



Turasha & another v Kashu & 3 others; Kashu (Interested Party) (Environment & Land Case 57 of 2017) [2022] KEELC 13806 (KLR) (26 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13806 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 57 OF 2017
CG MBOGO, J
OCTOBER 26, 2022**

BETWEEN

SIMON SAIYALEL TURASHA 1ST APPLICANT

KANUKA GROUP RANCH 2ND APPLICANT

AND

NICHOLAS NGIGE KASHU 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

AND

JOHN LEMAYIAN KASHU 1ST DEFENDANT

JOHN NGUGI GATHATUA 2ND DEFENDANT

AND

PETER KASHU INTERESTED PARTY

RULING

1. Before this court for determination is a Notice of Motion application dated 13th April, 2022 expressed to be brought under Order 8 Rule 3,7, 8, Order 24 Rule 1,4 (1) 8 (2), Order 50 Rule 1 of the [Civil Procedure Rules](#), and Sections 3, 3A and 63 (c) of the [Civil Procedure Act](#) seeking the following orders: -
 1. Spent.
 2. That the proposed 3rd and 4th defendants/respondent herein be enjoined as parties in these proceedings in their capacity as the officials of Kanuka Group Ranch, the 2nd defendant/respondent herein the registered proprietors of all that piece of land comprised in title no Cis-Mara/Narosura/2 herein referred to as the suit piece of land.



3. That upon prayer 2 being granted, the plaintiff/applicant herein be granted leave to accordingly amend his plaint.
 4. That this honourable court be pleased to issue such other and or further orders that it may deem fit and just in the interest of justice.
 5. That costs of this application be provided for.
2. The application is premised on the grounds on the face of it and in the affidavit of the 1st plaintiff/ applicant sworn on even date. The applicant in his affidavit deposed that the suit was instituted against the 1st and 2nd defendants/ respondents by the firm of Mbichire & Co Advocates on 7th November, 2013 and before this matter could proceed for hearing, the 1st defendant passed on and his son Peter Kashu was enjoined as an interested party in the proceedings. Further, that the orders he is seeking are against the officials of Kanuka Group Ranch as well as the group ranch itself and that from the records availed to them from the Land Registry, the transfer documents are signed by among others, the proposed 3rd and 4th defendants. The 1st applicant deposed that for a proper and conclusive determination of all the core issues in this matter, there is need to have all the proper parties enjoined in the proceedings and that without the input and or participation of all the relevant parties in these proceedings, it would not be possible to have this matter heard and determined with finality. The applicant further deposed that apart from being enjoined as a Co-plaintiff in this matter, the proposed third defendant has not executed any witness statements and or participated in any way in these proceedings.
3. The interested party filed a replying affidavit sworn on 2nd September, 2022 in opposition to the application. The interested party deposed that the plaintiffs are conducting this matter in a clandestine manner and it is not clear as to which party has brought the suit before court and it is critical to track the matter since its inception. Further, that the parties to the suit are Kanuka Group Ranch as the plaintiff and Nicholas Ngigi Kashu and the Attorney General as the defendants and that during the progress of the proceedings, the plaintiffs were changed to indicate Simon Saiyalel Turasha and Kanuka Group Ranch; in the instant application the plaintiffs are Simon Saiyalel Turasha and Kanuka Group Ranch. The interested party further deposed that the plaintiff is attempting to substitute a plaintiff or plaintiff's witness as a defendant particularly John Lemayian who is listed as the plaintiff's witness in their list of witnesses. That the said John Lemayian Kashu has appeared alongside Simon Saiyalel Turasha as a co-plaintiff as against the Chairman of the group ranch and is therefore apprehensive that the intention of the plaintiff to substitute John Lemayian Kashu as a defendant is ill motivated and an attempt at compromising the present suit. In addition, the plaintiff has knowingly failed to enjoin crucial parties to the matter in a bid to unlawfully obtain prejudicial orders which is mischievous, in bad faith and an attempt at abusing the court process. The interested party further deposed that the proposed fourth defendant has never been an official of the group ranch.
4. The applicants did not file written submissions. The interested party filed written submissions dated 26th September, 2022. The interested party raised two issues for determination i.e.
- i. Whether the plaintiff merits the prayers sought in the application; and
 - ii. Who shall bear the costs of the application.
5. On the first issue, the interested party submitted that the nature of the orders sought in the application is to have the proposed 3rd and 4th defendants joined in this matter which can only be achieved under Order 1 rule 10 (2) of the [Civil Procedure Rules](#). Further, that the application does not seek to substitute the 1st defendant with the legal representative but seeks to join other parties as joinder and as such, the



