



**Gachunia v Karuba & 24 others (Environment & Land Case
277 of 2018) [2022] KEELC 15170 (KLR) (5 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15170 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 277 OF 2018
FM NJOROGE, J
DECEMBER 5, 2022**

BETWEEN

ROSEMARY N. GACHUNIA PLAINTIFF

AND

CATHERINE KARUBA & 24 OTHERS DEFENDANT

RULING

1. The hearing notice appears to have been served upon the Land Registrar Naivasha. That is not tallying with the amended plaint which states that the case is against the Land Registrar Nakuru. I have had a discussion in open court with Mr Karanja and Mr Olonyi appearing for the plaintiff and for the 1st – 23rd defendants respectively and it is common ground that the omission to amend the plaint to read “Land Registrar Naivasha” instead of “Land Registrar Nakuru” may occasion this matter some difficulties down the line.
2. Further, procedural justice will not be seen to have been served since there is no affidavit of service of the summons issued afresh on 8/6/2022 as well as the amended plaint on the Land Registrar Naivasha. It is the case that the Government ought to be sued through the office of the Attorney General as a defendant representing the officers sought to be held culpable and this is the requirement in section 12 of the *Government Proceedings Act*.
3. However, there has been a proliferation of suits in which public servants have been joined to suits by way of their official titles without joining the Attorney General for reasons unknown and this inevitably leads process servers to effect service not upon the Attorney General but on those public officials directly sometimes leading to crisis such as the one facing this case now.
4. The courts have been adjudicating matters in which such joinder has been effected in the past and orders have issued and since that has been the practice it is clear it is possible to finalise a case without



the Attorney General being joined as a party although in my view it would have been better and safer to have the Attorney General sued and described as “being sued on behalf of” the public officer named.

5. That said, this court finds that though both counsel had earlier this morning confirmed that they were ready for the hearing, it cannot proceed to hear this case today and it must await proper procedural steps to be undertaken by the plaintiff.
6. Consequently, I adjourn this hearing to 6/3/2023 and I order as follows:
 1. The plaintiff shall within 14 days from today serve the Attorney General’s office, Nakuru and the Land Registrar Naivasha with the summons and shall file an affidavit of service to that effect.
 2. Since Mr Karanja acknowledges that the proper Land Registry bearing records of the suit land now is in Naivasha subsequent to the transfer of those records from Nakuru some time back, it is hereby ordered that the pleadings shall be deemed to be amended to read “Land Registrar Naivasha” as the 25th defendant herein and no further documents shall be filed or accepted by the registry if it reads “Land Registrar Nakuru” in this suit henceforth.
 3. The costs of this day shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT ON THIS 5TH DAY OF DECEMBER, 2022.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

