



Jambo Holdings Limited v Double Clean Limited & 6 others (Environment and Land Case Civil Suit 219 of 2015) [2025] KEELC 1038 (KLR) (6 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1038 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 219 OF 2015
OA ANGOTE, J
MARCH 6, 2025**

BETWEEN

JAMBO HOLDINGS LIMITED PLAINTIFF

AND

DOUBLE CLEAN LIMITED 1ST DEFENDANT

DAIMLER ENTERPRISES LIMITED 2ND DEFENDANT

RUORA INVESTMENT LIMITED 3RD DEFENDANT

MARSTONS ENTERPRISES LIMITED 4TH DEFENDANT

NGINYO ROADWAYS LIMITED 5TH DEFENDANT

**GUARANTY TRUST BANK (KENYA) LIMITED (6TH DEFENDANT STRUCK
OFF THE SUIT ON 18/11/2021) 6TH DEFENDANT**

CHIEF LAND REGISTRAR 7TH DEFENDANT

RULING

1. Before this Court is a Notice of Motion application filed by the 3rd Defendant dated 8th May 2024 and filed pursuant to Section 1A, 1B and 3A of the [Civil Procedure Act](#) and Order 51 of the Civil Procedure Rules 2010. The 3rd Defendant has sought the following orders:
 - a. That this Honourable Court does grant the 1st, 2nd and 3rd Defendants leave to include Guaranty Trust Bank (Kenya) Limited as an interested party in the instant suit.
 - b. That this Honourable Court does grant the 1st, 2nd and 3rd Defendants leave to seek typed proceedings in the instant suit.



- c. That this Honourable Court does grant the 1st, 2nd and 3rd Defendants leave to obtain copies of the pleadings filed on behalf of the Defendants herein and any other that they may need in preparation of the hearing in the instant suit.
 - d. That this Honourable Court does grant the 1st, 2nd and 3rd Defendants leave to reopen the Plaintiff's case.
 - e. That Honourable Court does grant the 1st, 2nd and 3rd Defendants leave to cross-examine the Plaintiff's witness.
 - f. That this Honourable Court does grant the 1st, 2nd and 3rd Defendants leave to comply with provisions of Order 11 and file any requisite documents within a reasonable time-frame.
 - g. That costs be in the cause.
2. The 3rd Defendant's application is supported by an Affidavit sworn by Peter Mwenda Njagi, the Advocate for the 1st, 2nd and 3rd Defendants, who deposed that this suit was filed on 22nd July 2015 by the Plaintiff and revolves around conflicting claims as to the ownership of land measuring approximately 13.8 acres in which the Plaintiff claims to have obtained by way of a sale by the 6th Defendant, who was struck out of the suit and that the 6th Defendant has been extensively mentioned in the pleadings.
 3. It was deposed that it is paramount and a matter of extreme urgency that the struck out 6th Defendant is brought into these proceedings, in the very least, as an interested party, for it to shed light on how it was able to gain a charge on the suit property despite records at the land registry showing otherwise.
 4. Counsel for the 3rd Defendant deposed that the 3rd Defendant has had to change representation because it was not adequately represented and that the 1st, 2nd and 3rd Defendants' Counsel did not have an opportunity to see the Statement for Defence filed by the Defendants nor did they have an opportunity to have sight of the Defendants' witness statements to to prepare his clients for the defense hearing.
 5. The deponent stated that the Advocate for the 1st, 2nd and 3rd Defendants never had an opportunity to conduct cross-examination of the Plaintiff's witnesses and their statements went uncontroverted; that he is unable to tell what transpired and what issues ought to be raised at the Defense stage because he did not receive the Applicant's previous Advocate's case notes and that the mistake of the Defendants' previous counsel, no matter how grave, should not affect the 1st, 2nd and 3rd Defendant's case as mistake of counsel ought not to be meted out on an innocent litigant.
 6. The Plaintiff opposed the application through a Replying Affidavit dated 10th June 2024 and sworn by Rimal Rameshchandra Sira, a Director of the Plaintiff. The Plaintiff's Director deposed that it is inappropriate that the said advocate for the 1st, 2nd and 3rd Defendants deposed the affidavit in support of this application.
 7. He argues that the orders seeking re-joinder of Guaranty Trust Bank (Kenya) Ltd are superfluous considering that the said party was formally struck off the proceedings after inter parties hearing in an application which the 1st, 2nd and 3rd Defendants did not oppose; that Guaranty Trust Bank Ltd provided a witness who has already testified and that the court therefore has no jurisdiction to order rejoinder of a party who it has removed from the proceedings after a merit consideration.
 8. Mr. Rimal Rameshchandra Sira stated that the 1st, 2nd and 3rd Defendants were represented by the firm of a senior lawyer, Masore Nyang'au & Co. Advocates all through and that it is therefore unfair to insinuate that they were inadequately represented. He further contended that this suit has been pending for hearing for a considerable period of 9 years and re-opening the trial is unfair and unjustifiable.



