



Simglad Ltd v Malili Ranch Limited (Environment & Land Case 17 of 2020) [2024] KEELC 1269 (KLR) (6 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1269 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 17 OF 2020**

**A NYUKURI, J
MARCH 6, 2024**

BETWEEN

SIMGLAD LTD PLAINTIFF

AND

MALILI RANCH LIMITED DEFENDANT

RULING

Introduction

1. Vide a Chamber Summons dated 24th May 2023, the defendant in this case sought the following orders;
 - a. That leave be granted and or time be extended for filing of an application under Order 1 Rule 15 of the *Civil Procedure Rules*.
 - b. That leave be granted to the defendant to issue a third party notice upon Julius Maweu Kilonzo.
 - c. That costs be in the cause.
2. The application is anchored on the supporting affidavit sworn by Leonard Kyama Kitua the defendant’s director on 24th May 2023. He deponed that Plot No. 2557 was erroneously listed as being part of the 5000 acres of the defendant’s property that was sold to the Government of Kenya (Konza ICT City) and that as a consequence thereof, the intended third party Julius Maweu Kilonzo was compensated for the acquisition of that plot by the defendant.
3. That it was later discovered that the said Plot No. 2557 did not form part of the 5000 acres. Further that there is a question relating to the defendants and intended third party’s liability on unjust enrichment on the part of the latter and that therefore the defendant is entitled to contribution and indemnity from the intended third party. He stated that for a just determination of all issues raised, a third party notice ought to issue to Julius Maweu Kilonzo.



4. The application is opposed. Simon Kamene, the Managing Director of the plaintiff swore a replying affidavit on 20th June 2023. He deposed that from the defendant's pleadings, what he intends to claim against the 3rd party is not land but a civil debt based on erroneous payment and that such a civil debt having accrued in November 2010 would be barred by statute on limitation and that a claim for a civil debt is outside this court's jurisdiction. Further that since the claim by the plaintiff is for land and not money, the defendant cannot bring themselves under the provision of Order 1 Rule 15 (1) (a) (b) or (c) of the [Civil Procedure Rules](#). That there is no nexus between the claim of the plaintiff and that of the defendant and that there is no reason why the application was not brought within 14 days of close of pleadings.
5. The application was canvassed by written submissions. On record are submissions filed by the defendant on 17th July 2023 and the plaintiff's submissions filed on 23rd August 2023; both of which this court has duly considered.

Analysis and determination

6. The court has carefully considered the application, response and rival submissions and the sole issue that arise for determination is whether the defendant is entitled to issue a third party notice to the intended third party.
7. Order 1 Rule 15 of the [Civil Procedure Rules](#) provides for the power of the court to grant leave to a defendant to issue a third party notice, upon an ex parte application. The said provision states as follows;
 - (1) Where a defendant claims as against any other person not already a party to the suit (hereinafter called the third party) —
 - (a) that he is entitled to contribution or indemnity; or
 - (b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or
 - (c) that any question or issue relating to or connected with the said subject-matter is substantially the same question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party or between any or either of them,

he shall apply to the Court within fourteen days after the close of pleadings for leave of the Court to issue a notice (hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers ex parte supported by affidavit.
 - (2) A copy of such notice shall be filed and shall be served on the third party according to the rules relating to the service of a summons.
 - (3) The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the court, be filed within fourteen days of service, and shall be in or to the effect of Form No. 1 of Appendix A with such variations as circumstances require and a copy of the plaintiff shall be served therewith.
 - (4) Where a third party makes as against any person not already a party to the action such a claim as is mentioned in subrule (1), the provisions of this Order regulating the rights and procedure



as between the defendant and the third party shall apply mutatis mutandis as between the third party and such person, and the court may give leave to such third party to issue a third party notice, and the preceding rules of this Order shall apply mutatis mutandis, and the expressions “third party notice” and “third party” shall respectively apply to and include every notice so issued and every person served with such notice.

- (5) Where a person served with a notice by a third party under subrule (4) makes such a claim as is mentioned in subrule (1) against another person not already a party to the action, such other person and any subsequent person made a party to the action shall comply mutatis mutandis with the provisions of this rule.
8. In the instant application, the basis for the application is that the suit property being Plot No. 2557 was erroneously listed as being part of the 5000 acres belonging to the defendant, which was sold to the Government. That this error resulted in the compensation of one Julius Maweu Kilonzo as owner of that plot. Although the plaintiff has opposed the application on the basis that the suit against the intended third party is time barred, that in my view, is a matter touching on facts between the defendant and intended third party and can only be determined at the trial and not at this stage. In any event, the intended third party notice is a claim not against that plaintiff but a third party and there is no prejudice that will be suffered if the third party is joined to this matter. The allegation that there is no nexus between the plaintiff’s claim and the defendant’s claim and the intended third party is not correct as the assertions made by the defendant are in respect to the suit property claimed by the plaintiff which the defendant alleged to have compensated the intended third party basing on the claim by the intended third party.
9. It is therefore my view that the two claims form one transaction and are related and issues touching on the suit property involving the plaintiff, defendant and intended third party ought to be heard in the same proceedings, which is this suit. At any rate, the leave to file third party notice ought to be heard exparte without involving the plaintiff.
10. In the premises, I find and hold that the Chamber Summons dated 24th May 2023 is merited and the same is allowed as prayed. The defendant is ordered to file and serve third party notice upon Julius Maweu Kilonzo within fourteen (14) days of this ruling.
11. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 6TH DAY OF MARCH, 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of:-

Ms Muluvi holding brief for Mr. Mutua SC for defendant/applicant

Ms Kiarie holding brie for Mr. Njuguna for respondent

Josephine – Court Assistant

