



Thika Greens Limited v Decko Africa Limited & another (Environment and Land Case 36 of 2019) [2021] KEELC 4788 (KLR) (14 January 2021) (Ruling)

Thika Greens Limited v Decko Africa Limited & Safaricom Plc [2021] eKLR

Neutral citation: [2021] KEELC 4788 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANGA

ENVIRONMENT AND LAND CASE 36 OF 2019

JG KEMEL, J

JANUARY 14, 2021

BETWEEN

THIKA GREENS LIMITED PLAINTIFF

AND

DECKO AFRICA LIMITED 1ST RESPONDENT

SAFARICOM PLC 2ND RESPONDENT

RULING

1. Vide a chamber summons dated the 23/11/2020 the Applicant sought leave to serve a 3rd party notice upon Waterfalls Welfare Group members (164 of them) on the basis that they are entitled to indemnity and or contribution from the proposed 3rd party for any judgement that may be issued against it because it has been sued as a consequence of its authorisation. Further that the Applicant had obtained the consent of the 3rd party who are property owners to enter into the suit land and make installations. That the issues under consideration between the Applicant and the 3rd party are basically the same issues between the Plaintiff and the Applicant.
2. Order 1 rule 15 provides as follows;

“[Order 1, rule 15.] Notice to third and subsequent parties 15. (1) Where a Defendant claims as against any other person not already a party to the suit (hereinafter called the third party) — (a) that he is entitled to contribution or indemnity; or (b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or (c) that any question or issue relating to or connected with the said subject-matter is substantially the same question or issue arising between the plaintiff and the Defendant and should properly be determined not



only as between the plaintiff and the Defendant but as between the plaintiff and Defendant and the third party or between any or either of them, he shall apply to the Court within fourteen days after the close of pleadings for leave of the Court to issue a notice (hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers ex parte supported by affidavit. (2) A copy of such notice shall be filed and shall be served on the third party according to the rules relating to the service of a summons. (3) The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the Court, be filed within fourteen days of service, and shall be in or to the effect of Form No. 1 of Appendix A with such variations as circumstances require and a copy of the plaint shall be served therewith. (4) Where a third party makes as against any person not already a party to the action such a claim as is mentioned in subrule (1), the provisions of this Order regulating the rights and procedure as between the Defendant and the third party shall apply mutatis mutandis as between the third party and such person, and the Court may give leave to such third party to issue a third party notice, and the preceding rules of this Order shall apply mutatis mutandis, and the expressions “third party notice” and “third party” shall respectively apply to and include every notice so issued and every person served with such notice. (5) Where a person served with a notice by a third party under subrule (4) makes such a claim as is mentioned in subrule (1) against another person not already a party to the action, such other person and any subsequent person made a party to the action shall comply mutatis mutandis with the provisions of this rule.

3. The general rule is that only matters from the same cause of action or which can be conveniently tried together should be joined in the same cause of action. In order for a third party to be legally enjoined the subject matter of the suit must be the same, and the original causes of action must be the same.
4. In this case the Plaintiff sued the Defendants, the Applicant included for trespass into the property with the purpose of installing fibre network on the property. The Applicant's defence is that the installation was carried out with the consent of the owners of the waterfalls county homes as well as with approval of the plaintiff and the 2nd Defendant. It is the Applicant's case that they were authorized by the plot owners to go ahead and install the fibre network.
5. I am satisfied that the cause of action as against the Applicant and the 3rd party arises from the same facts and circumstances.
6. The application is granted as prayed. The Applicant is directed to serve the third party notice within a period of 15 days from the date of the ruling.
7. I make no orders as to costs
8. It is so ordered.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 14TH DAY OF JANUARY 2021.

J. G. KEMEI

JUDGE

Delivered in open Court in the presence of:

Ben Mwangi (HB)

Manyora: Plaintiff Present

Gichuhi (HB) for Ms Karemi

