



Ruth & 2 others v Namunyu; Chebet (Intended Interested Party) (Environment & Land Case 032 of 2018) [2025] KEELC 1075 (KLR) (5 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1075 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE 032 OF 2018**

**A NYUKURI, J
MARCH 5, 2025**

BETWEEN

FELICITER AMURO RUTH 1ST PLAINTIFF

ALEXANDER JOMO ANGOLIO 2ND PLAINTIFF

JAMES AMUNGA ANGOLOLE 3RD PLAINTIFF

AND

ERNEST ELELWA NAMUNYU DEFENDANT

AND

EVERLYNE ILAMENYA CHEBET INTENDED INTERESTED PARTY

RULING

Introduction

1. Before court is a Notice of Motion dated 12th April, 2023 filed by a proposed Interested Party seeking the following orders;
 - a. That this Honourable court be pleased to review and/or set aside its orders made on 3rd December, 2020 and make appropriate orders.
 - b. That upon reviewing the said orders this Honourable court be pleased to enjoin the Interested Party as a party to this suit.
 - c. That this Honourable court be pleased to stay the proceedings in Kakamega CMC ELC Case No. E075 OF 2023 pending the final outcome of the main suit.
 - d. That upon review an order of inhibition do issue against title of LR Numbers Kakamega/Lugari/1772 and 1774 respectively pending the final outcome of the main suit.



- e. And any other order that this Honourable court may be pleased to make in the interest of justice.
 - f. That the costs of this application be in the cause.
2. The application is premised on the grounds on its face as well as the affidavit of Everlyne Ilamenya Chebet, the applicant. The applicant's case is that on 3rd December, 2020, the court adopted a consent order which settled this suit to the effect that titles for parcel numbers Kakamega/Lugari/1772, 1773 and 1774 be cancelled and be registered in the name of the 1st plaintiff. That the plaintiff had in the suit accused the defendant of fraudulently registering himself as the sole proprietor of parcel No. Kakamega/Lugari/286 before subdividing it into Kakamega/Lugari/1771, 1772, 1773 and 1774.
 3. According to the Proposed Interested Party /Applicant, she came to know of this suit when the 1st plaintiff served her with copies of summons to enter appearance and plaint in Kakamega CMC ELC Case no. E075 of 2023, seeking eviction order against her and others.
 4. The applicant stated that on 22nd April, 2007, she entered into a land sale agreement with the defendant having purchased 2 acres of land being the parcel of land numbers Kakamega/Lugari/1772 and 1774, which had been registered in the defendant's name. That she has been staying on the suit property since purchase and that the outcome of this application will have a direct bearing on Kakamega CMC ELC No. E075 of 2023.
 5. She further stated that each time she sought to have the defendant transfer the purchased land to her, he always gave the excuse that the title had been used as security to obtain a loan from the Agricultural Finance Corporation. She further stated that she had developed the land by building her house there and cultivating the same. That the 1st plaintiff is a sister to the defendant and lives a few meters to the applicant's home and is aware that the applicant is on the suit property. That the 1st plaintiff and defendant cannot agree to bind the applicant in a consent where she is not a party.
 6. The application is opposed. Feliceter Amuro Ruth, the 1st plaintiff filed a replying affidavit dated 30th January, 2024, on her own behalf and on behalf of her co-plaintiffs. She stated that provisions of Order 1 Rule 10 (2) of the Civil Procedure Rules does not apply to her case as the applicant is a stranger to the suit herein. That her claim of a purchaser's interest from the defendant cannot affect the plaintiff's interest since the applicant has nothing to do with the history of the parcel of land herein. That the suit land belonged to the mother of parties herein. That the applicant is not a family member and her interests are unknown to the plaintiff. That she purchased the suit property without consent of family members.
 7. She stated that the applicant seeks to set aside court orders of 3rd December 2020 while the consent is still in force. That the applicant has not faulted the consent. Further that the sale agreement of the applicant became null and void six months after the agreement for want of consent of the Land Control Board and that she should claim for refund of the same from the defendant. She stated that she was currently the owner of parcels of land known as Kakamega/Lugari/1771, 1772, 1773 and 1774 and the applicant cannot lay a claim over them based on her agreement with the defendant. That Kakamega MC ELC No. E075 of 2023 is a different matter from this matter and that no reasons have been given for review of orders of 3rd December, 2020.
 8. In a rejoinder, the applicant filed supplementary affidavit dated 10th May, 2024. She stated that she had been in uninterrupted occupation of parcel numbers 1772 and 1774 for a period of more than 17 years and that the plaintiff and her siblings are aware of her occupation. She further averred that the consent that led to orders of the court of 3rd December, 2020 was as a result of collusion between the plaintiffs



