



**Kiragu & 8 others v Nyere & 6 others; Nyaga & 4 others & another (Applicant)  
(Environment & Land Case 111 of 2016) [2022] KEELC 3890 (KLR) (21 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3890 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 111 OF 2016**

**M SILA, J**

**JULY 21, 2022**

**BETWEEN**

**SUSAN WANGECHI KIRAGU & 8 OTHERS ..... PLAINTIFF**

**AND**

**SHABAN SALIM NYERE & 6 OTHERS ..... DEFENDANT**

**AND**

**PETER KIRIMI NYAGA & 4 OTHERS ..... APPLICANT**

**PALM WOMEN GROUP & EQUITY BANK (KENYA) LIMITED .... APPLICANT**

**RULING**

**Background**

(Applications for joinder to the suit and for orders that the suit starts *de novo*; suit filed by 9 plaintiffs seeking orders over 27 plots of land; suit against defendants who are said to have trespassed into the properties; case already heard and awaiting judgment; before judgment two applications filed by parties claiming to also have title to two of the 27 properties in dispute and having sued the 6<sup>th</sup> plaintiff in a separate suit over the two titles; applicants seeking to be joined to the suit and for the proceedings to start *de novo*; clear that the applicants may have an interest in two of the disputed properties and may have a competing claim against the 6<sup>th</sup> plaintiff; however in considering the overriding objective, it would be disproportionate to reopen the case all over again; order that the two properties be severed from this suit and court to pronounce itself on the other properties)

1. This ruling is in respect of two applications. The first application is dated March 22, 2022 filed by four persons being Peter Karimi Nyaga, Susan Wanjiru Gachungu, Peninah Wambura Mwoya, and Eunice Wanjiku Mwangi (hereinafter referred to as the first applicants). The first applicants seek orders that this court arrests its pending judgment and have them joined as defendants in the suit with leave to file defence. They wish to come into this suit because they claim to own the plots Kwale/Ramisi Phase II SS/1828, 1829 and 1830, which are said to be subdivisions of the Plot Kwale/Ramis Phase II SS/958.



The second application is dated March 24, 2022 filed by Palm Women Group Limited and Equity Bank (Kenya) Limited (hereinafter referred to as the second applicants). The second applicants also seek that the proceedings herein be set aside, that delivery of the judgment be stayed, and that Palm Women Group Limited be joined as defendant and Equity Bank Limited be joined as interested party, and that the matter to start de novo. They want to come into the suit because they claim to own the Plot Kwale/Ramisi Phase II SS/957.

2. The background is that this suit was instituted by way of a plaint filed on May 19, 2016. The nine plaintiffs pleaded that they are the registered owners of several plots of land being Kwale/Ramisi Phase II S.S/ 969, 955, 965, 241, 966, 888, 971, 968, 956, 957, 958, 959, 970, 962, 964, 967, 947-951, 953, 954, 153, 960, 246, 883, and that the seven defendants had trespassed into their land. The plaintiffs have therefore prayed for orders inter alia for a declaration that they are the lawfully registered proprietors of the suit properties, a declaration that the defendants are trespassers, general damages for trespass, and a permanent injunction against the defendants from interfering with the plaintiffs' ownership and possession of the suit properties. Alongside the plaint, the plaintiffs filed an application seeking orders restraining the defendants from interfering with the plaintiffs' efforts to erect boundary fences and restraining orders against the defendants from interfering in any way with the plaintiffs' possession and enjoyment of the suit properties. By a ruling dated November 30, 2016, this court allowed the orders as prayed.
3. The defendants filed a joint defence. They denied the averments in the plaint and further stated that they are residents of Kinondo Ramisi Phase II A Settlement Scheme, and they grew up there. They further averred that after the demarcation, the plots were reallocated to them, but the title deeds were issued to the plaintiffs without their knowledge.
4. On October 22, 2018 and March 3, 2021, the plaintiffs adduced their evidence and closed their case. On September 30, 2021, the defendants called two witnesses and closed their case. The court directed parties to file their written submissions and judgment was set for March 9, 2021. Judgment was not delivered on March 9, 2021 as the court was on sick leave. Before the court resumed, so as to give a new date for judgment, these two applications were filed and it will be observed that part of what they seek is that the judgment be arrested and the applicants be allowed to participate in this case before judgment can be rendered.
5. It will be observed that among the properties which are the subject matter of this suit are the plots Nos 957 and 958. In this case, the 6<sup>th</sup> plaintiff, Christopher Githaiga (Mr Githaiga), asserts ownership of them. In the first application, the applicants claim that they own the Plots Numbers 1828, 1829 and 1830, which they say arose from a subdivision of the Plot No 957. They have annexed copies of their title deeds. The applicants contend that they obtained registration on November 9, 2015 and February 22, 2016 before this suit was filed. In the supporting affidavit sworn by Peter Karimi Nyaga, he deposes that it was in March 2022, when they came to know of this case. They came to know of it because they had sued Mr Githaiga in Kwale SRMCC E003 of 2022, and among the matters that Mr Githaiga pleaded was that there was a determination in this suit in his favour. According to the first applicants, it will be in the best interest of justice if they are joined into the suit, so that the real dispute which is on ownership of the land, can be addressed holistically and that this joinder would save judicial time by avoiding multiple suits.
6. In the second application, Palm Women Group Limited claim to be owners of the Plot No 957, having purchased it from one Said Omari Mwatayari on May 15, 2020. A copy of the title deed is similarly annexed. This title is charged to Equity Bank Limited. The supporting affidavit is sworn by Fatuma Mohamed Faki who has deposed that upon purchase of the land they took a loan and commenced farming activities. In December 2021, she was informed that persons authorized by Mr Githaiga had



