



**Gachungu & 23 others v Nganga & another (Environment & Land Case E007 of 2021) [2022] KEELC 13622 (KLR) (13 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13622 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU  
ENVIRONMENT & LAND CASE E007 OF 2021**

**YM ANGIMA, J  
OCTOBER 13, 2022**

**BETWEEN**

**ALEXANDER NGANGA GACHUNGU & 23 OTHERS ..... PLAINTIFF**

**AND**

**DANIEL NGANGA ..... 1<sup>ST</sup> DEFENDANT**

**JANE WANGARI KIBE (SUED AS THE LEGAL REPRESENTATIVE OF THE  
ESTATE OF NAOMI WANJIRU KAMANDE (DECEASED) ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**A. Introduction**

1. By an originating summons dated July 15, 2021 based upon sections 1A, 1B & 3A of the *Civil Procedure Act* (cap 21), sections 7, 17 & 18 of the *Limitation of Actions Act* (cap 22), sections 28(h) of the *Land Registration Act*, 2012, order 37 rule 7 of the *Civil Procedure Rules, 2010* (the rules), and all enabling provisions of the law, the plaintiffs sought adverse possession of various portions of land which they claimed to be in possession out of title No Laikipia/Nyahururu/39 (the suit property).
2. The defendants filed a replying affidavit sworn on October 14, 2022 disputing the plaintiffs' claim for adverse possession. The defendants contended that the suit property belonged to their late mother Naomi Wanjiru Kamande who had been engaged in previous legal proceedings with the plaintiffs and some of their parents. The defendants further contended that other than the 24 plaintiffs there were numerous other persons who were illegally in occupation of the suit property and that they intended to apply for their joinder in the proceedings so that they could be evicted upon determination of the suit.

**B. The Defendants' Application**

3. By a notice of motion dated March 10, 2022 grounded upon sections 1A, 1B & 3A of the *Civil Procedure Act* (cap 21), order 1 rules 1 & 8 of the rules and all other enabling provisions of the law, the



defendants sought an order for 157 proposed interested parties to be joined in the suit. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the 1<sup>st</sup> plaintiff, Daniel Ng'ang'a Kamande on March 10, 2022. It was contended that the proposed interested parties had illegally entered and occupied the suit property without any lawful justification. It was further contended that it was just to have them joined in the suit as interested parties to enable the court to conclusively determine the rights of all concerned parties without the necessity of having additional suits being filed.

### **C. The Plaintiffs' Response**

4. There is no indication on record of the plaintiffs having filed any response to the said application. There is also no indication of the plaintiffs having filed any submissions thereon.

### **D. Analysis And Determination**

5. Through their written submissions dated June 6, 2022 the defendants submitted that since the proposed interested parties had unlawfully invaded and occupied the suit property, they ought to be joined in the proceedings so that they may seek eviction orders against them at the opportune moment. The court was consequently urged to grant the application so that the property rights of all the concerned parties are conclusively determined once for all.

6. Order 1 rule 1 of the rules stipulates that:

“All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise.”

7. On the other hand, order 1 rule 8 of the rules stipulates that:

1. Where numerous persons have the same interest in any proceedings, the proceedings may be commenced, and unless the court otherwise orders, continued, by or against any one or more of them as of all in same representing all or as representing all except one or more of them.
2. The parties shall in such case give notice of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct.
3. Any person on whose behalf or for whose benefit a suit is instituted or defended under subrule (1) may apply to the court to be made a party to such suit.

8. It is evident from defendants' replying affidavit and their affidavit in support of their application that they are aggrieved by the alleged actions of the proposed interested parties in invading and occupying the suit property which has been the subject of previous legal proceedings. However, they have not sought to join them in the proceedings either as plaintiffs or defendants. They would simply want them to be joined as interested parties. They would also want the court to adjudicate on their property rights in the capacity of interested parties and to order their eviction from the suit property upon conclusion of the suit.

9. The court is of the opinion that the proposed interested parties' rights cannot be effectively adjudicated in the instant suit by simply joining them as interested parties. The defendants shall not be able to file a substantive pleading or even seek substantive orders against them. That can only happen in a separate suit for their eviction if they are merely trespassers on the suit property. The role of an interested party



in legal proceedings is usually very limited to protecting his legal interests and ensuring that no adverse order is made against him without being accorded an opportunity of being heard. An interested party cannot be treated on the same footing as a plaintiff or a defendant in a suit.

10. For the foregoing reasons the court is unable to agree with the defendants that the property rights of the proposed interested parties can properly be adjudicated and determined in the instant suit in the proposed capacity. The court is unable to agree with the defendant's contention that an eviction order can properly issue against them upon a hearing of the suit. Accordingly, the court finds that no useful purpose shall be served by joining the alleged illegal occupants of the suit property as interested parties in the instant suit.

#### **E. Conclusion And Disposal**

11. The upshot of the foregoing is that the court finds no merit in the instant application. Consequently, the defendants' notice of motion dated March 10, 2022 is hereby dismissed without prejudice to the defendants' right to institute legal proceedings for recovery of the portion of the suit property occupied by the proposed interested parties. Costs of the application shall be in the cause.

It is so ordered.

**RULING DATED AND SIGNED AT NYAHURURU THIS 13<sup>TH</sup> DAY OF OCTOBER, 2022 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.**

In the presence of:

Mr. Gachichio for the Plaintiffs

N/A for the Defendants

C/A - Carol

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**Y. M. ANGIMA**

**JUDGE**

