



**Wanjohi v Maina & 4 others (Environment & Land Case
9 of 2021) [2025] KEELC 3566 (KLR) (7 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3566 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE 9 OF 2021**

LN MBUGUA, J

MAY 7, 2025

BETWEEN

GODFREY NGUNJIRI WANJOHI PLAINTIFF

AND

BILLY NG'ANG'A MAINA 1ST DEFENDANT

**RICHARD KURIA MWANIKI (SUED AS THE ADMINISTRATOR OF THE
ESTATE OF GIDRAPH MWANIKI KARIRI DECEASED) 2ND DEFENDANT**

NATIONAL LAND COMMISSION 3RD DEFENDANT

THE LAND REGISTRAR, LAIKIPIA 4TH DEFENDANT

JAMES MITHAMO KAMAU 5TH DEFENDANT

RULING

1. Judgment was delivered herein on 20.8.2024. Thereafter, two applications have sprung up, one dated 6.11.2024 brought forth by Crispus Wanjohi Ngunjiri and Alice Wanjiru Ngunjiri as administrators of the estate of Godfrey Ngunjiri Wanjohi as intended defendants, and another application dated 16.1.2025 brought forth by Moran Reloaded Lounge & Grill who also seeks to be joined in these proceedings but as an interested party.
2. On 4.3.2025, the court gave directions on the prosecution of the two applications, of which the respective applicants were to file and serve their submissions by 19.3.2025 while the respondents were to file and serve their submissions by 5.4.2024. The Applicants in the application dated 6.11.2024 did not comply with the aforementioned directions, thus their submissions filed on 14.4.2025 are hereby expunged.



Application dated 6.11.2024 (1st Application)

3. The applicants/intended defendants are seeking orders to be joined in this suit, that there be a stay of execution of the judgment, that the same be set aside and the matter be consolidated with the case Nanyuki ELC 9 of 2023 (*Godfrey Ngunjiri v Billy Nganga Maina & 4 Others*).
4. The application is premised on the grounds set out on the face of the application and the supporting affidavit of Crispus Wanjohi Ngunjiri. The deponent contends that his late father Godfrey Ngunjiri Wanjohi purchased the suit parcel from Gidraph Mwaniki Kariri on 26.6.1998 and has been in possession of the said land until his demise when the deponent took over the possession thereof.
5. He avers that Gidraph died on 26.10.2008 before he could transfer the suit parcel to Godfrey.
6. That on 10.7.2013, the National Land Commission issued a notice requiring all persons with letters of allotments to submit them for verification and issuance of titles, thus he submitted the letter of allotment on 19.9.2013 and the suit parcel was then registered in the name of deceased vendor (Gidraph).
7. However, Godfrey was to learn that the land was registered in the name of Billy Nganga Maina, prompting him to file the case Nyeri ELC No 30 of 2018 which was later transferred to Nanyuki and was given a new number ELC 9 of 2023 which is pending determination, of which restraining orders were issued. He avers that the transfer order given on 9.11.2023 directed that the two matters be heard together.
8. He contends that a complaint was also lodged with the Director of Criminal investigations culminating in the placement of a caveat by EACC on 8.7.2017 on the suit parcel.
9. He further contends that the judgment was obtained irregularly through material non disclosure as the plaintiff failed to inform the court of the existence of the other matter.
10. In response thereof, the plaintiff filed a notice of preliminary objection dated 13.12.2024 averring that the applicants have not filed an application for substitution of the plaintiff in the case ELC 9 of 2023 as he died in year 2019, thus they have no locus and the aforementioned suit abated. They also contend that since the sale agreement was done in year 1998 and the suit ELC No. 9 OF 2023 was filed in year 2018, the claim is time barred. Finally, it is argued that this suit has already been heard and determined.
11. The plaintiff also filed a replying affidavit dated 13.12.2024 where he denies the allegation that he didn't disclose the existence of the other matter, averring that he is the one who filed the application dated 18.10.2023 for the consolidation of the two suits, then the two suits were transferred to Nanyuki.
12. That thereafter, the advocate for the applicants only attended court twice. Then the advocate for the defendant raised an issue that the plaintiff in ELC 9 of 2023 had passed on , and there was no certainty on appointment of a legal representative, thus the plaintiffs case (in ELC No.9 of 2021) was eventually listed for hearing and judgment was delivered, thus the court is now functus officio.
13. It is argued that the applicants have not attached a copy of the sale agreement and that Gidraph did not comply with the terms of allotment.
14. In his undated submissions filed on 20.3.2025, the plaintiff reiterates the averments set out in his replying affidavit. He cites the case Nairobi HCCC No. E201 of 2021 *Arnold Kipkirui Langat v Atticon Limited & Others* to buttress the point that an application for consolidation of the suits ought to be filed at pre-trial stage and not post judgment.
15. The defendants did not file any documents.



