



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kenya Electricity Transmission Company Limited v Biego & 14 others;  
Bett & 2 others (Proposed Defendant) (Environment & Land Case  
96 of 2021) [2022] KEELC 14917 (KLR) (17 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14917 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAPSABET**

**ENVIRONMENT & LAND CASE 96 OF 2021**

**MN MWANYALE, J**

**NOVEMBER 17, 2022**

**(FORMERLY ELDORET 4 OF 2021)**

**BETWEEN**

**KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED ..... PLAINTIFF**

**AND**

**KIBII ARAP BIEGO ..... 1<sup>ST</sup> DEFENDANT**  
**EMILY CHEPTOO MELI ..... 2<sup>ND</sup> DEFENDANT**  
**JOHN KIBIWOT KIPLAGAT ..... 3<sup>RD</sup> DEFENDANT**  
**PRISCILLA C. SIMOTWO ..... 4<sup>TH</sup> DEFENDANT**  
**MARK NAFULA ..... 5<sup>TH</sup> DEFENDANT**  
**ASHA NAFULA ..... 6<sup>TH</sup> DEFENDANT**  
**CHEGUGU STANLEY MAGRAY ..... 7<sup>TH</sup> DEFENDANT**  
**ELIUD KIPKORIR ..... 8<sup>TH</sup> DEFENDANT**  
**ROSEMARY CHELAGAT KOSKEI ..... 9<sup>TH</sup> DEFENDANT**  
**KIPRONO ARAP CHESASUR & ALEX MWARABU AGUI ... 10<sup>TH</sup> DEFENDANT**  
**JOSHUA KIMELI YEGO & LEAH JEBITOK SAINA (THE ADMINISTRATORS  
OF THE ESTATE OF KIBIEGO ARAP TUWEI) ..... 11<sup>TH</sup> DEFENDANT**  
**KIBIWOT ARAP CHEMUIYWA ..... 12<sup>TH</sup> DEFENDANT**  
**CLEOPHAS KIPKETER SUGUT (THE ADMINISTRATOR OF THE ESTATE OF  
THE LATE KIPSUGUT ARAP CHEPSIROR) ..... 13<sup>TH</sup> DEFENDANT**  
**JACKSON KIBET SIREM ..... 14<sup>TH</sup> DEFENDANT**



CHERUTO TABLELEI BIREN ..... 15<sup>TH</sup> DEFENDANT

AND

JOYCELINE JEROP BETT ..... PROPOSED DEFENDANT

GILBERT SAWE ..... PROPOSED DEFENDANT

GRACE JEPKETER KOGO ..... PROPOSED DEFENDANT

## RULING

1. Before me for determination is an application dated May 26, 2022 brought under section 1A, 1B,3A and 63 (e) of the [Civil Procedure Act](#) and order 1 rule 10 (2) of the [Civil Procedure Rules](#) seeking the following orders:-
  - i. This honourable court be pleased to grant leave to the applicants Joyceline Jerop Bett, Gilbert Sawe, William Kipkosgei Mosbei and Grace Jepketer Kogoi to be enjoined as 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup> defendants in this suit.
  - ii. The court be pleased to grant leave to the applicants to file pleadings in this suit.
  - iii. Costs be in the cause.
2. The application is premised on grounds on the face of it and supported by affidavits of Joyceline Jerop Bett, Gilbert Sawe, William Kipkosgei Mosbei and Grace Jepketer Kogoi.
3. The applicants deponed in their respective affidavits that the 4<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> defendants extinguished their rights and interest over suit parcels of land upon sale of the same to the applicants.
4. As a result the applicants have a legitimate interest in the suit properties hence the need to be enjoined as defendants.
5. The application was opposed *vide* grounds of opposition dated October 3, 2022 and filed by the plaintiff/respondent. The plaintiff stated that the instant application presented conflict of interest between the defendants and intended defendants (applicants herein). That this was contrary to the Code of Standards of Professional Practice and Ethical conduct of the Law Society of Kenya, 2016.
6. On September 22, 2022 this court directed that the application be canvassed by way of written submissions. Both parties complied by filing their respective submissions.
7. Counsel for the applicants submitted that the applicants had shown their interest in the sit parcels *vide* the sale agreements annexed to the instant application. That the applicants are necessary parties and their enjoinder would enable the court effectively and completely adjudicate upon all issues in this suit. They relied on order 1 rule 10 (2) of the [Civil Procedure Rules](#) and the case of [Gladys Nduku Ntbuki -vs- Letshego Kenya Limited; Mueni Charles Maingi \(intended plaintiff\)](#) 2022 eKLR to buttress this position.
8. The plaintiff/respondents Counsel on the other hand submitted that the actions of Counsel for the applicants to file this application while representing the defendants in this suit amounted to breach of the Code of Standards of Professional Practice and Ethical Conduct of the Law Society of Kenya, 2016 which under rules 95 and 96 prohibits representation of clients with conflicting interest over the same matter. Counsel relied in the case of [Abdirahman Husseinwaytan Mohammed -vs- Independent Electoral and Boundaries Commission and 4 others](#) (2018) eKLR.



