



REPUBLIC OF KENYA



Chepwambok & 3 others v Chepkemboi & another (Environment & Land Case 6 of 2022) [2022] KEELC 2670 (KLR) (21 July 2022) (Ruling)

Neutral citation: [2022] KEELC 2670 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE 6 OF 2022
MN MWANYALE, J
JULY 21, 2022
FORMERLY ELDORET ELC CASE NO 231 OF 2012**

BETWEEN

**MARY CHEPWAMBOK 1ST APPLICANT
MARY CHEPWAMBOK 2ND APPLICANT
RAPHEL TONUUI 3RD APPLICANT
RAPHEL TONUUI 4TH APPLICANT**

AND

**PAULINE CHEPKEMBOI 1ST RESPONDENT
PAULINE CHEPKEMBOI 2ND RESPONDENT**

RULING

1. Vide his notice of motion application dated January 25, 2022, Joel Kenduiywo seeks to be joined in this suit as third party, on the ground so as to have a locus standi to challenge paragraph 10 of the amended statement of defence dated April 27, 2006 by the defendant.
2. The applicant in further grounds to the application states that he is the indefeasible proprietor of Nandi/Kamobo/914; while the 1st plaintiff is the registered owner of Nandi/Kamobo/2825, which properties are separate; from the cadastral maps.
3. The applicant acting in person, has also sworn a supporting affidavit in which he deponed the grounds aforementioned and has annexed the copies of green card of Nandi/Kamobo913 and Nandi/Kamobo/2825.
4. The 2nd plaintiff Raphael Tanui has filed a “replying affidavit” but in support of the third application for joinder application.



5. The defendant/respondent has filed ground of opposition, to the application, on grounds interalia;
 - a) That the said application is incompetent, an afterthought, misadused, baseless, frivolous, scandalous and an outright abuse of the Court process.
 - b) That in 2017, the Applicant has filed a similar application dated 18/4/2017 seeking similar orders but the same was dismissed
 - c) That the Applicant has no interest neither is he claiming any interest over the suit properties herein being Nandi/Kamobo/2825 and Nandi/Kamobo/913 for him to be made a party to proceedings.
 - d) That the instant Application is a just a collusion between the Applicant and the Plaintiffs to further delay, this matter with the hope that something will happen to the Defendant before this suit can be heard and determined is a very old and sickly lady.
 - e) That the Applicant is not entitled to orders sought herein and the said application should be dismissed with costs since the Application is untenable in law.
6. Parties were directed to file written submissions on the application.
7. It is important to note that whereas the defendant opted to file grounds of opposition to the application, and raised the issue of Res-judicata, by not filing a replying affidavit the defendant denied the court a chance to examine the application that the plaintiff had filed on 18/4/2017.
8. The defendant/respondent represented by counsel unprocedurally annexed the application dated 18/4/2017 as well as correspondences between the DCI, DPP and the court on how the applicant was registered as the proprietor of Nandi/Kamobo/914. The defendant further submitted extensively that the applicants title in respect of Nandi/kamobo/914 was obtained through Fraud; and/or forgery.
9. The court frowns upon the conduct of the respondent to Annex the said annexures in her submission and not in through a replying affidavit, having opted only to file grounds of opposition. Upon perusal of the typed court proceedings, at pages 51, the court established than an application dated 18/4/2017 was heard on December 11, 2017 before Hon. Justice A. Ombwayo who in a ruling delivered on the same dated dismissed the said application as an abuse of the court process. Upon further perusal of the court record, and the notice of motion application dated 18/4/2017 dismissed by Justice Ombayo was filed by Joel Kenduiywo the Applicant herein who sought to be joined in as a Co-plaintiff.
10. It follows there from that the court has already dealt with a similar application by the same Joel Kenduiywo for joinder, hence this application is thus Res judicata and ought to be demised with costs.
11. In paragraph 10 of the amended defence the defendant makes reference to the property which the Applicant claims to his as hers, to wit, Nandi/Kamobo/914, yet the defendant other than the amended defence and the allegations of fraud brought through the correspondences and submissions as captured in paragraph 8 above has not filed a counterclaim.
12. While the court shall not consider the allegations of fraud as captured in paragraph 8 above in determining this application, it is the courts view that the issue in controversy can only be heard and finally determined if the defendant filed a counterclaim and pleads the issues of fraud submitted in this application, as against the plaintiffs and the applicant, for it is unprocedural as observed in paragraph 9 above to introduce evidence in the form of correspondences though submissions, yet the same has not been pleaded by the defendant in the defence and in the absence of a counterclaim, the court is not equal about to look at the issues.



13. The issues of forgery of court orders by the applicant so as to obtain registration of Nandi/Kamobo/914 are issues of public policy that the court ought to inquire on, as was held in the case of *Standard Chartered Bank vs Inter Coms Services Ltd and 4 others* quoted in the case of *Kenya Pipeline Company Limited vs Gleencore Energy (UK) Ltd* 2015 eKLR where the court accepted the submissions made that once an issue of breach of stature is brought to the attention of the court in the course of proceedings, then in the interest of justice, the court must investigate it because the courts fundamental role is to hold the law. The court upheld and endorsed the old English case of *Holman -vs- Johnson* (1775 – 1803) ALLER 98 where Chief Justice Mansfield stated “the principle of public policy is this Exdolo Malo no other citor,.....no court shall will lend its aid to a man who found his cause of action on an immoral or an illegal act. If from Plaintiffs own stating or otherwise, the cause appears to arise ex turpi causa, or transgression of a positive law for the country, then the court says that he had no right to be assisted. It is on that the court goes, not for the sake of the defendant, but because they will lend their aid to such a plaintiff....”
14. As observed earlier this court has found that the application herein is similar to the one dated 18/4/2017 which was dismissed and therefore has no option but to dismiss the application with costs to the defendant.
15. Accordingly the application dated January 25, 2022 is hereby dismissed with costs to the defendant.
16. It is so ordered

DATED AT KAPSABET THIS 21ST DAY OF JULY 2022.

HON. M. N. MWANYALE,

JUDGE.