- application does not seek the final, fair and just determination of the present suit. The interested party relied on the cases of *Kampala Coach Limited v First Community Bank Limited & another* [2016] eKLR and *Kiarie Waweru Kiarie v Moses Kanyira & 2 Others* [2018] eKLR.
6. On the issue of costs, the interested party submitted that given that the application lacks merit and is made in bad faith, the plaintiff should bear the costs of this application. The interested party relied on the case of *Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 Others* [2014] eKLR.
 7. I have perused the pleadings and the record contained in this file. Kanuka Group Ranch filed a plaint dated 6th November, 2013 *vide* ELC Civil Case no 586 of 2013 at Nakuru. The parties in this case are Kanuka Group Ranch as the plaintiff and Nicholas Ngigi Kashu as the 1st defendant and Attorney General (On behalf of the Registrar of Land Narok) as the 2nd defendant. The plaint is accompanied by the verifying affidavit of Simon Sayialel Turasha as the chairman of the plaintiff, plaintiff witness statement, plaintiff's list of documents and a plaintiff's list of witnesses who include John Lemayian, the proposed third defendant as a witness. The plaint was filed by the firm of Mbichire & Co. Advocates. On 27th March, 2017, the matter was transferred from Nakuru to Narok and was allocated file reference number ELC Case no 57 of 2017 where the parties remained as they were in Nakuru ELC Case no 586 of 2013. It is upon reaching Narok, I presume that the parties seemed to acquire different titles as and when they deemed. For example, in the notice of motion application dated 18th June, 2018, the parties were Simon Sayialel Turasha and John Leayian (On behalf of Kanuka Group Ranch) as the plaintiff and Nicholas Ngigi Kashu and Attorney General (On behalf of Registrar of Lands Narok) as the defendants which was filed by the firm of Mbichire & Co. Advocates.
 8. The firm of Lelei & Associates filed a notice of appointment of advocates dated 10th November, 2018. The interested party filed a statement of defence dated 21st January, 2019 with the parties as Simon Saiyalel Turasha (suing as the registered official of Kanuka Group Ranch) as the plaintiff and John Lemayian as the 1st defendant, John Ngugi Gathatwa as the 2nd defendant and Attorney General as the third defendant.
 9. I have not come across any application or order of the court or even consent where there is inclusion or amendment to include the 1st applicant as a co-plaintiff in this suit. For clarity, the parties herein so far are Kanuka Group Ranch as the plaintiff and Nicholas Ngigi Kashu as the 1st defendant and the Attorney General as the 2nd defendant and Peter Kashu as the interested party.
 10. Order 1 Rule 10(2) of the *Civil Procedure Rules* provides: -
 - “(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.”
 11. In the case of *Amon v Raphael Tuck & Sons* (1956) 1 All ER 273, Devlin J, held that:

“What makes a person a necessary party” It is not of course, merely that he has relevant evidence to give on some of the questions involved: that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance and is afraid that the existing parties may not advance them adequately... the court might often think it convenient or



desirable that some of such persons be heard so that the court could be sure that it had found the complete answer, but no one would suggest that it would be necessary to hear them for that purpose. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action, and the question to be settled, therefore must be a question in the action which cannot be effectually and completely settled unless he is a party"

12. Order 8, rule 3 of the [Civil Procedure Rules](#) provide as follows: -

- “(1) Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.
- (2) Where an application to the court for leave to make an amendment such as is mentioned in subrule (3), (4) or (5) is made after any relevant period of limitation current at the date of filing of the suit has expired, the court may nevertheless grant such leave in the circumstances mentioned in any such subrule if it thinks just so to do.
- (3) ...
- (4) An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under subrule (2) if the capacity in which the party will sue is one in which at the date of filing of the plaint or counterclaim, he could have sued.
- (5) ...”

13. In the view of the above cited provisions of the law, I find, that the [Civil Procedure Rules](#) allows amendment of the pleadings and joinder of parties and, leave to amend the pleadings can be granted or allowed at any stage of the pleadings, on conditions such amendments, or joinder as the case may be, will not result in prejudice or injustice to the party being joined which cannot be property compensated for his costs. The principle as I understand it is to do substantive justice to the parties in a suit.

14. Similarly, in the case of [Meme v Republic](#), [2004] 1 EA 124, the High Court observed that a party could be joined in a matter for the reasons that:

- “(i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
- (ii) joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) joinder to prevent a likely course of proliferated litigation.”

15. It is the mandate of the court that as far as possible all matters in controversy between the parties should be completely and finally determined and all multiplicities of legal proceedings concerning any of the matters be avoided. In this regard, it would be appropriate and in the interest of justice that all matters touching and concerning the subject matter of the suit in the case at hand be determined finally and completely to avoid litigating over the same matters again.



16. The 1st applicant (sic) sought leave to amend his plaint accordingly. The 1st applicant has not annexed the draft plaint with the proposed amendment to afford this court an opportunity to interrogate and make a finding on the same. To this end, I will not give an open ended order where no such draft amended plaint has been availed to court.
17. For this reason and in the interest of justice, I will allow the application as follows:-
- i. That the plaintiff is hereby allowed to amend its plaint to the extent only as to include the proposed 3rd and 4th defendants as defendants in this suit within the next 14 days from the date hereof.
 - ii. The interested party is hereby joined as the 1st defendant.
 - iii. The costs of this application to be in the cause. It is so ordered.
 - iv. Mention on the 23rd November, 2022 for further directions.

DATED, SIGNED & DELIVERED VIA EMAIL on this 26th day of OCTOBER, 2022.

HON. MBOGO C.G.

JUDGE

26/10/2022.

In the presence of:-

CA:Chuma

