



**Otieno v Omwom (Land Case E006 of 2024)  
[2024] KEELC 6611 (KLR) (9 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6611 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA  
LAND CASE E006 OF 2024**

**E ASATI, J**

**OCTOBER 9, 2024**

**BETWEEN**

**DIVINAH MORAGWA OTIENO ..... PLAINTIFF**

**AND**

**WILSON OTIENO OMWOM ..... DEFENDANT**

**RULING**

1. This ruling is in respect of the Intended Interested Party’s Notice of Motion application dated 13<sup>th</sup> September, 2024 stated to be brought pursuant to the provisions of Order 1 Rule 10(2), Order 51 Rule 1 of the Civil Procedure Rules 2010 and sections 1A, 1B, 3A of the *Civil Procedure Act*.
2. The application seeks for orders that the Applicant be joined in the suit as 2<sup>nd</sup> Defendant, temporary injunction pending hearing and determination of the suit, an order directing the parties to amend, file and exchange documents and that costs of the application be provided for.
3. The application was based on the grounds that the Applicant is a purchaser of the suit land having bought the land from the Defendant who was the registered owner.
4. That the Applicant is in actual possession of the land. That she has paid 96% of the purchase price and that she has been prevented from registering the transfer because there is a caution on the land.
5. That it is in the interest of justice that the Applicant becomes a party in the suit so as to be able to defend her interest by filing statements of defence and counter-claim or cross-suit.
6. The application was supported by the contents of her Supporting Affidavit sworn on 13<sup>th</sup> September, 2024 and the annexures thereto.
7. The application was opposed by the Plaintiff vide the averments contained in Replying Affidavit sworn by the plaintiff on 19<sup>th</sup> September, 2024. The Plaintiff’s case is that the suit land is a matrimonial home for her, the Defendant and their children. That the matrimonial house on the suit land has been vacant



even by the time of filing the present suit. That the applicant only moved into the house in collusion with the Defendant when the suit was still pending in court. That the Applicant was not a bona fide purchaser of the land.

8. That the Defendant does not have Land Control Board consent, Vendor's spousal consent and certified copy of Vendor's spouse's identity card, which are documents required for completion of sale agreement.
9. That the Applicant should not be allowed into the suit as her remedy is a claim for refund of the money paid which cause of action is against the Defendant. That the Applicant is a trespasser without any right to an order of injunction or any other remedy against the Plaintiff. That the subject application is an abuse of the court process and should be disallowed.
10. Pursuant to directions given on 19<sup>th</sup> September, 2024, the application was argued by way of written submissions.
11. It was submitted on behalf of the Applicant vide the written submissions dated 24<sup>th</sup> September, 2024 filed by the firm of Chege Kibathi & Company Advocates that joinder of parties should be permitted to all parties in whom any right or relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist. That the determining factor in joinder of parties is whether common question of law or fact would arise between existing and intended parties.
12. That the Applicant is a necessary party for the determination of the real matters in dispute and to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit and particularly whether or not the suit property No. South Maragoli/Buyonga/2927 passed to the Applicant.
13. Counsel relied on inter alia Order 1 of the Civil Procedure Rules and the case of Zephir Holdings Ltd –vs- Mimosa Planations Ltd, Jeremiah Maztagano and Ezekiel Musango Mutisya (2014)eKLR to support the submissions.
14. Vide the written submissions dated 24<sup>th</sup> September, 2024 filed by A.B.L. Musiega & Company Advocates it was submitted on behalf of the Plaintiff that the right for a party to be enjoined in a suit is not automatic. That Order 1 Rule 10(2) allows court to add a party to a suit and sub rule 10(4) thereof require that once a party is added then the Plaint be amended to correspond to the addition.
15. That by the time the suit was filed, the house was vacant and the Applicant only came to occupy the house after the suit had been filed.
16. That the presence of the Applicant in the matter is not necessary for adjudication of the dispute.
17. That the Applicant seeks joinder so as to enforce a contract in vacation of the sale agreement which she relied upon and the provisions of the [Land Control Act](#).
18. That the only remedy for the Applicant is recovery of the money from the Defendant paid to Letshego as provided in clause 9.2 of the sale agreement.
19. That the Plaintiff would have no cause of action against the Applicant as to require her to amend her Plaint.
20. Counsel relied on the case of Helga Christa Ohany –v-s ICEA Lion General Insurance Company Limited (2022)eKLR to submit that a court is not permitted to allow parties to an agreement to break the terms thereof. Counsel urged the court to disallow the application.

The defendant did not oppose the application.



21. I have considered the application, the Replying Affidavit and the written submissions filed. As submitted by both parties, the law governing joinder of parties is found in Order 1 of the Civil Procedure Rules. Under Order 1 Rule 10, the court has power to add any party to a suit whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit.
22. The Applicant claims to have bought the suit land and taken over possession of the same together with what the Plaintiff describes as the matrimonial house on the land. She claims that she now has a right over the suit land which she wishes to protect/defend as a party in the suit.
23. The Plaintiff does not deny that the Applicant is in possession of the premises but avers that the Applicant took possession after the suit had been filed. My view is that whatever decision that will ultimately be made by the court will affect the Applicant. And assuming that the Plaintiff ultimately wins the case, she will need to remove the Applicant from the premises. I find that the Applicant is a necessary party in the suit.
24. No submissions were made on the prayer for temporary injunction. In any event, there already order of temporary injunction in place.
25. For the foregoing reasons, the court finds that the application has merit and allows it in terms of prayers 2 and 5 thereof as follows: -
  - i. The Applicant is hereby added to the suit as 2<sup>nd</sup> Defendant. The Applicant to file and serve her pleadings, witness statements and documents if any with 14 days hereof.
  - ii. Parties requiring to amend their pleadings to do so within 14 days of service of the Applicant's documents
  - iii. Cost of the Application to the Plaintiff.

Orders accordingly.

**RULING DATED AND SIGNED AT VIHIGA DELIVERED VIRTUALLY THIS 9TH DAY OF OCTOBER, 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,  
JUDGE.**

In the presence of:

Ajevi- Court Assistant.

Wanda for the Intended Interested/Applicant.

Edaki h/b for Malanda for the Plaintiff/Respondent

Wekesa for the Defendant Respondent

