



**Karanja represented by Njoroge Ngigi Karanja v Njoroge; Njoroge represented by James Kariuki Ndung'u (Proposed Defendant) (Environment & Land Case 32 of 2020) [2022] KEELC 14931 (KLR) (22 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14931 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE 32 OF 2020  
FO NYAGAKA, J  
NOVEMBER 22, 2022**

**BETWEEN**

**ESTATE OF NGIGI KARANJA REPRESENTED BY NJOROGE NGIGI  
KARANJA ..... PLAINTIFF**

**AND**

**GEOFFREY NGOTHO NJOROGE ..... DEFENDANT**

**AND**

**ESTATE OF NDUNG'U NJOROGE REPRESENTED BY JAMES KARIUKI  
NDUNG'U ..... PROPOSED DEFENDANT**

**RULING**

1. The applicant, the estate of Ndung'u Njoroge represented by James Kairuki Ndung'u, is intent on participating in these proceedings. The representative filed the present application dated June 2, 2022 on June 6, 2022 seeking the following reliefs:
  1. That the proposed 2<sup>nd</sup> defendant herein be granted leave to be enjoined as 2<sup>nd</sup> defendant in this instant suit and to file his pleadings accordingly.
  2. That upon prayer 2 being granted, the proposed 2<sup>nd</sup> defendant be allowed to participate in the proceedings by tendering evidence in support of its case herein.
  3. That any other relief as the Honorable Court may deem fit and just to grant in the circumstances of this application.
  4. That costs of this application be provided for.



2. The applicant espoused grounds in support of the application on its body and by affidavit. The applicant is the administrator of the estate of Ndung'u Njoroge. He evidenced this by annexure JKN1, the grant of letters of administration ad litem. The applicant disclosed that he is the plaintiff's first cousin by virtue of the fact that their fathers (now deceased) were brothers. Their grandfather, Njoroge Kariuki (now deceased) was the proprietor of all that parcel of land namely Trans Nzoia/Cherangani/84. He annexed copies of settlement funds statements marked JKN7 (a), (b) and (c).
3. Upon the grandfather's death on December 24, 1970, Trans Nzoia/Cherangani/84 was bequeathed to Njoroge Kariuki's six (6) children. This was done so pursuant to succession causes namely Kitale District Magistrate Succession Cause No 4 of 1971 and Nairobi High Court Succession Cause No 320 of 1984. The plaintiff's father became the legal administrator of the estate of Njoroge Kariuki. The applicant annexed various pleadings and documents in support of the assertions. He made reference to them and annexed and marked them JKN2, JKN3, JKN4 and JKN5.
4. On January 5, 1994, the plaintiff's father allocated the agricultural land to Njoroge Kariuki's family before the area chief. He annexed a copy of the agreement for this presupposition that was marked JKN6.
5. The applicant stated that he had been in possession and occupation of the suit property since 1965 for over 57 years. The property is erected with permanent structures. Additionally, the applicant's mother was buried on that land. By virtue of these, the applicant had a stake in the matter, claiming against the plaintiff. He urged this court to grant the reliefs sought.

### Responses

6. The plaintiff opposed the application. In his replying affidavit sworn on September 10, 2022 and filed on September 16, 2022, he deposed that the fathers to the applicant and respondent had previously litigated. They were brothers. On March 22, 1999, the respondent's father became the registered owner of all that parcel of land namely Trans Nzoia/Cherangani/84.
7. He further explained that his late father obtained allotment of the suit land in his father's name by way of purchase. He then settled his father and his other siblings on all that parcel of land situate in Kiambu namely Lari/Magina/224 measuring 8.8 acres. The title which he annexed as NNK4 was transferred to the name of the applicant's brother. He relied on a letter he annexed as NNK1, written by the court to the director of settlement for this position.
8. In 1995, the respondent's father commenced eviction proceedings in the tribunal against his nephews, the applicant included, from plot No 84 Cherangani Settlement Scheme. The tribunal concurred with the respondent's father and directed the evictees to vacate the suit land since they had land in Kiambu. This award was adopted as an order of the court in Kitale SPMC Land Case No 123 of 1995. He annexed the decree and eviction order marked NNK2 and NNK3 respectively. To him, that decision remains unchallenged to date.
9. The eviction order was enforced on January 18, 1996 against the applicant and his other cousins. In that regard, enjoining the applicant in these proceeding he propositioned, would amount to *res judicata*. His prayer was thus for a dismissal of the application with costs.

