



REPUBLIC OF KENYA



**Gathumbi v Gargar & 3 others (Environment & Land Case
50 of 2023) [2025] KEELC 493 (KLR) (5 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 493 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 50 OF 2023
CA OCHIENG, J
FEBRUARY 5, 2025**

BETWEEN

SYLVIA WAIRIMU GATHUMBI PLAINTIFF

AND

AHMED IBRAHIM SALAH GARGAR 1ST DEFENDANT

KENNEDY MUSYOKA 2ND DEFENDANT

BISMARCK KIMANZI 3RD DEFENDANT

FREDRICK ODHIAMBO 4TH DEFENDANT

RULING

1. What is before Court for determination is the 1st, 3rd and 4th Defendant's Notice of Motion application dated the 1st October, 2024 where they seek the following Orders:
 - a. That an order do issue joining the Intended Defendants/Respondents as Defendants in this matter.
 - b. That an order in form of leave do issue allowing the 1st, 3rd and 4th Defendants to amend the Statement of Defence to include the intended Defendants and seek appropriate reliefs thereon.
 - c. That costs of the application be in the cause.
2. The application is premised on the grounds on the face of it and the supporting affidavit of Bismarck Kimanzi where he explains the reasons for joinder. He contends that the intended Defendants were also joint purchasers of the suit land, but the Plaintiff failed to include them in this suit.
3. The Plaintiff opposed the instant application and filed a replying affidavit sworn by Sylvia Wairimu Gathumbi, where she insists the Applicants have not demonstrated the reason for joinder or amendment of the Defence.



4. The Applicants filed a further affidavit sworn by Bismarck Kimanzi reiterating their averments.
5. The application was canvassed by way of written submissions.

Analysis and Determination

6. Upon consideration of the instant Notice of Motion application dated the 1st October, 2024 including the respective affidavits, annexures, as well as rivalling submissions, the only issue for determination is whether the proposed Defendants should be allowed to be joined in these proceedings as Defendants and subsequently whether the respective pleadings should be amended.
7. In respect to joinder of a Defendant to a suit, Order 1 Rule 10 (2) of the Civil Procedure Rules stipulates inter alia:
 - (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.'
8. In the case of *Zephir Holdings Ltd vs. Mimosa Plantations Ltd, Jeremiah Matagaro & Ezekiel Misango Mutisya (2014) eKLR*, it was held that:

“A proper party is one who is impleaded in the suit and qualifies the thresholds of a plaintiff or defendant under Order 1 rule 1 and 2 respectively, or as a third party or as an interested party and whose presence is necessary or relevant for the determination of the real matter in dispute or to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. And the court has a wide discretion to even order suo moto for a party to be impleaded whose presence may be necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. Accordingly, a suit cannot be defeated for mis-joinder or non-joinder of parties.”
9. See also the case of *Departed Asians Property Custodian Board vs. Jaffer Brothers Ltd [1999] 1 EA 55*.
10. On perusal of the pleadings herein including documents filed, I note the proposed Defendants were actually some of the purchasers of the suit land, which is in dispute herein. I note that the Plaintiff has vehemently opposed their joinder to this suit claiming there will be a delay in its determination but not given plausible reasons why she failed to include them, in these proceedings. However, I opine that since the intended Defendants were also purchasers of the suit land, their involvement in these proceedings is necessary to enable the court effectually and completely adjudicate upon as well as settle all questions involved in the suit. Further, this will also avoid a multiplicity of suits.
11. Based on the facts as presented and relying on the legal provisions I have quoted while associating myself with the cited decisions, it is my considered view that the proposed Defendants will also be affected by any decision emanating from this suit. To my mind, I find that the Plaintiff has not demonstrated what prejudice she stands to suffer if the proposed Defendants were joined in these proceedings as Defendants.
12. It is against the foregoing that I find the Notice of Motion application dated the October 1, 2024 merited and will allow it, in the following terms:



- a. The newly joined 5th and 6th Defendants do file and serve their respective Defences within thirty (30) days from the date hereof, after which the Plaintiff is directed to file and serve an amended Plaintiff in fourteen (14) days.
- b. Costs in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 5TH DAY OF FEBRUARY, 2025.

CHRISTINE OCHIENG

JUDGE