Application dated 16.1.2025 (2nd Applicant)

16. This application has been filed by an intended interested party known as Moran Reloaded Lounge & Grill who seeks to be joined in these proceedings. Their application is premised on grounds set out on the face of the application and the supporting affidavit of its director, one Robert Kabata. He contends that he is the one who is using the suit property having leased the same from the owners namely Gideon Maina Thuku and Godfrey Ngunjiri Wanjohi. He uses the parcel for parking. However, he received a demand letter dated 28.10. 2024 from the plaintiff directing him to halt any payments to the owners as there was a judgment which determined that he (plaintiff) was the owner of the suit parcel. The applicant desires to be joined in this matter so as to ascertain to whom he should be remitting lease charges to.
17. In its submissions dated 6.3.2025, the applicant reiterated the averments set out in its application adding that prior to the demand notice, the applicants had no prior knowledge of the case, and now their business operations are at risk due to conflict on ownership, yet they have an ongoing lease in respect of the suit property. To buttress its arguments, the applicants rely on the cases of *Mudembei & Another v Malembi & Another* (ELC Case no 3 of 2020) (2024) KEELC 1239 (KLR) (7 March 2024) (Ruling), *Mary Beach Limited v Attorney General and 18 Others* (2018) eKLR and *Re Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others* (2015) eKLR.
18. On the Preliminary Objection, it was submitted that the same does not meet the threshold set out in *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors* (1969) EA where it was emphasized that a preliminary objection must consist of a pure point of law capable of being determined without delving into facts. It was also argued that this court has jurisdiction to hear the matter going by the pre-dominant purpose test rendered in *Suzanne Achien Butler & 4 Others v Redhill Heights Investments Limited & Another*.
19. In opposition thereof, the plaintiff filed a notice of preliminary objection dated 7.2.2025 averring that this is a concluded matter, judgment having been delivered and that the applicant has not indicated what claim he has against either party to warrant joinder.
20. In his submissions (the same ones filed in respect of the older application), the plaintiff refutes the claim that the applicant has met the criteria for joinder as he is only a tenant in the suit property.
21. The issue falling for determination is whether the applicants should be joined in these proceedings and whether the judgment delivered on 20.8.2024 should be set aside so as to consolidate this case with ELC No 9 of 2023.
22. Order 1 Rule 10(2) of the *Civil Procedure Rules* provides for joinder of parties. See *Parsaloi Ole Meikoki & others v Commissioner of Lands & 9 others* [2017] eKLR.
23. In the case of *Trusted Society Of Human Rights v Mumo Matemo & 5 others* [2014] eKLR, the Supreme Court held that:

“ An interested party is one who has a stake in the proceedings though he or she was not party to the cause *ab initio*. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause.”
24. For the 1st application dated 6.11.2024, I have perused both files (ELC 9 of 2021 and ELC 9 of 2023) and it is clear that the subject matter is the same (Nanyuki Municipality Block 8/905). Even some



parties are the same. There is however an averment made by the plaintiff that the two applicants have no locus as the plaintiff in case no. 9 of 2023 died way back in 2019.

25. To that end, the applicants in the 1st application had filed an application dated 20.5.2021 seeking to substitute the plaintiff with the current applicants. For one reason or another, but mostly laxity on the part of the applicants, the said application was not determined. Thus on one hand there is no suit known as ELC No 9 of 2023, on account of the death of the plaintiff, while on the other hand, the applicants have approached this court seeking reinstatement of the suit and substitution. As late as 18.12.2023, the applicants were seeking courts directions on the said application and they stated that the same was unopposed.
26. In so far as the application of 20.5.2021 remains active, pending courts directions/determination, then the court cannot rule on the issue of locus at this stage. On the same breadth, the court cannot delve into the merits of the two pending applications, seeing that in one way or another, the claim of the applicants in the 2nd application is closely tied to the presence of the applicants in the 1st application. It is only when the applicants in the 1st application are fully on board that the court can delve into the merits of the two applications.
27. For that reason, the court shall put on hold the delivery of the ruling in this matter until the application of 20.5.2021 in ELC 9 of 2023 is determined. The orders of maintenance of status quo are to remain in force.

DATED, SIGNED AND DELIVERED AT NANYUKI THIS 7TH DAY OF MAY 2025 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Gachuhi for Plaintiff

Ms. Kimathi for proposed Interested Party

Ms. Mbugua holding brief for Kiarie for 3rd defendant

Kebuka Wachira for 2nd defendant.