and the defendant as they failed to disclose to court that she had purchased 2 acres out of parcels 1772 and 1774; that she was in occupation of 2 acres of the two titles. She also lamented that they failed to join her in the proceedings where the final orders would affect her interests; that they concealed this suit from her; that she was lied to that titles for her land had been charged on account of a loan from AFC and that the plaintiffs were using the consent for purposes of evicting her.

9. She pointed to the defendant's conduct of not showing up in court despite service arguing that it is a scheme to ensure the court is not told the truth. That when the plaintiff was served with her application herein, they were evasive and have been changing advocates.
10. The defendant did not file any response to the application. The application was canvassed by way of written submissions. On record the plaintiffs' submissions dated 14th October, 2024.
11. The plaintiffs' counsel submitted that the applicant being a stranger to these proceedings, she cannot be joined to this case. Reliance was placed on the case of Gladys Nduku Nthuki –vs- Letshego Kenya Ltd & Mueni Charles Maingi, Machakos HCC No. 7 of 2021, for the proposition that a party cannot be added to a proceeding so as to introduce a new cause of action or alter the nature of the suit and that a mere commercial interest in the proceedings are not sufficient for joinder.
12. Counsel argued that in this case the suit property had changed from the defendant to the 1st plaintiff and that the applicant has no claim against the plaintiffs.
13. Counsel further relied on Bomet HCC Civil Appeal no. E032 of 2021 Watu Credit –vs- Geoffrey Mokaya Aboki & Another and argued that stay of proceedings is a grave Judicial action that affects the right of litigants to conduct litigation and that the same cannot be granted in the instant matter as the applicant has not met the threshold thereof.

Analysis and Determination

14. The court has carefully considered the application, response thereto and submissions. Four issues arise for the court's determination namely;
 - a. Whether the applicant has met the threshold for joinder to these proceedings.
 - b. Whether the applicant deserves orders for review/setting aside orders of 3rd December, 2020.
 - c. Whether orders of inhibition should issue in regard to titles of parcels Kakamega/Lugari/1772 and 1774 pending determination of this matter.
 - d. Whether the applicant has met the threshold for grant of orders of stay of proceedings in Kakamega CMC ELC Case No. E075 of 2023 pending the hearing and determination of this suit.
15. Order 1 Rule 10 (2) of the Civil Procedure Rules provides for the Power of Court to join a necessary party to proceedings before court 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.”



