



Chege Mwangi v Ole Minis & 6 others; Land Registrar Transmara West & 2 others (Proposed Defendant) (Environment & Land Case 10 of 2021) [2022] KEELC 12694 (KLR) (27 September 2022) (Ruling)

Neutral citation: [2022] KEELC 12694 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE 10 OF 2021
EM WASHE, J
SEPTEMBER 27, 2022**

BETWEEN

IGNATIUS CHEGE MWANGI APPLICANT

AND

ADASON OLE MINIS 1ST DEFENDANT

OLE NANYOIKE LEMAYIAN ONYONKE 2ND DEFENDANT

SHIROI KIMOKOTHO OLE NASHA 3RD DEFENDANT

MPOKE MATASI 4TH DEFENDANT

SAMSON MPATIAN RINKA 5TH DEFENDANT

COUNTY GOVERNMENT OF NAROK 6TH DEFENDANT

AHMED SALIM 7TH DEFENDANT

AND

SUB COUNTY LAND REGISTRAR TRANSMARA WEST PROPOSED DEFENDANT

SUB COUNTY LAND SURVEYOR TRANSMARA WESTR PROPOSED DEFENDANT

MARY SIPARO PROPOSED DEFENDANT

RULING

1. The Counsel for the 5th Defendant/Applicant filed an application dated May 24, 2022 (hereinafter referred to as “the present application”) under Order 51 Rule 1, Order 1Rule 10(2), Order 40 Rule



1, 3 and 4 of the Civil Procedure Rules and Section 1A,1B and 3A of the Civil Procedure Act, Cap 21 Laws of Kenya.

The Application seeks three Orders namely; -

- i) This Honourable Court be pleased to stay the hearing of the main suit pending the hearing and determination of this application inter-partes.
 - ii) That this Honourable Court be pleased to join the proposed Defendants herein The Sub-county Land Registrar Transmara West, The Sub-county Land Surveyor, Transmara West And Mary Siparoas Defendants in the Counter-Claim.
 - iii) The Costs of this Application be provided for.
2. The Application is supported by the grounds outlined in the body and the Affidavit of Samson Mpatiany Ole Rinkasworn on the 24th of May 2022.
 3. The gist of the grounds outlined in the body of the Application and the Supporting Affidavit are as follows; -
 - a) The Applicant herein is the beneficial owner the property known as Transmara/ololchani/107.
 - b) However, due to fraudulent actions of the Plaintiff, 2nd, 3rd and 4th proposed Defendants to the Counter-Claim, the Mutation and/or Diagram Index Map relating to his parcel of land was altered and given another number known as Transmara/ololchani/237.
 - c) As result of the above fraudulent and/or collusion between the Plaintiff, 2nd, 3rd and 4th proposed Defendants, a new title number was consequently issued and the Applicant's property now vests in the name of the Plaintiff.
 - d) The Applicant further indicates that he is in occupation of the ground contained in the Plaintiff's title and would like to now pursue various orders against the Plaintiff, 2nd, 3rd and 4th proposed Defendants through a Counter-claim.
 - e) The Applicant submits that indeed, the presence of the 2nd, 3rd and 4th proposed Defendants in the Counter-Claim is fundamental in understanding the real and true facts of the case so as to arrive at a just decision.
 4. The present Applicant's annexures include various documents in the supporting affidavit namely (i)proceedings of the Land Adjudication Committee heard on the 11/2/1985,(ii) A copy of the Ololchani Adjudication Section, SheetNo. 4,(iii) Copy of Adjudication Records of the property known as Transmara/ololchani/110 in the names of the Applicant and one Thabitha Njeri Michaeldated 11/12/1987,(iv) a letter dated September 24, 2019 from the Land Adjudication and Settlement Officer, Transmara East and West to the Deputy County Commissioner, Transmara West.
 5. The present Application has been opposed by the Plaintiff's Replying Affidavit dated June 17, 2022.
 6. The proposed 2nd, 3rd and 4th Defendants in the Counter-claim have not filed any responses in terms of Replying Affidavits and/or submissions.
 7. The Applicant filed his submissions on the 21st of July 2022 and the Plaintiff filed his submissions on the 5th of July 2022.
 8. The Applicant's first issue is that of joinder.