9. Additionally, the Plaintiff's Director deposed, this application is misleading and lacks bona fides because the firm of Mwenda Njagi & Co. Advocates is not a stranger to the dispute and that the said firm has been acting for the 1st, 2nd and 3rd Defendant's Director in Nairobi Criminal Case No. 1203 of 2015 and filed a Constitutional Petition No. 199 of 2016 in which they exhibited the pleadings in this case.
10. The deponent contended that this application was geared to adjourn the Defence hearing previously scheduled for 9th May 2024. Furthermore, he deposed, the 3rd Defendant's prayers seeking to recall the Plaintiff's two witnesses and for the 1st, 2nd and 3rd Defendants to file more documents is superfluous because a similar application was made on 29th February 2024 and this court declined to allow the request before fixing the case for Defence hearing on 9th May 2024 and the application is therefore res judicata.
11. It was deposed that the Directors of the 1st to 5th Defendants were found guilty of contempt of court and their appeal to the Court of Appeal against the mandatory injunction and conviction was dismissed. The parties filed submissions which I have considered.

Analysis and Determination

12. This court has considered the pleadings in respect of the 1st, 2nd and 3rd Defendants' application. The issues for this court's determination are as follows:
 - a. Whether this application is res judicata?
 - b. Whether to allow re-joinder of the 6th Defendant as an interested party?
 - c. Whether to allow the 1st-3rd Defendants to seek typed proceedings and to obtain copies of the pleadings filed on behalf of the Defendants herein?
 - d. Whether this court should grant the applicants leave to comply with Order 11 and to file additional documents?
13. By way of background, this suit was filed by the Plaintiff vide a Plaint dated 12th March 2015. The firm of Masore Nyang'au entered appearance for the 1st to 5th Defendants on 10th April 2015 and duly filed a Defence and Counterclaim on 27th April 2015. The Plaintiff then filed a Reply to the Defence and Defence to the Counterclaim dated 18th May 2015. On 31st May 2023, the firm of Mwenda Njagi & Co. Advocates took over the Defence of this suit on behalf of the 1st, 2nd and 3rd Defendants.
14. On 30th May 2023, when this matter came up for mention, Counsel for the Plaintiff and the 7th Defendant confirmed that they had complied with the court's directions to file trial bundles. Counsel holding brief for the 1st to 5th Defendants' advocate informed the court that there had been filed a notice of change of advocates. The court then directed that hearing would commence on 7th November 2023. On the said date of 7th November 2023, the Plaintiff presented two witnesses, including Ms. Pascaline Mburu, a legal officer at Guaranty Trust Bank. They thereafter closed their case. Neither the 1st, 2nd and 3rd Defendants nor their newly appointed advocates were present in court. The matter came up for defense hearing on 29th February 2024 but was adjourned.
15. The first issue for this court's consideration is whether the application is res judicata. The Plaintiff has opposed the application on the grounds that it is res judicata, as it asserts that a similar application was made before the court on 29th February 2024 and dismissed.



16. The doctrine of res judicata is predicated on the principle of finality. Under Section 7 of the [Civil Procedure Act](#), a court is barred from trying a suit between the same parties under similar title, which a court with similar jurisdiction has already heard and finally determined.
17. This doctrine is similarly applicable to applications. The court in *Kennedy Mokuva Ongiri vs John Nyasende Mosioma & Florence Nyamoita Nyasende* [2022] eKLR, rightly opined that a court should consider the decision of the court in contention, in determining whether the issue raised in the subsequent application was settled:

“In order therefore to decide as to whether an issue in a subsequent Application is res judicata, a court of law should always look at the Decision claimed to have settled the issues in question and the entire Application and the instant Application to ascertain;

 - i. what issues were really determined in the previous Application;
 - ii. whether they are the same in the subsequent Application and were covered by the decision.
 - iii. whether the parties are the same or are litigating under the same title and that the previous Application was determined by a court of competent jurisdiction.”
18. According to the Plaintiff, this application is res judicata because the 1st to 3rd Defendants made a similar application on 29th February 2024. When this suit came up for defense hearing on 29th February 2024, Mr. Mugo, holding brief for Mr. Njagi for the 1st, 2nd and 3rd Defendants, indicated that they were not ready to proceed as they had only recently come on record on 23rd February 2024, which was a blatant misrepresentation of facts.
19. They claimed that their clients had not filed a Defence to the main suit as there were parallel criminal proceedings that were only terminated in 2024. Counsel sought time to peruse the documents filed by the other parties and to recall the witnesses who had testified.
20. The Plaintiff’s Counsel, Mr. Mwangi, opposed the oral application and pointed out that the Defendants’ Counsel had in fact come on record on 30th May 2023, and had been on the record for ten months. He further clarified that the Defendants had filed a Defence and Counterclaim on 27th April 2015 together with documents and statements. Mr. Mwangi argued that there was no reason to recall the witnesses who had testified and that this was an old matter.
21. The court adjourned the matter, only because the court was away on official duties. It, however, expressly declined to reopen the Plaintiff’s case as requested by the Defendants. The court thereafter set the matter down for hearing on 9th May 2024. It was then that the Defendants’ Counsel filed this application on 8th May 2024.
22. Accordingly, the issue of whether to reopen the Plaintiff’s case and to cross-examine the Plaintiff’s witnesses has already been determined by this court through its ruling in court on 29th February 2024. It is therefore not within this court’s jurisdiction to revisit the same issue, the same being res judicata.
23. However, the other issues raised through this application are still for the determination of this court, these are the issues of joinder of the 6th Defendant, leave to seek typed proceedings, leave to obtain copies of pleadings filed by the Defendants and leave to comply with Order 11 and to file additional pleadings.



