



Nkirote v Land Registrar Meru County & 11 others (Environment & Land Case E017 of 2021) [2024] KEELC 6045 (KLR) (16 September 2024) (Ruling)

Neutral citation: [2024] KEELC 6045 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E017 OF 2021
CK NZILI, J
SEPTEMBER 16, 2024**

BETWEEN

CELINA NKIROTE PLAINTIFF

AND

LAND REGISTRAR MERU COUNTY 1ST DEFENDANT

ATTORNEY GENERAL 2ND DEFENDANT

LAND ADJUDICATION & SETTLEMENT OFFICER 3RD DEFENDANT

MERU COUNTY SURVEYOR DEPARTMENT 4TH DEFENDANT

M'MBOROKI NDURA 5TH DEFENDANT

JULIUS KIMATHI MUNGANIA 6TH DEFENDANT

AFUSA GRACE SULEIMAN 7TH DEFENDANT

YUNUS ADAM MUTHAMIA 8TH DEFENDANT

JOSEPH JUNYU THIRIKWA 9TH DEFENDANT

PRISCILLA MWARI 10TH DEFENDANT

MERCY KANYIRI 11TH DEFENDANT

MICHAEL MWIRIGI MAITIMA 12TH DEFENDANT

RULING

1. Following an application for leave to amend a plaint made by the plaintiff, this court rendered a ruling on 21.2.2024 and allowed the proposed draft amended plaint to be filed and served upon the parties.



2. The amended complaint dropped from the suit several defendants among them the Gedion Mugambi Mworira, M'Mboroki Ndura, Afusa Grace Suleiman, Yunus Adam Muthamia, Joseph Munyu Thirikwa, Priscilla Mwari, Mercy Kanyiri, Michale Mwirigi Maitima who were the 5th, 6th, 8th – 13th defendants.
3. In the application dated 13.7.2024 Mercy Kanyiri and the administrator of the estate of Gedion Mugambi Mworira, who says that she had filed a defence and counterclaim dated 12.10.2021 and who are interested in L.R No. Ruiiri/Rwarera/2962 and 3804 pray to be reinstated as 5th & 16th defendants in the suit.
4. The reasons are that they were obliterated from the suit after the amendments aforesaid, yet the plaintiff continues to refer to their parcels of land at paragraphs 13A, 26, 263, 30 and prayer B of the amended complaint, otherwise if not joined they will be prejudiced, the suit will proceed without being heard, they are necessary parties and their cross-claims will be prejudiced.
5. The application is supported by an affidavit of Mercy Kanyiri sworn on 13.7.2024. She says that she has authority from the administrator of the 5th defendant to make and swear the affidavit. Unfortunately, no such authority has been attached to the affidavit. The deponent while rehearsing the contents of the application states that on 27.4.2021 the county surveyor and the district land adjudication officer visited their parcels of land and confirmed their status and position on the ground. The applicants aver that it is surprising that the respondent states their land parcels do not exist on the ground and have obliterated their names from the suit the same way their land parcels were obliterated from the adjudication records.
6. Order 1 Rule 10(2) Civil Procedure Rules provides that a court may at any stage of the proceedings either upon or without an application of either party and on such terms as may appear to just order that the name of any party improperly joined, whether as a 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 adjudicate upon and settle all the questions involved in the suit, be added.
7. In *King'ori vs Chege & others* (2002) 2 KLR 243 the court observed that parties cannot be added so as to introduce quite a new course of action or to alter the nature of the suit.
8. The court said that in the case of a defendant, two conditions must be met namely that (1) his presence should be necessary and a proper party is one who has a designed subsisting direct and substantive interest in the issues arising in the litigation which interest must be recognizable in a court of law, being an interest which the court will enforce.
9. In this application it is the proposed defendants who are moving themselves to be joined as parties. None of the existing defendants has sought to join them as defendants.
10. In *Kingori vs Chege & others* (supra) the court observed that either party under Order 1 Rule 10 Civil Procedure Rules denotes that the formal move has to be made by a party already participating in the proceedings and therefore an intending party cannot come on his own and chose which position he wants.
11. In *Civicon Ltd vs Kivuwatt Ltd & others* (2015) eKLR the court said that the power given under the rules is discretionary and must be exercised judicially to bring on board all parties to the dispute over the subject matter to be determined in their presence as the time without any protection, inconvenience and to avoid multiplicity of proceedings and therefore any party reasonably affected by the proceedings is a necessary and proper party to be enjoined.



12. In this application the authority to bring on board the 5th defendant is missing. Secondly, the nexus between the proposed defendants and the subject matter has not been clarified. The annexed land survey report does not refer to the proposed defendants as persons with a stake in the suit land. There are no letters from the land registry, sale agreements and or allotment letters to demonstrate what interest the proposed parties have on the subject land. It is not enough to aver that a party will be prejudiced or condemned unheard.
13. In *CCK vs Royal Media Services Ltd Petition No. 14 of 2014* the court observed that it would not exercise its discretion to enjoin a party that disguises itself as an interested party while in actual fact it was merely seeking to institute a fresh suit.
14. In *Mumo Matemu vs Trusted Society of Human Rights (2014) eKLR* the court said that a suit was a solemn process owned solely by the parties. In *Luka Kipkeilel Kotut vs Joseph Chebii & another (2013) eKLR*, the court held that a person who is not a defendant cannot simply walk into proceedings by filing a statement of defence.
15. In *Marigat Group Ranch & others vs Wesley Chepkoimet and others (2019) eKLR* the court declined to allow a joinder as a defendant on the basis that where the plaintiff has chosen to assert his rights against certain defendants and not others, the court should not bestow in imposing other defendants upon him.
16. From the court record it appears that on 12.10.2021 the intended defendants as the 5th and 12th defendants filed a statement of defence and a cross-claim against the plaintiff and the 1st and 2nd defendants. It is not clear if summons to enter appearance were filed, signed and served upon the defendants to the cross-claim within the stipulated period in law.
17. A cross-claim and a counterclaim are different. After the 5th and 12th defendants were removed from the suit they cannot purport to hang as parties without drawing a nexus and defining their stake.
18. The upshot is I find the application lacking merits. It is dismissed with costs.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 16th DAY OF SEPTEMBER, 2024.

In presence of

C.A Kananu

Plaintiff

Mr. Ashava for the plaintiff

Mbaikyatta for the 1st – 4th defendant

7th defendant

HON. C K NZILI

JUDGE

