E06/2022 (OS) Samuel Kuria Ndichu vs Noordeen Mohamed Haji & 2 others pending determination; that the instant suit has failed to disclose the 5<sup>th</sup> interested party's lengthy occupation and use of the suit lands; that the instant suit is a scheme to obtain adverse orders which will be used to effect the applicant's eviction; that the 5<sup>th</sup> interested party suspects that the 1<sup>st</sup> plaintiff planned the invasion that was intended to evict him; that the applicant knows the suit land as his only home for the last two decades and he stands to suffer irreparable harm should he be evicted as that would render Nakuru ELC case no E06/2022(OS) academic and nugatory on account of loss of possession; that by being joined to this suit the applicant would be able to show that he has been in lawful occupation and has acquired valid interest over the suit land before any adverse orders can be issued in favour of the plaintiff or the 3<sup>rd</sup> and 4<sup>th</sup> interested parties. Therefore, he deems his joinder as necessary for the purpose of determining the questions relating to ownership of the suit property with finality and he states that no prejudice will be suffered by the other parties if the orders sought are granted.
5. In a supplementary affidavit dated May 23, 2022 the applicant denies being a vagabond or an agent of the plaintiff in ELC 34 of 2021 which is further litigation pending in this court involving the 1<sup>st</sup>



- plaintiff. He maintains that the plaintiffs are not the registered members of LR 20591/20 and 21 and that for the reason that none of the plaintiffs is in occupation of the stated parcels of land a cause of action against them in adverse possession does not lie. He denies that the 3<sup>rd</sup> & 4<sup>th</sup> interested parties sold the suit properties to the 1<sup>st</sup> plaintiff; he also denies that any property of the plaintiff was demolished in May 2022 on the suit land. He reiterates that the 1<sup>st</sup> plaintiff has never had possession of the suit properties and that he is avoiding to sue the applicant by suing persons who are not in occupation while fully aware that the applicant is in possession.
6. In his response to the application the 1<sup>st</sup> plaintiff has stated in his sworn affidavit that the application contains falsehoods; that the proposed 5<sup>th</sup> respondent is a vagabond or agent of the plaintiff in ELC 34 of 2021 as he currently occupies the house built on LR no 20591/78 and he has never occupied LR 20591/20 and 21; that he has not produced evidence of how he has been in occupation of those lands; that the 3<sup>rd</sup> and 4<sup>th</sup> interested parties sold their interest to the 1<sup>st</sup> plaintiff in 2006; that the 1<sup>st</sup> plaintiff's house was demolished while these proceedings were still pending which destruction was reported to the police; that the applicant is aware that the 1<sup>st</sup> plaintiff has been in possession of those properties since 2006; that the 1<sup>st</sup> plaintiff has only come to know of the applicant's alleged occupation from the instant application.
  7. Citing rule 2 of the [Constitution of Kenya \(Protection of Rights and Fundamental Freedoms\) Practice and Procedure Rules 2013](#) on the definition on an interested party and order 1 rule 10(2) [CPR](#) 2010 the proposed interested party in his submissions submitted that this court has discretion to order his joinder. He also cites the case of *Nicodemus Emuron Lowoton & another vs Charles Ejoro Lorogoi & others* [2019] eKLR and *Trusted Society of Human Rights Alliance vs Mumo Matemo* [2015] eKLR and *Richard Konzolo Obimbo and another vs Rosemary Nalisi Otwere & another* [2007] eKLR. He submits that although the 1<sup>st</sup> plaintiff has not produced any sale agreement, he claims that the 3<sup>rd</sup> and 4<sup>th</sup> interested parties sold the suit lands to him. He submits that on account of his open, continuous and uninterrupted possession of over 12 years the 3<sup>rd</sup> and 4<sup>th</sup> interested parties' titles to LR 20591/20 and 21 have been extinguished and if the court hears and grants the injunction application in respect of those suit lands there is likelihood that the 1<sup>st</sup> plaintiff may use those orders to evict the applicant who is in actual possession. The applicant states that in deciding whether to grant the injunction application or not the court will have to make a determination on whether the 1<sup>st</sup> plaintiff is in actual occupation of the suit land or not. Consequently, he argues, it would be prejudicial for such a decision to be made without joining him in the proceeding and affording him an opportunity to be heard. It is indicated that a finding that the 1<sup>st</sup> plaintiff is in occupation of the suit land would automatically defeat the claim under section 38 (1) of the [Limitation of Actions Act](#) cap 22 suit in ELC E6 of 2022(OS) for adverse possession and therefore his joinder herein is necessary.
  8. In their submissions, the plaintiffs submitted as follows regarding the instant notice of motion: that stay of proceedings directly interferes with the right of the plaintiff in having his suit heard expeditiously; the applicant only intends to embarrass and delay the trial of the suit; that the suit seeks to determine the issue of possession as well as legality of the titles held by the 4<sup>th</sup> and 5<sup>th</sup> defendants and the claim for adverse possession and legality of the possession in LR 20591/20 & 21 cannot be conveniently tried in the instant suit; that an interested party being not a substantive party in the suit, though enjoined, cannot seek substantive orders like stay of proceedings; citing the decision in [Wilfred G Gisebe V Chepkwony Chumo & 2 Others and Cheruiyot Henry Kiptanui](#) 2019 eKLR, the plaintiffs aver that if the 5<sup>th</sup> interested party is to seek substantive orders against the plaintiffs, he can not do so as an interested party. Also, citing [William Kiprono Towett & 1597 Others V Farmland Aviation Ltd & 2 Others](#) 2016 eKLR, the plaintiffs state that order 1 rule 2 CPR gives the court unfettered discretion to put the plaintiff to election, or to order a separate trial and the plaintiffs in this suit have elected to



