



REPUBLIC OF KENYA



**Soi v Keriri & another (Environmental and Land Originating Summons  
124 of 2020) [2022] KEELC 4838 (KLR) (19 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 4838 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 124 OF 2020  
EK WABWOTO, J  
SEPTEMBER 19, 2022**

**BETWEEN**

**ERIC KIPROTICH SOI & OSCAR KIBET SOI ( SUING AS THE  
PERSONAL REPRESENTATIVES OF THE LATE LINAH CHELANGAT  
KIRUI) ..... APPLICANT**

**AND**

**JOHN MATERE KERIRI ..... 1<sup>ST</sup> RESPONDENT**

**MARGARET WAMBUI LINDIJER ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant filed a notion of motion application dated March 11, 2022 which was accompanied by a supporting affidavit sworn by Eric Kiprotich Soi. The applicant sought the following orders:
  - i. That this honorable court be pleased to grant leave to the applicant to further amend the originating summons dated April 8, 2020 in the manner shown on an annexed copy of the draft further amended originating summons.
  - ii. That the further amended originating summons annexed hereto be treated as the applicant's claim and that the same be considered as duly filed and served.
  - iii. That the orders issued by Honorable Justice L Komingoi against the 1<sup>st</sup> and 2<sup>nd</sup> respondent do apply to the 3<sup>rd</sup> respondent.
  - iv. That the costs of this application be costs in the cause.
2. The application was opposed by the 1<sup>st</sup> and 2<sup>nd</sup> respondents through an affidavit sworn by the 2<sup>nd</sup> respondent Mary Wambui Lindijer on May 9, 2022. In the said affidavit, it was deposed that should the applicant have any claim against the proposed 3<sup>rd</sup> respondent then the appropriate action would be to file a fresh suit instead of enjoining the 3<sup>rd</sup> respondent herein as proposed.



3. In essence, the application seeks to enjoin the Nairobi Metropolitan Services as a 3<sup>rd</sup> respondent. Pursuant to the directions issued by this court on May 16, 2022, it was directed that the application be canvassed by way of written submissions. Both parties complied with the said directions. The applicant filed his written submissions dated June 15, 2022 through Conrad Law Advocates LLP while the 1<sup>st</sup> and 2<sup>nd</sup> respondents submissions were dated July 5, 2022 and filed by Angela Mwadumbo Law.
4. In his submissions dated June 15, 2022, the applicant submitted that the amendment would bring out the real matters in controversy and would not prejudice the Respondents. It was further argued that the joinder of the proposed 3<sup>rd</sup> respondent would prevent multiplicity of suits and proliferation of litigation. Counsel relied on the case of *Central Kenya Limited v Trust Bank Limited (2000) 2 EA 365* and *Kenya National Hospital v Kenya Commercial Bank Limited & Another (2003) EA* in support of this position.
5. In the submissions dated July 5, 2022, the 1<sup>st</sup> and 2<sup>nd</sup> respondents while opposing the said application argued that the effect of joinder would bring up new issues under the [Physical and Land Use Planning Act](#) therefore taking away from the cause of action in the suit. Moreover, it was submitted that extending the injunctive orders to the proposed 3<sup>rd</sup> respondent would be encroaching on its statutory mandate and function.
6. Having considered the evidence and written submissions, it is clear that the issues for determination before this court are as follows:
  - i. Whether the applicant's application to seek joinder of the 3<sup>rd</sup> respondent is merited?
  - ii. Whether the applicant should be granted leave to further amend the originating summons?
7. The principles for joinder are well outlined in Order 1 of the [Civil Procedure Rules](#) as well as in [Meme v Republic \(2004\)1 124, eKLR](#) which are:
  - a. Joinder of a person because his presence will result in the complete settlement of all questions involved in the proceedings;
  - b. Joinder to provide a protection of a party who would otherwise be adversely affected in law;
  - c. Joinder to prevent a likely course of proliferated litigation
8. I remain cognizant to the fact that the application for joinder is hinged upon the alleged actions of the proposed 3<sup>rd</sup> respondent in respect to the suit property. On face of it, it would appear sensible for the proposed 3<sup>rd</sup> respondent to be enjoined so as to ensure finality in the litigation. However, I am guided by the determination of learned brother Justice MD Mwangi, in [Eric Kiprotich Soi & another v Director General Nairobi Metropolitan Services \[2022\] eKLR](#) which outlines an existing out-of-court dispute resolution process pending between the applicant and the proposed 3<sup>rd</sup> respondent herein. The process emanates from an enforcement notice issued by the proposed 3<sup>rd</sup> respondent in exercise of its statutory duty. In the said case, the court stated: -

“...Section 73(4) of the [Physical and Land Use Planning Act](#) provides that any party who is aggrieved by the determination of the County Physical and Land Use Liaison Committee may appeal to the court (read Environment and Land Court) only on a matter of law. The law is therefore clear that this court, on matters falling under the provisions of the [Physical and Land Use Planning Act](#), enjoys appellate jurisdiction and on matters of law only.”



9. The applicant's allegations that the 1<sup>st</sup> and 2<sup>nd</sup> respondents were in collaboration with the proposed 3<sup>rd</sup> respondent to circumvent justice is immaterial. It is clear that the applicant must first seek to exhaust the available remedy at hand prior to seeking refuge in this court. The doctrine of exhaustion has been addressed by several courts including the decision of the Court of Appeal in the case of *Geoffrey Muthiga Kabiru & 2 Others v Samuel Munga Henry & 1756 others* (2015) eKLR. The court expressed itself as follows; -

“It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked”.

10. In the foregoing, the court hereby finds that the application dated March 11, 2022 is unmerited and the same is hereby dismissed in its entirety with costs to the 1<sup>st</sup> and 2<sup>nd</sup> respondents.

I also direct that the suit be set down for hearing upon delivery of this ruling.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2022.**

**E. K. WABWOTO**

**JUDGE**

**In the presence of: -**

**Mr. Nduati for the Applicant**

**Ms. Mwadumbo for the 1st and 2nd Respondent**

**Court Assistant; Caroline Nafuna**

**E. K. WABWOTO**

**JUDGE**