16. Therefore, the court has jurisdiction on its motion or on application of a party to join any person to proceedings pending before it as a plaintiff or defendant or interested party if that joinder will assist the court to effectually and completely determine all questions arising in the suit.
17. In this case, the applicant's argument is that she entered into a land sale agreement with the defendant herein on 22nd April, 2007 purchasing two acres of land part of the parcels known as Kakamega/Lugari/1772 and 1774. That subsequent to the agreement she constructed a house and began living on the suit property and cultivating the same. She states that the order of 3rd December, 2020 adopted a consent between the plaintiffs and defendant who are all siblings; to the effect that the defendants' registration of parcels of land Kakamega/Lugari/1771, 1772, 1773 and 1774 be cancelled and the same be registered in the 1st plaintiff's name. That although the parties herein knew that the consent would affect the applicant's rights they did not inform the applicant of this suit or involve her in their consent.
18. The plaintiffs have not denied the applicant's allegations of purchase of the suit property from the defendant and the fact that she is in occupation of the suit property. Indeed, the fact that the applicant is in occupation is stated in the plaint in Kakamega CMC ELC Case No. E075 of 2023 wherein the 1st plaintiff herein seeks the applicant's eviction. In addition, the defendant has not rebutted the applicant's assertions as he has not filed any response to the application.
19. The plaintiffs' response is that since the applicant is not their family member and has no part in the history of the suit property, she should not be joined to these proceedings.
20. From the allegations made in the application and the response, I understand the applicant to be stating that at the time this suit was filed and when the consent was entered to compromise the suit and cancel the defendant's registrations, the plaintiffs were aware of her occupation of the suit property. The claim put forth by the applicant is that she has continuously occupied the suit property for 17 years with the knowledge of the parties in this suit and the judgment herein was a consent affecting her claim which consent she was not involved in, which violates her right to be heard before being condemned.
21. It is clear to me that the consent between the parties herein which was adopted by this court on 3rd December, 2020 directly affects the applicant who is in occupation of parcels Kakamega/Lugari/1772 and 1774. The primary parties herein have not denied the fact that the applicant was neither aware of this suit nor the consent and therefore, before the applicant is condemned and or before her rights are determined, in Kakamega CMC ELC NO. E075 OF 2023 which suit is premised on the consent herein, it is only fair and just that she be given opportunity to be heard within the same forum in which her claim was affected, which is in these proceedings.
22. I am therefore convinced that it is in the interest of justice that the applicant is joined to these proceedings. Having considered the fact that the applicants is not just alleging that she will be affected by the decision made herein, but that she has a claim over the suit property based both on purchase and continuous open occupation, I take the view that she takes the position of a primary party and therefore she ought to be joined to this suit as defendant.
23. Regarding review, Section 80 of the *Civil Procedure Act* and Order 45 Rules of the Civil Procedure Rules grants this court the jurisdiction to grant orders of review and states the elements to be proved before review orders are granted. The said provisions are as follows;
24. Section 80 of the *Civil Procedure Act* provides;

Any person who considers himself aggrieved—



- a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

25. Order 45 Rule 1 of the Civil Procedure Rules provides:

Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) a decree or order from which no appeal is hereby allowed,

and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

26. Therefore, where any person is aggrieved with a decree or order of the court, they may seek review if they can demonstrate that they have obtained new and important evidence which could not have been obtained even after exercise of due diligence; that there is an error apparent on the face of the record or for any other sufficient reason.

27. In this case, there is no dispute that the consent adopted on 3rd December, 2020 affects the applicant's claim. The applicant's claim of purchase and continuous occupation challenges the claim of both the plaintiffs and defendant herein, and the fact that she is not a family member of the parties herein cannot be a bar for her to raise those claims in this suit. The issue of proof is a matter that will be determined at the trial. It is trite that a consent judgment is a contract therefore the consent entered herein and adopted by the court binds the plaintiffs and defendant herein and not the applicant who is obviously affected by the consent due to her occupation of part of the suit property. Parties cannot lawfully agree to an outcome that affects another person not party to their agreement. It is clear that this consent is the basis for the eviction claim in Kakamega CMC ELC E075 of 2023. Considering the facts herein and the fact that the defendant has not opposed the application, and the applicant was not involved in the consent herein when it obviously affects her claim and occupation of the suit property, I am satisfied that that is a sufficient cause for reviewing and setting aside the orders of 3rd December, 2020.

28. Section 68 of the [Land Registration Act](#) grants this court the power to make an order of inhibition as follows;

The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.