### Submissions

10. Parties canvassed the application by way of written submissions. The applicant submitted on October 24, 2022 that he sought to be enjoined in these proceedings as he has been in occupation and possession of the suit property for over 57 years. He submitted that his application met the qualification set out



in order 1, rule 3 of the Civil Procedure Rules. He added that if disallowed to participate in these proceedings, his interests would not be safeguarded as he is still in actual occupation of the suit land.

11. The respondent submitted on October 13, 2022 that enjoining the applicant in these proceedings would surmount to *res judicata*. He posited that the applicant's remedy lay in appeal against the tribunal's decision. Since the issues he raised in the application and intended proceedings were determined with finality in another forum, he was estopped from raising the same cause of action before this court.

### **Analysis and disposition**

12. The applicant, the estate of Ndung'u Njoroge represented by James Kariuki Ndung'u seeks enjoinder as a co-defendant. The relevant provisions are to be found in order 1, rule 3 and order 1, rule 10 (2) of the Civil Procedure Rules. I will reproduce them verbatim as follows:

Order 1, rule 3

All persons may be joined as defendants against 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 separate suits were brought against such persons any common question of law or fact would arise.

Order 1 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.

13. Guided from the above provisions, a person may be enjoined as a defendant where a relief arises out of the same transaction or a series thereof. Similarly, a party desirous of being enjoined in proceedings must demonstrate that there are common questions of law or fact that would arise if separate suits were filed. To, thus, save on the court's time and avoid a multiplicity of suits, it is necessitated that such a party be enjoined in the proceedings. In addition to this, such enjoinder will enable complete and effective adjudication of all questions involved in the suit.
14. Nambuye J (as she then was) in the case of Kingori v Chege & 3 others [2002] eKLR laid out the relevant tests for determining whether or not to join a party in proceedings as follows:
  - i. He must be a necessary party;
  - ii. He must be a proper party;
  - iii. In the case of the defendant, there must be a relief flowing from that defendant to the plaintiff;
  - iv. The ultimate order or decree cannot be enforced without his presence in the matter;
  - v. His presence is necessary to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit.



15. In *Departed Asians Property Custodian Board v Jaffer Brothers Limited (1991) 1 EA 55*, it was held that:
- “a person qualifies, (on an application of a defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectively set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person”.
16. The respondent in his plaint seeks *inter alia* general damages for trespass and injunctions to include an eviction order over Land Parcel No Trans Nzoia/Cherangani/84. Both the respondent and the applicant lay claim thereto as owners of the said parcel of land. The respondent, relying on the strength of the title he intends to adduce as evidence, seeks to find the present defendant herein guilty of trespass.
17. The applicant on the other hand maintains that he has been in occupation of the suit premises for over 57 years. That was not rebutted by the respondent who instead alleged that the enjoinder of the applicant would amount to *res judicata*. The respondent deposed that the applicant’s issues were resolved in earlier decisions. Looking at the annexures attached to the application in support of these assertions, I find them too ineligible to ascertain the veracity of the respondent’s claims. So much so that I cannot hold that those allegations have been corroborated. In that regard, they are simply mere allegations.
18. The respondent claims ownership over the suit land that the applicant similarly lays credence to. I think these are dire issues that should be addressed before me with the benefit of a full hearing. The applicant has further indicated that he intends to lay a claim against the respondent.
19. The applicant, in my view, is a necessary and proper party that will ascertain the issue of ownership at the onset to finality. After all, the ultimate orders, requiring eviction *inter alia*, will have a direct impact on the estate and cannot be enforced without his presence in the matter. It will further save the court’s time and avoid a multiplicity of suits.
20. The court is further guided by the provisions set out in article 159 (2) (a) of the *Constitution* in that justice shall be done. I will thus exercise my discretion and allow the application as follows:
1. The applicant shall be enjoined in these proceedings as the 2<sup>nd</sup> defendant; the plaint be amended accordingly forthwith.
  2. The applicant shall file and serve his defence and other accompanying documents within the next fourteen (14) days from the date of this order.
  3. The matter shall be mentioned on December 6, 2022 to confirm compliance and take further directions.

**RULING DATED, SIGNED AND DELIVERED VIA ELECTRONIC MAIL THIS 22ND DAY OF NOVEMBER 2022.**

**HON DR IUR FRED NYAGAKA  
JUDGE, ELC KITALE.**