entered the land and started demolishing farm structures. They filed the suit Kwale SRMCC E003 of 2022, *Palm Women Group & 5 Others v Christopher Githaiga*. It was while replying to their application for injunction that Mr Githaiga revealed the presence of this suit. There is another supporting affidavit sworn by Kariuki King'ori, the Manager, Legal Services at Equity Bank. He has deposed that a Charge on plot No 957 was registered on July 19, 2021 in favour of Palm Women Group Limited. He deposed that prior to the advancement of the loan facility, Equity Bank conducted a search which confirmed that the Group was the registered proprietor of plot No 957.

7. Mr Githaiga, the 6<sup>th</sup> plaintiff herein, filed a replying affidavit to oppose the two applications. He asserted ownership of both Plots No 957 and 958 having been issued with a title deed on February 3, 2014. He deposed that he has been in possession of the two properties since his registration. He deposed that in January 2022, he was fencing his plots together with the other plots that he owns in the area, when Mr Nyaga attempted to stop his workmen. Soon after, he was sued in the case Kwale SRMCC No E003 of 2022. He deposed that he has been in possession of all the plots of land and none of the proposed defendants had any claim. He pointed out that this suit is against the seven defendants for trespass while Kwale SRMCC No E003 of 2022 is an ownership dispute over title between himself and the applicants. He deposed that the cause of action of the applicants is solely against him and not jointly with his co-plaintiffs herein. He deposed that there are two separate and distinct suits which cannot be tried jointly. He stated that he is ready and willing to prosecute Kwale SRMCC ELC Case No E003 of 2022 to conclusion and have the validity of his title over plots 957 and No 958 interrogated by that court which has competent jurisdiction over the dispute. He averred that they have expended considerable time and resources from 2016 to date in financing the litigation in this suit, hence, it would be a great injustice to have the entire trial process reversed and re-commenced based on the claims of the applicants.
8. The defendants did not respond to the application.
9. I have taken note of all the above alongside the submissions filed by counsel.
10. What the applicants want is to be joined to this case and for an order that the case starts *de novo* with their full participation. They base their application on the contention that they are owners of two of the plots which are in dispute in this case and challenge the ownership of the two plots by the 6<sup>th</sup> plaintiff, Mr Githaiga. The response of Mr Githaiga is that it will be contrary to the expeditious resolution of disputes to have the case start afresh yet the grievances of the applicants is only against himself.
11. All counsel referred me to order 1 rule 10 (2) which addresses joinder of parties. The same provides as follows :-

“Rule 10(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.”



12. Counsel also referred me to the case of *Civicon Limited v Kivuwatt Limited and 2 others* (2015) eKLR where the Court of Appeal stated that the court has discretion in determining an application for joinder. It was held as follows:-

“Again, the power given under the rules is discretionary which discretion must of necessity be exercised judicially. The objective of these rules is to bring on record all the persons who are 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. Thus, any party reasonably affected by the pending litigation is a necessary and proper party and should be enjoined.”

13. From the above, it can be discerned that the court has discretion when determining applications such as these. It will be observed from order 1 rule 10(2) above that the court may order the name of a person “whose presence before the court may be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit” to be added. Therefore, what the court needs to be convinced of, is that it is necessary for the said party to be joined, for the court to effectually and completely adjudicate the dispute and settle all questions in the matter. The test is one of necessity.

14. This suit is one of trespass against the defendants over a number of properties. I have counted 27 plots as the suit properties herein. The case is thus not restricted to the two plots No 957 and 958, though the two plots are indeed among the suit properties. This case has already been heard and is pending judgment. I can see the interest of the applicants but their interest is restricted to two plots out of 27. Their claim also only affects one party, the 6<sup>th</sup> plaintiff, out of the nine plaintiffs. Being alive to the overriding objective set out in section 1A of the *Civil Procedure Act*, Cap 21, Laws of Kenya, which is that the duty of the court and parties is “to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes” I think it would be disproportionate to have the entire proceedings set aside owing to the interest of the applicants in two out of the 27 plots in dispute. In my view, it is better that I sever the dispute regarding the two plots No 957 and 958, given that there is contention over their ownership between the 6<sup>th</sup> plaintiff and the applicants, rather than set aside the entire proceedings. This court will thus not make any pronouncement over the Plots No 957 and 958 and will only restrict itself to the other properties. The dispute over ownership of the two Plots No 957 and 958 will first need to be resolved, which resolution will be made in the case Kwale SRMCC E003 of 2022. If there is any complaint of trespass, parties to apply within the suit Kwale SRMCC No E003 of 2022. For the avoidance of doubt, the two plots No 957 and 958 will not be the subject of the judgment that this court will deliver. I think this order is fair to all parties.

15. The only issue left is the costs of this application. I make no orders as to costs.

16. Orders accordingly.

**DATED AND DELIVERED THIS 21 DAY OF JULY 2022**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