29. Orders of inhibition are in the nature of temporary injunction orders. Order 40 Rule 1 of the Civil Procedure Rules grants this court jurisdiction to grant temporary injunction orders where the applicant demonstrates that the subject matter of the suit is at risk of waste, damage, alienation, disposal or sale in execution of a decree; and if an injunction is not granted, there would likely be a delay or obstruction in the execution of any decree that may eventually be passed in favour of the plaintiff. To obtain a temporary injunction, an applicant must demonstrate that they have a prima facie case with chances of success; that if the injunction is not granted, they stand to suffer irreparable loss that may not be atoned in damages and where the court is in doubt, it ought to decide on a balance of convenience. (See *Giella v Cassman Brown* [1973] EA 158).
30. Therefore, if the court is satisfied that there is a likelihood that the title in dispute may be dealt with to the detriment of a plaintiff which may delay or obstruct execution of any decree that may be made in their favour, then nothing stops the court from granting an inhibition against the title in dispute if the applicant demonstrates a prima facie case with chances of success and that they stand to suffer irreparable injury if the inhibition is not issued. In this case, the 1st plaintiff having been registered as proprietor of the suit property means that she is at liberty to deal with the suit property as she pleases despite the fact that the applicant is in occupation thereof. In the premises, maintaining the status quo obtaining on the title of the suit property is necessary to preserve the substratum of the case pending determination of this dispute. In the premises, I am satisfied that the applicant deserves orders of inhibition.
31. The applicant also sought for stay of proceedings in Kakamega CMC ELC Case No. E075 of 2023, pending determination of this suit. Stay of proceedings ought not be confused with stay of execution, as the test to be applied by the court in considering an application for stay of proceedings is higher and more stringent. Parties file proceedings in court so that they are heard and determined expeditiously as Article 159 of *the Constitution* of Kenya provides that justice shall not be delayed. Therefore, unless it is in the interest of justice and it is clear that proceedings with a matter will result in an injustice, an order of stay of proceedings will not usually be granted.
32. My position is fortified by the holding made by the court in the case of *Kenya Wildlife Service v James Mutembei* (2019) e KLR, where the court stated as follows;
- Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on the right of access to justice, right to be heard without delay, and overall right to fair trial. Therefore, the test for stay of proceedings is high and stringent.
33. In this case, the applicant has sought stay of proceedings in Kakamega CMC ELC No. E075 of 2023 pending determination of her claim herein. This court takes the view that since Kakamega CMC ELC No. E075 of 2023 is predicated on the ownership granted to the 1st plaintiff herein based on the consent adopted on 3rd December, 2020, which consent that was made without involving the applicant who was and is still in occupation, the said suit ought to be stayed pending the determination of the applicant's claim herein.
34. Since the plaintiffs have not demonstrated any reason why they did not join the applicant in this suit as a defendant, when their assertion is that her occupation is unlawful, and premised on the alleged unlawful purchase from the defendant, it is the opinion of this court that the applicant deserves an opportunity to be heard in these proceedings first, before the claim for her eviction can be considered. In my view it will be an injustice to proceed with Kakamega CMCC ELC E075 of 2023 when the basis thereof being the consent between siblings herein is contested in this case.



35. In the premises, I am satisfied that the applicant deserves orders of stay of proceedings in regard to Kakamega CMCC ELC E075 of 2023.
36. In the end, I find and hold that the application dated 12th April, 2023 has merit and the same is hereby allowed as follows;
- a. The applicant, Everline Ilamenya Chebet is hereby joined to these proceedings as the 2nd defendant.
 - b. The orders of this court made on 3rd December, 2020 are hereby set aside with the consequence that the consent dated 23rd October 2020 is no longer judgment of this court.
 - c. This grants orders of inhibition inhibiting registration of any dealings in regard to parcel Number Kakamega/Lugari/1772 and parcel Number Kakamega/Lugari/1774 pending hearing and determination of this suit.
 - d. Proceedings in respect of Kakamega CMC ELC Case No. E075 of 2023 are hereby stayed pending hearing and determination of this suit.
 - e. The 2nd defendant herein Everline Ilamenya Chebet is hereby granted leave to file and serve her statement of defence and counterclaim, witness statements and documents within 14 days of the date of this ruling.
 - f) The costs of this application shall be borne by the plaintiffs.
37. It is do ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA VIRTUALLY THIS 5TH DAY OF MARCH, 2025 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of;

Ms Munihu for the plaintiffs/respondents

No appearance for the defendant

Mr. Mbaka for the applicant.

Court Assistant: Juliet

