



REPUBLIC OF KENYA



**Opilio v Amuya (Environmental and Land Originating Summons  
3 of 2020) [2023] KEELC 17399 (KLR) (10 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17399 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUSIA  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 3 OF 2020**

**BN OLAO, J**

**MAY 10, 2023**

**BETWEEN**

**FLORENSIO OKITUK OPILO ..... PLAINTIFF**

**AND**

**WYCLIFFE OPILO AMUYA ..... DEFENDANT**

**RULING**

1. What calls for my determination is the Plaintiff's Notice of Motion dated November 29, 2022 in which he seeks the main order that one Givinali Omailo (the Respondent) be enjoined as a 2<sup>nd</sup> Defendant in this case. The application is premised on the provisions of Sections 1A, 1B and 3A of the *Civil Procedure Act* as well as Order 10(2) and (4) of the *Civil Procedure Rules*. It is based on the grounds set out therein and supported by the affidavit of Floren시오 Okituk Opilio (the Plaintiff herein).
2. The gist of the application is that although the Plaintiff filed this Originating Summons against Wycliffe Opilio Amuya (the Defendant herein) seeking orders that he has acquired by way of adverse possession a parcel of land measuring one (1) acre out of the land parcel No South Teso/Apokor/1585, it was discovered during pre-trial that the Plaintiff took possession of the suit land following a sale agreement drawn by Respondent. It is therefore necessary that the said Respondent be enjoined as a 2<sup>nd</sup> Defendant in this case.
3. The application is opposed and the Defendant filed grounds of opposition dated February 24, 2023 describing the application as lacking in merit and which should be dismissed.
4. The application has been canvassed by way of written submissions. These have been filed both by Mr Omagwa instructed by the firm of Omagwa Angima & Company Advocates for the Plaintiff and by Mr Makokha instructed by the firm of J P Makokha & Company Advocates for the Defendant.
5. I have considered the application, the supporting affidavit and the grounds of opposition.



6. Joinder of parties is provided for under Order 1 Rule 10(2) of the *Civil Procedure Rules* and not under Order 10 as cited by the Plaintiff. It reads:

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as 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 to adjudicate upon and settle all questions involved in the suit, be added.”

7. The court has a wide discretion to enjoin a party in proceedings so long as that joinder will assist it to “effectually and completely” adjudicate over the dispute at hand. That power is very wide and a joinder can be done even at the appeal stage. It is clear from the supporting affidavit that the Plaintiff took possession of the land in dispute following an agreement executed by one Givinali Omailo. I have seen a copy of the sale agreement dated February 5, 1997 and which has been filed by the Plaintiff as part of his documents and it clearly shows that Givinali Omailo is described therein as the seller of a portion of land measured 1½ acres to the Plaintiff. I must at this stage point out that the said agreement is in Kiswahili language. Hopefully Counsel for the Plaintiff will ensure that an English version is filed before the hearing date.

8. Having said so, this Court is satisfied that Givinali Omailo is a necessary party in these proceedings. The sale agreement by which the Plaintiff took possession of the suit land describes him as the vendor and the Plaintiff as the purchaser. His presence will therefore assist this court in determining the dispute before it.

9. Ultimately therefore, the Notice of Motion dated November 29, 2022 is hereby allowed in the following terms:-

1. Leave is granted to the Plaintiff to amend his Originating Summons and enjoin Givinali Omailo as the 2<sup>nd</sup> Defendant.
2. The amended Originating Summons be filed and served upon Wycliffe Opilio Amuya and Givinali Omailo within 10 days of this ruling.
3. The said Wycliffe Opilio Amuya and Givinali Omailo shall have 15 days from the date of service to file their respective replying affidavits.
4. The matter shall thereafter be mentioned before the Deputy Registrar on June 7, 2023 for pre-trial and to fix a hearing date once compliance has been confirmed.
5. No orders as to costs.

**BOAZ N OLAO**

**JUDGE**

**10<sup>TH</sup> MAY 2023**

**RULING DATED, SIGNED AND DELIVERED BY WAY OF ELECTRONIC MAIL AT BUSIA ELC  
ON THIS 10<sup>TH</sup> DAY OF MAY 2023.**

**BOAZ N OLAO**

**JUDGE**



10<sup>TH</sup> MAY 2023

