



**Nyongesa v County Government of Trans Nzoia (Environment & Land
Case E021 of 2023) [2025] KEELC 1246 (KLR) (12 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1246 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE E021 OF 2023**

**CK NZILI, J
MARCH 12, 2025**

BETWEEN

ELIZABETH NASIMIYU NYONGESA PLAINTIFF

AND

THE COUNTY GOVERNMENT OF TRANS NZOIA DEFENDANT

RULING

A. A Brief History of the Matter

1. The pleadings in this suit were closed when the defendant filed a defense to the amended plaint dated 6/8/2024. A list of documents and witness statements accompanied the same. A pretrial bundle was eventually filed on 31/1/2025, slightly a month before the hearing. The affidavit of service by Isaac Ochieng Ouko, sworn on 28/1/2025 confirms the service of the documents to the plaintiff.
2. The subject matter of the suit is LR No. (IR 38108) 2116/1276, whose certificate of title emanates from the Central Registry, Lands Department Nairobi, whose custodian of records is the Registrar of Titles. In the letter dated 24/5/2024 written to the County Secretary of the defendant listed in the defendants list of documents dated 6/8/2024, the Director of Surveys had mentioned missing documents. The defendant has, with the above background, filed a chamber summons dated 17/2/2025, seeking joinder of the County Land Registrar, Trans Nzoia, as a party to the suit, for it is the custodian of all records relating to the suit land, with technical ability or capacity to determine and establish the actual ownership of the same and who if the orders sought in the suit are allowed could be amenable to be executed against. The application ought to have been made by way of a notice of motion. It is, therefore, fatally defective in form.
3. The applicant says that the party proposed will adversely be affected by the outcome of the suit and should, therefore, be given an opportunity to participate in the suit by filing a defense. Further, it is deposed in the affidavit in support sworn by Truphosa Otwala that the suit land is public land to be utilized for the greater benefit of the residents of the County. Further, it is said that the proposed



party will assist the court to delve into the root of the title, avail its records and eventually result in the complete settlement of the questions involved in the matter.

4. The claim, as pleaded by the plaintiff has raised no complaint against the Kitale Land Registrar relating to the events of trespass and demolition. The plaintiff cannot be blamed for not suing the proposed party. The suit property falls under the Repealed Registered Titles Act, whose register and the registrar are domiciled in Nairobi. The National Land Commission manages public law under Article 67(3) of [the Constitution](#), for and on behalf of the County and National Governments.

B. Submissions

5. Learned counsel for the defendant in support of the application submitted that as he was preparing for the hearing, he noted that some documents they were looking for were unable to be traced from the land registry. Learned counsel contended that the plaintiff had filed some documents obtained in a specific land registry, and the custodian of such documents is the Land Registrar Kitale. In his view, learned counsel submitted that such a custodian was a necessary party who must actively participate in the suit and must be given time to cross-examine and shed light on how the plaintiff obtained the suit land and also provide documents on how the transfer was done. Learned counsel referred to *Dina Management Ltd -vs- County Government of Mombasa* [2023] eKLR, and submitted that having a title is not a prima facie evidence of ownership, without the root of the title being traced.
6. Learned counsel submitted that the Land Registrar must file documents to show how the plaintiff obtained title. Learned counsel submitted that a joinder can be done at any stage of a suit. Reliance was made on *Wanjohi -vs- Saif Holdings Ltd & Others* [2023] eKLR that a Land Registrar is a necessary party. Equally, learned counsel relied on *Jeremiah's Creek Limited -vs- Ndungu; Imwati (Interested Party)* (Environment & Land Case 103 of 2021) [2023] KEELC 19174 (KLR) (28 July 2023) (Ruling)
7. Regarding the land registry being situated in Nairobi, learned counsel submitted that any Land Registrar may appear on behalf of that registry, and once brought on board, the role of the National Land Commission will not matter, for the National Land Commission is not the custodian of the land records. Learned counsel relied on *Bitok -vs- Samuel Maina* [2020] eKLR, that the presence of the Land Registrar was necessary. Further, learned counsel relied on the case of *Meme -vs- Republic*. Learned counsel submitted that the application was not an afterthought for as held in *P.M -vs- MWM & Another* [2015] eKLR, that power can be exercised even after a judgment.
8. On making the application late, learned counsel submitted that the hearing date was taken *ex parte* on a day he thought he would raise the issue.
9. Mr. Masika, for the respondent, submitted that a Land Registrar cannot be imposed on the plaintiff and that the defendant has an option of calling the Land Registrar as a witness. Reliance was placed on *Kitale ELC No. 18 of 2021 Sakwa & Others -vs- NHC & Others* [2022] eKLR.
10. Learned counsel submitted that the documents relating to the suit had all been filed and served upon the defendant without any objection or complaint on their authenticity. Learned counsel submitted that it is not the business of the plaintiff to provide or keep documents. Further, learned counsel submitted that the defendant, in his defense, has not claimed ownership of the land yet Article 67 of [the Constitution](#) is now clear on what public land is.

