



**Ngatiari v Njue & another (Environment & Land Case 1308 of 2014)  
[2022] KEELC 14731 (KLR) (10 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14731 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 1308 OF 2014  
EK WABWOTO, J  
NOVEMBER 10, 2022**

**BETWEEN**

**JOEL NGATIARI ..... PLAINTIFF**

**AND**

**MADRIS KERE NJUE ..... 1<sup>ST</sup> DEFENDANT**

**JOSEPH GITAU ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The notice of motion application dated 1<sup>st</sup> March 2022 was accompanied by a supporting affidavit by Joel Ngatiari sworn on even date in which the plaintiff/applicant sought the following orders:
  - i. Spent...
  - ii. That this Honourable Court be pleased to appoint and direct the Director of Criminal Investigations through the Director of Criminal Investigations by himself or by such of his officers as he shall appoint to examine the fingerprints of Madris Kere Njue holder of Kenya National Identity Card Number 4249XXX, the 1<sup>st</sup> defendant herein.
  - iii. That within such time as this Honourable Court shall direct, the said Madris Kere Njue holder of Kenya National Identity Card Number 4249XXX be ordered to present herself before the Director of Criminal Investigations Headquarters at Nairobi or at such other location as the Director of Criminal Investigations shall direct, to undergo a fingerprint examination.
  - iv. That upon examining the Fingerprints of Madris Kere Njue holder of Kenya National Identity Card Number 4249XXX, the Director of Criminal Investigations through the Director of Criminal Investigations by himself or



such of his officers as he shall appoint do compare the same with fingerprints signed off as “Madris Kere Njue” appearing in the following documents exhibited in the supporting affidavit of Joel Ngatiari sworn on 1<sup>st</sup> March 2022 and filed herein and present a report on the findings to the parties in this suit and this court within such time as this court shall direct:

- a) The copy of Kenya National Identity Card Number 4249XXX marked Exhibit A.
- b) The chamber summons application dated 14<sup>th</sup> May 1991 filed P&A Cause 179 of 1987 in the Matter of Estate of Joshua Njue Murere alias Njue Murere marked Exhibit B.
- c) The affidavit of Madris Kere Njue sworn at Thika filed in P&A Cause 179 of 1987 in the Matter of Estate of Joshua Njue Murere alias Njue Murere marked Exhibit C.
- d) Page 2 of the Assent dated 29<sup>th</sup> October 2009 between Madris Kere Njue and Joel Julius Ngatiari marked Exhibit D
- e) The Application for Transfer Business plot marked Exhibit E
- f) The replying affidavit of Madris Kere Njue sworn at Thika on 22<sup>nd</sup> January 2015 marked Exhibit F.
- g) The statement of Madris Kere Njue filed herein on 13<sup>th</sup> August 2018 marked Exhibit G.

v. That the plaintiff be granted leave to join the following persons as parties to this suit:

- a) Isabel Wakarima Nganga.
- b) The Chief Land Registrar.

vi. That the Plaintiff thereafter be at liberty to amend the Plaintiff filed herein.

2. The application was supported by the grounds on its face. The same was also opposed by the respondents vide grounds of opposition dated 23<sup>rd</sup> March 2022. The respondents contended that the application is made in bad faith and the same will infringe on the rights of the 1<sup>st</sup> respondent and the same will be contrary to the rules of natural justice. It was also contended that the prayers for joinder of two more parties Isabel Wakarima Nganga and the Chief Land Registrar is made late in the day after the suit has been pending in court since it was filed and further no evidence has been availed to show why they ought to be joined as a necessary party to the suit.
3. Pursuant to directions issued by this court on 18<sup>th</sup> May 2022, it was directed that the application be canvassed by way of written submissions upon which both parties complied.
4. In submissions dated 10<sup>th</sup> July 2022, the plaintiff submitted that he had purchased the suit property from the 1<sup>st</sup> defendant and therefore sought for the respective documents that were made in respect to the said transaction be examined. Counsel for the plaintiff also reiterated that the Directorate of Criminal Investigations would be a neutral party who would be best placed in assisting the court.
5. It was also submitted that since the orders would affect the proposed parties, the Court should consider their relevance and thus grant leave to enjoin them.