- have a separate trial. The plaintiffs aver that they have already been held at ransom by the applicant whose applications are said to have delayed the trial of the injunction application filed by the plaintiff.
9. Courts permit joinder of parties when joinder would result in a complete settlement of all the questions involved in the proceedings and protect the rights of a litigant who would otherwise be adversely affected in law, or prevent a likely proliferation of litigation. Regarding the last point, it is important to note that there is already more litigation regarding the applicant's interest in Nakuru ELC case no E06/2022(OS) in which the applicant claims adverse possession against the 3<sup>rd</sup> and 4<sup>th</sup> interested parties.
  10. What is the interest of the plaintiffs in the two properties the applicant claims, it must be asked?
  11. In the plaint dated March 20, 2022, the plaintiffs state as follows: that the 1<sup>st</sup> plaintiff is the beneficial owner of LR no 20591/20 having acquired it from the 3<sup>rd</sup> and 4<sup>th</sup> interested parties, that he has taken up possession and has been cultivating the same without any interruption until March 17, 22. The plaintiffs claim that the chief land registrar who is named as the 1<sup>st</sup> defendant has falsified records contained in certificate of title LR no 20591/9 by creating entry no 7 (LR no 20591/20) and misrepresented it to have been registered in the name of the 4<sup>th</sup> defendant and also by creating entry no 8 (LR no 20591/21) and misrepresenting it to have been registered in the name of the 5<sup>th</sup> defendant. Now, it is clear that the applicant is not the same person as the 4<sup>th</sup> defendant or the 5<sup>th</sup> defendant. The 4<sup>th</sup> defendant is one James Malakwen. The 5<sup>th</sup> defendant is one James M Chemjor. Going by the averments of the plaintiffs as above, it would appear that the applicant has to also contend with the claims to the two parcels by the 4<sup>th</sup> and 5<sup>th</sup> defendants. It is not clear from the application whether the 2 defendants have been joined to the other suit, to wit, Nakuru ELC case no E06/2022(OS). It is also apparent that the plaintiffs herein, not being named as title holders, have not been joined to that suit. The emerging tentative picture is that the plaintiffs are learning of the applicant's claim through the instant application and by the plaint the applicant is also learning of the interest of the 3<sup>rd</sup> and 4<sup>th</sup> defendants in the land he lays claim to under adverse possession. It would then appear that whatever claim the applicant has will affect the interests of the 1<sup>st</sup> plaintiff, the 3<sup>rd</sup> and 4<sup>th</sup> defendants, and the 3<sup>rd</sup> and 4<sup>th</sup> interested parties as all of them appear to be claiming the same land. There is no representation for the 4<sup>th</sup> and 5<sup>th</sup> defendants in this suit at the moment.
  12. In the circumstances I see no good ground advanced by the plaintiff to persuade me from ordering the joinder of the applicant, who has amply demonstrated his interest as stated herein above, as an interested party. In this court's view, it is proper to grant any person who claims an interest in the land, whether registered or unregistered, which can be verified by way of evidence at the hearing, an opportunity to be heard so as not to prejudice their interest.
  13. I have considered the plaintiffs' submission as to election. The plaintiffs submit that the court ought to order a separate trial of the applicant's claim as against the 4<sup>th</sup> and 5<sup>th</sup> defendants. That would mean excluding the applicant from the instant suit. But how can a trial of that claim in the manner suggested by the plaintiff be proper while the plaintiff claims the said parcels? That would be piecemeal litigation that may bring further chaos to the already complex situation the parties currently find themselves in. I am persuaded that the plaintiff now being formally aware of the claim by the proposed 5<sup>th</sup> interested party can not go about the instant litigation as though the said interested party's claim does not exist, but must be given an opportunity to amend his pleadings to include him as a defendant, and, in default, the applicant's application for order of joinder be allowed. I state this because there would be no point of concluding the litigation herein without the applicant's participation only for issues to arise as between the plaintiff and the interested party much later in the form of another suit. I am convinced that the dispute between the plaintiff, the 3<sup>rd</sup> and 4<sup>th</sup> defendants and the 3<sup>rd</sup> and 4<sup>th</sup> interested parties,