C. Determination

11. Order 1 Rule (3) of the Civil Procedure Rules provides that all persons may be joined as defendants against whom any right to relief in respect of or arises out of the same act or transaction. What makes



- a person a necessary party to a suit is not merely that he has relevant evidence to give on some of the questions involved. That would only make him a necessary witness.
12. In *Amon -vs- Raphael Tuck & Sons* [1956] ALL ER 213, Lord Devlin observed that it is not merely that such a party has an interest in the correct solution of some questions involved and that the only reason which makes it necessary to make a person a party to an action is so that the result of the action should bind him and that the question to be settled, is one in which cannot wholly and effectually be settled unless he is a party.
 13. The guiding principles to consider were set out in *Technomatic Ltd T/A Promopack Co. -vs- Kenya Wine Agencies Ltd & Another* [2014] eKLR. The court held that the party must be a necessary one, as a proper party, and in the case of a defendant, there must be a relief flowing from that defendant to the plaintiff; the ultimate order or decree cannot be enforced without his presence in the matter, and that the presence is necessary to enable the court to effectually and completely adjudicate upon and settle all the questions involved in the suit.
 14. For the applicant to succeed, it must show the nexus that the cause of complaint by the plaintiff; seeks a right to relief in respect of or arising out of the same act or transaction or series of acts or transactions existing between it and the Land Registrar Trans Nzoia District. In *Carol Construction Engineers Ltd -vs.- Naomi Chepkorir Langat* (2016) eKLR, the court observed that it would be wrong to impose upon the plaintiff some persons as defendants when, in fact, the plaintiff has no issues with such persons.
 15. In *Robina Ahmed & Others -vs- Guardian Bank Ltd* [2019] eKLR, the Court of Appeal, observed that the purpose of an amendment is to facilitate the determination of the real question in controversy between the parties to any proceedings. The cause of action, as defined by the plaintiff in the amended plaint dated 4/4/2024, is that as a holder of a leasehold title issued by the government of Kenya for 99 years, she sought and was allowed to develop her plot by the predecessor of the defendant, and that on 17/4/2023, the defendant trespassed into and illegally demolished part of her perimeter wall and threatened to demolish the entire developments on the suit property, leading to moving to this court where she obtained temporary orders of injunction.
 16. Despite the orders issued and served, the plaintiff avers that the defendant, on 20/4/2023, made good the threats by demolishing and destroying the residential apartment on the suit property, effectively evicting its tenants and rendering it inhabitable. As a result, the plaintiff avers she suffered loss and damage for the wrongful demolition and trespass assessed at Kshs.118,535,195/=. The plaintiff prays for special, exemplary, punitive, aggravated, and general damages for trespass and malicious destruction of her property, in the alternative compensation at market rate and for loss of income at Kshs.140,709,195/=.
 17. In the amended defense dated 6/2/2024, the defendant pleads that the suit land is public land, which could only be allocated to a person after following seven steps before issuance of a certificate of lease. The defendant avers that the seven steps were not followed or adhered to, and if it ever was, the same was fraudulently done; otherwise, the suit land was meant for the construction and expansion of the Kitale stadium. The defendant termed the certificate of title held by the plaintiff as unclean and put the plaintiff on strict proof to demonstrate how she acquired the title.
 18. It is a trite law that issues for the court's determination flow from the pleadings. There are no questions or issues raised in the pleadings, especially by the defendant, that connect the Land Registrar Kitale, with the cause of action based on trespass and the alleged illegal demolition that occurred on 17/4/2023.



19. A cause of action, as defined in *D.T Dobie & Company (Kenya) Ltd -vs- Muchina* 1982 K.L.R 1, is a conduct or act on the part of the defendant giving rise to a cause of complaint by the plaintiff. The role of the Land Registrar Kitale in the events of April 2023 has not been raised by the plaintiff or the defendant through pleadings. The Land Registrar is not pleaded as the one who issued a certificate of the lease to the plaintiff or who authorized the trespass or the demolition. The plaintiff has confirmed that she has no complaint against the proposed party. No third-party notice was sought and obtained by the defendant against the Land Registrar Kitale in the amended statement of defense.
20. I find no question(s) or role(s) that the intended party played in the cause of action disclosed to be termed as a necessary party. Equally, there are no documents either in the plaintiff's or the defendant's list that the intended party authored to show acts or series of transactions that make it a necessary party. The defendant has not listed the proposed party as a witness or attached any letters where it sought and has been denied public documents by the proposed party. There is no evidence that the defendant invoked the *Access to Information Act* and Article 35 of *the Constitution*, and the proposed party declined to release or avail any requested documents by the defendant relevant to its defense. The inordinate delay is not explained. The defendant is nevertheless at liberty to seek for any summons to attend court and produce any public documents in support of its defense.
21. The upshot is that I find the application lacking merits. It is dismissed with costs.
22. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 12TH DAY OF MARCH 2025.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant - Laban

Mr. Masika for the plaintiff present

Mr. Orige for the defendant present