### **Analysis and Determination: -**

9. Upon perusal of the application, affidavits in support, plaintiff/respondent grounds of opposition as well as submissions filed by respective parties, the sole issue for determination by this court is whether the applicants have made a case to enable this court to join the intended defendants as a party and further grant them leave to file pleadings.
10. Under order 1 rule 10 (2) of the *Civil Procedure Rules* this court has discretion, either on application by a party to a suit or its own motion, to order the joining in to the suit of any party or striking out of a party improperly joined to the suit. Order 1 rule 10 (2) of the *Civil Procedure Rules* provides that:-

“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 the name of any party improperly joined, whether as a plaintiff or defendant, to be struck out and 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 to effectually and completely to adjudicate upon and settle all questions involved in the suit, to be added.”
11. Another provision relevant in this application is order 1 rule 3 of the *Civil Procedure Rules* which is drawn as follows: -

“All persons may be joined as defendants against whom any right to relief in 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.”
12. My understanding of the provisions cited herein above is that the court is empowered to order a joinder of a defendant if the claim against him arises out of the same act or transaction complained of by the plaintiff. In other words the plaintiff ought to have a case against the intended defendant.
13. In the present case, the applicants' argument is that on diverse dates, they purchased the suit parcels from the 4<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> defendants who are the registered owners of the said properties. That as a result they have a beneficial interest over the properties which the plaintiff is seeking to have and in exchange to give compensation to the owners of the suit properties.
14. In my view, it is necessary to bring on board the applicants, who claim a beneficial interest over the suit properties to enable the court to effectively determine the issue of ownership as well as to arbitrate over the issues raised by the plaintiff. I find so because even if after hearing the suit, the court were to grant the plaintiff the orders sought, those orders would not be enforced against the applicants and not the 4<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> defendants. It would also be unjust to determine issues affecting the suit properties without hearing the Applicants, who claim an interest therein.
15. On the issue of conflict, once the applicants are joined in the proceedings, they will be all defendants, hence the issue of conflict of interests does not arise.
16. That said, counsel for the respondent raised an issue of delay in filing the instant application. I do not think this is so. This suit was filed in January 2021 and the instant application was filed in May 2022, 1 year, 5 months later. This delay is not inordinate; furthermore, the hearing of this suit has not taken off. Also, the plaintiff has not sufficiently demonstrated that they will suffer prejudice if this application is allowed.



17. In order to adjudicate upon all issues and do substantive justice to all parties, I find the application dated May 26, 2022 meritorious and allow the same.

18. Orders accordingly.

**DATED AT KAPSABET THIS 17<sup>TH</sup> NOVEMBER, 2022.**

**HON. M. N. MWANYALE,**

**JUDGE**

In the presence of;

**Mr. Lagat holding brief for Ms. Koech for Defendant/Applicant**

**No appearance for Ms Gezemba for Plaintiff**