6. The defendants/respondents submitted that the application is in bad faith and the court equally lacked jurisdiction. It was submitted that the prayer to enjoin parties should be denied on the lack of prior action over the last eight years. Lastly, they submitted that the documents in question had not been admitted in evidence and their actions amounted to fishing for evidence.
7. In submissions dated 3<sup>rd</sup> October 2022, they vehemently opposed the entire application while relying on the cases of *Anthony Francis Wareham T/A Wareham & 2 others v Kenya Ports Office Savings Bank Ltd* [2004] eKLR and *M'Bito Ntiro v Mbae Mwirichia & Another* [2018] eKLR.
8. Having considered the Application, the Affidavits filed in support and opposition to the same together with the written submissions of the parties. It is clear that the issues for determination in both applications before this court are as follows:
  - i. Whether Isabel Wakarima Nganga and The Chief Land Registrar ought to be joined to these proceedings?
  - ii. Whether the plaintiff should be granted the respective orders for expert aid and evidence?
9. The principles for joinder are well outlined in order 1 rule 10 (2) 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
10. In the case of *Shirvling Supermarket Limited v Jimmy Ondicho Nyabuti & 2 others* [2018] eKLR, the court rendered itself as follows:

“The test in applications for joinder is firstly, whether an applicant can demonstrate he has an identifiable interest in the subject matter in the litigation though the interest need not be such interest as must succeed at the end of the trial. Secondly, and in the alternative, it must be shown that the applicant is a necessary party whose presence is necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit.”
11. For the proposed parties to be enjoined in this suit, their presence must be necessary to enable the court effectually and completely adjudicate and settle all questions involved in the suit. Hence, the applicant has to show that they have a stake in the proceedings and that their presence will help determine the issues at hand.
12. In the instant application, I have carefully reviewed the affidavit in support of the application and further considered the submissions of the plaintiff but I have been unable to stumble upon any cogent reasons necessitating the joinder of Isabel Wakarima Nganga and the Chief Land Register. In summary the plaintiff has not made a case for their joinder.
13. On whether or not this court should direct the Director of Criminal Investigations (DCI) to examine the fingerprint of the first defendant and direct the 1<sup>st</sup> defendant to undergo fingerprint examination,



I wish to state that our legal system is an adversarial system where a party is required to avail all the material and evidence relevant to his case before trial. In the instant case, the applicant commenced this suit vide a plaint dated 8<sup>th</sup> October 2014 filed in court on the same day. Order 3 rule 2 Civil Procedure Rules provides the documents to accompany the filing of a suit as follows: The affidavit referred to under order 4 rule 1 (2); A list of witness to be called at the trial; written statements signed by the witnesses excluding expert witnesses; and copies of documents to be relied on at the trial including a demand letter before action. From the provisions of the rules, a party who files a suit is required to file his suit accompanied with all the evidentiary documents he intends to rely during the hearing. The application which the applicant has filed seeks to procure more evidence in his favour to the prejudice of the Respondent. This court is an impartial umpire and cannot assist one of the parties to procure evidence to his advantage.

14. In view of the foregoing, this court cannot direct the DCI on the investigations to conduct on behalf of the applicant since no proper basis has been laid to warrant the same. The only instance where this court can assist the parties in determination of their disputes is way of issuing summons to witnesses where it is requested by any of the parties. Compelling an entity to prepare investigative reports in a civil suit flies against its mandate as an impartial umpire.
15. I am therefore not satisfied that the plaintiff/applicant has demonstrated any merit in the application and for the reasons outlined, I decline to grant the orders sought in the application dated 1<sup>st</sup> March 2022. The same is dismissed with costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 10th DAY OF NOVEMBER 2022.**

**E. K. WABWOTO**

**JUDGE**

**In the presence of: -**

**Mr. Waweru h/b for Mr. Kithinji Marete for the Plaintiff/Applicant.**

**N/A for the 1st Defendant and 2nd Defendants**

**Court Assistant; Caroline Nafuna.**

**E. K. WABWOTO**

**JUDGE**