9. The two authorities placed before the Court by the Applicant indeed outline the principles that guide the Court in an application of joinder.
10. In the case of *Kingori v Chege & 3 Others* [2002] 2 KLR 243, the Court outlined the principles of joinder as follows; -
 1. He must be a necessary party.
 2. He must be a property party.
 3. In the case of the Defendant, there must be a relief flowing from that Defendant to the Plaintiff.
 4. The ultimate order or Decree cannot be enforced without his presence in the matter.
 5. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.
11. The Applicant in the Supporting Affidavit has clearly outlined the history and decision of the Land Adjudication Committee which handled the demarcation of Olochani Adjudication Section.
12. The Applicant through Annexures SMR 1, 2 and 3 has placed before the Court various documents which demonstrate and/or establish a legitimate claim and/or expectation on the property known as Plot 107 within Olochani Adjudication Section.
13. The mandate and authority to create the necessary legal registrable documents to facilitate the issuance of the Title Deed to any person who is a beneficiary of an adjudication section is vested in the 2nd and 3rd proposed Defendants in the Counter-Claim.
14. The 2nd and 3rd proposed Defendants in the Counter-Claim are very crucial parties in these proceedings to shed light on how the decision of the Land Adjudication Committee was implemented.
15. Similarly, the 2nd and 3rd proposed Defendants in the Counter-Claim are the authors and/or custodians on Government records appertaining to creation and issuance of title documents within Olochani Adjudication Section.
16. Any orders that will be issued by this Court will be implemented through the offices of the 2nd and 3rd proposed Defendants in the Counter-Claim to ensure compliance.
17. Consequently, in the Court's considered view, the 2nd and 3rd Defendants is absolutely necessary to enable the Court effectively and completely adjudicate upon and settle all questions for determination in this suit.
18. As for the 4th proposed Defendant in the Counter-Claim, the Applicant has pleaded in Paragraph 11 of the Supporting affidavit that Parcel No. Transmara/olochani/236 belongs to her.
19. The Applicant is of the view that the land demarcated and/or alienated to the 4th proposed Defendant in the Counter-claim includes that portion that was demarcated and/or alienated for Plot 107 within Olochani Adjudication Section.
20. It is therefore clear in the Court's mind that if the Applicant will succeed in his Counter-Claim, then the 4th proposed Defendant in the Counter-claim will be adversely affected as the property known as Transmara/olochani/236 will be subject of demarcation and/or sub-division again.



21. The 4th proposed Defendant in the Counter-Claim needs to present her side of the story on how she obtained the Title of the parcel No Transmara/ololchani/236 inclusive of the land which is being claimed by the Applicant herein.
22. The Kenyan Constitution and subsidiary Acts of Parliament require every Kenyan to be accorded an opportunity to be heard before a judgement is pronounced.
23. In view of the above sentiments by the Court, it is inevitable that the 4th proposed Defendant in the Counter-Claim should be joined in these proceedings.
24. The omission by the Applicant to annex the Draft Amended Defence and Counter-Claim in this Application cannot deprive the Applicant of the right to join other necessary parties.
25. The Respondents that will be affected by the amendments filed by the Applicant will be accorded sufficient time to present their Defences and other supporting pleadings to amount a proper defence and present all their issues at the hearing.
26. On the second prayer seeking a stay of the proceedings pending the hearing of this Application, the Court is of the considered view is that this prayer is not necessary as the Civil Procedure Rules require all interlocutory applications to be fully adjudicated before the hearing can proceed.
27. On the last issue of Costs, the Court is of the considered view that the costs of this Application should abide the outcome of the main suit and/or Counter-claim.
28. In conclusion thereof, the Court hereby makes the following Orders as appertains the Application dated May 24, 2022.
 - A. The 2nd proposed Defendant in the Counter-Claim be and is hereby joined in this proceeding as 8th Defendant.
 - B. The 3rd proposed Defendant in the Counter-Claim be and is hereby joined in this proceeding as the 9th Defendant.
 - C. The 4th proposed Defendant in the Counter-claim be and is hereby joined in this proceeding as the 10th Defendant.
 - D. The 5th Defendant/Applicant be and is hereby granted leave of 21 days from today's date to prepare, file and serve the Amended Defence and Counter-Claim on all the other parties.
 - E. The parties that will be affected by the Amended Defence and Counter-Claim shall prepare, file and serve their Responses as well as supporting documents including witnesses' statements within 21 days from the date of service of the Amended Defence and Counter Claim.
 - F. The 5th Defendant/Applicant shall have leave of 7 days upon service of the responses to the Amended Defence and Counter Claim to file any further documents if need be.
 - G. Costs of the application shall be abide the outcome of the Plaint and/or Counter-Claim thereof.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON DAY OF 27TH SEPTEMBER 2022.

EMMANUEL.M.WASHE

JUDGE



IN THE PRESENCE OF:

COURT ASSISTANT: Ngeno/Elisha

**ADVOCATES FOR THE APPLICANT: Pion for 1st - 6th
Defendant/Applicant**

**ADVOCATES FOR THE RESPONDENT: Anyona for
Plaintiff/Respondent**

