



Kariobangi North Light Industries Jua Kali Association v Nairobi City County Government & another; Nairobi City Water & Sewerage Services Co Ltd (Proposed Defendant) (Environment & Land Case E219 of 2024) [2024] KEELC 7385 (KLR) (6 November 2024) (Ruling)

Neutral citation: [2024] KEELC 7385 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E219 OF 2024
MD MWANGI, J
NOVEMBER 6, 2024**

BETWEEN

KARIOBANGI NORTH LIGHT INDUSTRIES JUA KALI ASSOCIATION PLAINTIFF

AND

NAIROBI CITY COUNTY GOVERNMENT 1ST DEFENDANT

KARIOBANGI SEWERAGE FARMERS 2ND DEFENDANT

AND

NAIROBI CITY WATER & SEWERAGE SERVICES CO LTD PROPOSED DEFENDANT

(In respect of the Proposed 3rd Defendant’s Notice of Motion application dated 17th September, 2024 seeking to be joined into the proceedings as a 3rd Defendant)

RULING

Background

1. Before me for determination is the Proposed 3rd Defendant’s application dated 17th September, 2024 expressed to be brought under the provisions of Order 1 Rule 10(2) of the Civil Procedure Rules. The Applicant seeks for orders that:
 - a. This Honourable Court be pleased to join Nairobi City Water & Sewerage Services Company Limited forthwith in these proceedings as a Defendant.
 - b. This Honourable Court be pleased to grant the Applicant herein leave to respond to pleadings filed by the Plaintiff.



- c. Costs of the Application be provided for.
2. The application is supported by the Affidavit of Viola Odhiambo, the Applicant's Legal Officer deponed on the 17th September, 2024. The Deponent avers that the suit herein relates to parcel of Land LR No. 8285/161 on which the Applicant currently provides and manages water services from. Further that the Applicant has identifiable stake and legal interest in the proceedings hence the prayer for joinder as a Defendant.
 3. The Deponent avers that the Applicant stands to be directly affected by any orders that may be eventually issued in this case therefore its participation is necessary for the effective adjudication of the matters in issue herein.

2nd Defendant's Replying Affidavit

4. The application is opposed by the 2nd Defendant through the Replying Affidavit of Issac Abdi Adan, its Chairman, deponed 8th October, 2024. The Deponent avers that the Applicant is part of the 1st Defendant and was created for purposes of managing water and sewerage in the Nairobi City County. At the time of its creation, the 1st Defendant had already allocated the subject property to the 2nd Defendant.
5. The 2nd Defendant contends that the Applicant is fully owned by the 1st Defendant hence cannot have a better interest in the current suit property than the 2nd Defendant.
6. It also argued that the suit property has been the subject of other proceedings in which Judgement has been delivered. He cites ELC 1680 of 1999 and ELC Petition No. 11 of 2010. The Applicant herein was never joined in those earlier proceedings. In the absence of any interest at stake, the application has no merit and ought to be dismissed with costs.
7. I have considered the tenor and import of the application and the rival Affidavit. The only issue for determination is whether the proposed Defendant/Applicant should be joined in these proceedings as a Defendant.

Determination

8. The law on joinder of parties is set out under Order 1 Rule 3 of the [Civil Procedure Rules](#), 2010, which provides as follows: -

“All persons may be joined as Defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.”

9. In the case of *Heifer Project International –vs- Forest City Services Limited & Another* [2012] KEHC 1241 (KLR), the court citing the Code of Civil Procedure by Mulla, 12th Edition at page 498 where stated that: -

“Under the present rule, all persons may be joined as Defendants against whom any right to relief in respect of the same act or transactions is alleged to exist, where if separate suits were brought against such person, any common question of law or fact would arise, though the causes of action against the Defendants may be different, a Plaintiff is entitled under this rule to join several Defendants in respect of several and distinct causes of action subject to



the discretion of the court to strike out one or more of the Defendants on the analogy of Order 1, Rule 2, if it thinks it right to do so.....”

10. In the instant suit, the Applicant maintains that it has an identifiable stake and legal interest on the suit property hence a necessary party to these proceeding. It avers that it carries out its mandate of providing and maintain water services from the suit property. In other words, the Applicant is in possession and/ or occupation of the suit property.
11. The 2nd Defendant contends that the Proposed Defendant is fully owned by the 1st Defendant hence its interests are already taken care of. Its argument is that there is no need of joining the Applicant into these proceedings.
12. It is a well-established principle of law since the old case of *Salomon vs Salomon* (1897) AC 22, that a company is a legal entity in its own right, independent of its shareholders/subscribers. As Lord Denning M.R. restated in *Moir -vs- Wallersteiner* (1975) ALLER 849,

“It is a fundamental principle of our Law that a Company is a legal person with its own corporate identity, separate from the Directors or Shareholders and with its own property rights and interests to which alone it is entitled.”
13. The Applicant therefore being such a entity is independent of the County Government of Nairobi. Even though it is fully owned by the County Government of Nairobi as alleged, it has a right to sue and be sued in its own name, own properties and as well as run its affairs independently.
14. It is noteworthy that the Plaintiff as the originator of this suit is not opposed to the joinder of the Applicant as a Defendant. The opposition by the 2nd defendant against the joinder of the applicant has no basis in law.
15. Order 1 rule 10(2) empowers the court to order joinder of any party whose presence before the court may be necessary for the effectual and complete adjudication and settlement of all questions in the suit. The Plaintiff has amongst other orders, sought payment for damages for trespass. The Proposed Defendant having demonstrated that it has a stake in the suit property, is a necessary party in these proceedings.
16. I am persuaded that the Proposed 3rd Defendant ought to and is hereby joined as a Defendant in this matter.
17. Accordingly;
 - a. Nairobi City Water & Sewerage Services Company Limited is hereby joined in this suit as the 3rd Defendant.
 - b. Subsequently, the 3rd Defendant, is granted leave to file its Defence and response to the Plaintiff’s application pending hearing within 14 days from the date of this Ruling.
 - c. The costs of the application shall be in the cause.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6TH DAY OF NOVEMBER 2024.

M.D. MWANGI

JUDGE



In the virtual presence of:

Mr. Limo for the Applicant

Mrs. Gulenywa for the 2nd Defendant/Respondent

Ms. Kihungi h/b for Mr. Khalif for the 1st Defendant

N/A by the Plaintiff

Court Assistant: Yvette.