24. Under Order 1 Rule 10 (2) of the Civil Procedure Rules, a court may allow joinder of a party at any stage of the proceedings. It states as follows:-
- “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.”
25. The 1st to 3rd Defendants have sought that the 6th Defendant be re-joined as an Interested Party because it has been mentioned extensively in the pleadings for it to shed light on how it was able to register a charge on the suit property despite records at the land registry showing otherwise.
26. To be clear, the 6th Defendant was a party to this suit from the beginning. The 6th Defendant later filed a Notice of Motion application dated 22nd October 2020 seeking to be struck out on the grounds that the Plaintiff does not disclose any reasonable cause of action against it and that there is no relief sought against it.
27. The Plaintiff did not oppose the application by the 6th Defendant to be released from the proceedings. The 1st to 5th Defendants, however, opposed the application through Grounds of Opposition dated 22nd March 2021. These grounds were that there is no need for a relief against a party for it to remain a Defendant and that the 6th Defendant should remain in the suit so that it can explain how the suit property was charged to it while the Respondents had title to the same.
28. Through a Ruling dated 18th November 2021, Obaga J held that there is no relief which was sought against the Applicant and that the 6th Defendant did not have to be a party when the party who sued it does not want it to remain as a defendant. In any case, the Court held, any explanation of how the suit property was charged can be made by the 6th Defendant’s representative being called as a witness.
29. Indeed, the Plaintiff called a legal officer of the 6th Defendant, Guaranty Trust Bank (Kenya) Limited, as one of its witnesses (PW2) on 7th November 2023. Notably, this was six months after the appointment of the firm of Mwenda Njagi and Company Advocates for the 1st, 2nd and 3rd Defendants, and the date for hearing was given in the presence of one Mr. Mathe, who was holding brief for Mr. Mwenda. The failure to cross-examine witnesses is therefore wholly that of the 1st-3rd Defendants’ current advocates.
30. No reason for the failure to enter appearance has been tendered by the Defendants’ Counsel even in this application. Further, it has not been established that such non-attendance was accidental, an excusable mistake, inadvertent or an error. The Defendants and their Counsel evidently squandered their opportunity to cross-examine the representative of the 6th Defendant.
31. From the narrative above, the question of whether the 6th Defendant ought to be a party to this suit was settled and answered by Obaga J on 18th November 2021. The Defendants have not laid any justifiable basis for this court to allow this prayer. In any case, as an officer from the 6th Defendant already had an opportunity to testify, re-joinder of the 6th Defendant on the grounds argued by the 3rd Defendant is superfluous.
32. The Applicant has also sought leave to be granted typed proceedings as well as obtain copies of the pleadings filed by the Defendants. These are however administrative processes that take place within the registry and the Applicant need not seek leave of the court before getting these documents.



33. All that is required is for the 1st to 3rd Defendants' Counsel to write to the Deputy Registrar requesting typed proceedings, upload the same to the Case Filing System and pay the requisite Kshs. 1000/-. The letter should then be taken to the registry for processing. With respect to obtaining copies of pleadings, a party should write to the Deputy Registrar requesting copies of the pleadings. There is no requirement for judicial direction or discretion in this respect.
34. It is trite that he who comes to equity must come to equity with clean hands. The hands of the 1st, 2nd and 3rd Defendants and the advocates have, however, been sullied with unexplained and undue delays, laches on the part of the disputants, misrepresentation of the state of facts and abuse of court process.
35. The Applicants have sought for leave to comply with Order 11 of the Civil Procedure Rules. This includes filing of witness statements and documents. This request has been made after the Plaintiff has already prosecuted its suit and after the court declined to reopen the Plaintiff's case.
36. Allowing the 1st-3rd Defendants to file additional documents will thereby visit prejudice upon the Plaintiff whose witnesses cannot speak to the documents to be introduced at this stage by the Applicant.
37. The court must find that the Applicant has not laid a satisfactory basis to exercise its discretion in its favor. This is especially noting that this suit has been pending for the last ten years. Accordingly, the court declines to grant leave to the Applicants to file additional documents.
38. In conclusion, the 3rd Defendant's application is devoid of merit. The application dated May 8, 2024 is dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 6TH DAY OF MARCH, 2025

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Mwangi for Plaintiff/Respondent

Mr. Allan Kamau for the Defendant/Respondent

Mr. Omondi for Kenyatta for 4th and 5th Defendant

Court Assistant: Tracy