who all claim the land, can be finally resolved within one or both of the two cases already filed with regard to the two parcels of land.

14. Consequently, I find that the application dated April 25, 2022 has merit. I therefore make the following orders:
- a. The 1<sup>st</sup> plaintiff shall within 14 days of this order elect to join or not join the applicant in the instant application as a defendant in the instant suit and he shall, perchance he so elects to join him, serve upon him summons and an amended plaint pleading against him on the basis of the disclosures in his instant application in the normal fashion for which filing leave is hereby granted;
  - b. In the alternative the 1<sup>st</sup> plaintiff shall within 14 days of this order elect whether to be joined as a defendant in Nakuru ELC no E006 Of 2022 and shall either make an application to that effect within Nakuru ELC no E006 of 2022 or amend the plaint herein so as to cease and withdraw his claim over all those properties known as titles No LR 20591/20 and LR 20591/21 leave for which filing is hereby granted and if he takes both options, the dispute between him and the applicant and the 3<sup>rd</sup> and 4<sup>th</sup> defendants and the 3<sup>rd</sup> and 4<sup>th</sup> interested parties shall be tried in that earlier suit, Nakuru ELC no E006 of 2022.
  - c. In default of the 1<sup>st</sup> plaintiff's election to join the applicant as allowed in orders No (a) or to be joined in Nakuru ELC E006 of 2022 as allowed in (b) above, the application dated April 25,2022 shall be deemed as allowed only in terms of prayers no (b) and (d) thereof.
  - d. This suit shall be mentioned on June 23, 2022 for further directions.
  - e. Costs of the application shall be in the cause.

It is so ordered.

**DATED, SIGNED AND ISSUED AT NAKURU VIA MICROSOFT TEAMS VIDEO CONFERENCE ON THIS 9<sup>TH</sup> DAY OF JUNE, 2022.**

**MWANGI NJOROGE**

**JUDGE, ELC, NAKURU**

**In the presence of:**

**Mr Rapando for the 7<sup>th</sup> defendant present.**

**Mr Otinga for the proposed 5<sup>th</sup> interested party present.**

**Mr Kibii for 6<sup>th</sup> defendant & 3<sup>rd</sup> defendant present.**

**Mr Otieno for 2<sup>nd</sup> defendant present.**

**Mr Odhiambo for plaintiffs present.**

**No appearance for interested parties nos 1 – 4.**

**No appearance for 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> – 11<sup>th</sup> defendants.**

