



REPUBLIC OF KENYA



**Watu Credit Limited v Dickson Omonde t/a Dimonde Agencies & Auctioneers & another
(Environment and Land Appeal 29 of 2022) [2023] KEELC 17750 (KLR) (6 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 17750 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND APPEAL 29 OF 2022**

EC CHERONO, J

JUNE 6, 2023

BETWEEN

WATU CREDIT LIMITED APPELLANT

AND

**DICKSON OMONDE T/A DIMONDE AGENCIES & AUCTIONEERS 1ST
RESPONDENT**

BENSON NDIRANGU NGANG'A 2ND RESPONDENT

RULING

1. The applicant/appellant vide a Chamber Summons application dated March 23, 2023 seeks the following orders;
 1. That this Honourable court be pleased to join the Domestic Taxes Department as an interested party to these proceedings.
 2. That the costs of this Application be provided for.
2. The application is based on grounds shown on the face of the said application and the affidavit of Antony Carlos Onyago advocate sworn on even date. The 2nd Respondent filed a Notice of Preliminary Objection and a Replying affidavit in opposition thereto.

Applicant's Summary Of Facts

3. The deponent of the supporting affidavit who is also the advocate for the appellant deposed that the gravamen of the issue arose when the Domestic Taxes Department issued a demand Notice dated January 8, 2021 to the applicant to pay rent owed to the 2nd Respondent as he had tax Arrears amounting to Kshs 8,026,956. A copy of the said demand Notice was annexed and marked WL1. The deponent further deposed that the said demand letter cautioned the applicant that if it failed to



comply with the Notice, it would be personally liable for the above-mentioned amount. He stated that in compliance to the said demand Notice, the applicant stopped paying rent to the 2nd Respondent and requested the 2nd Respondent to first iron out issues with the proposed interested party. He further stated that subsequently, the applicant in consonance with the demand notice, remitted the rent payable to the proposed interested party. He stated that consequently, the 2nd Respondent through a court order dated October 31, 2022 distressed for rent through the 1st Respondent as the appointed Auctioneers.

4. The applicant stated that the joinder of the proposed interested party will result in the complete settlement of all questions involved in this proceedings and that no prejudice will be suffered by any party if the application is allowed.

Respondents Summary Of Facts

5. The 2nd Respondent in his replying affidavit stated that the grounds raised do not merit joining the applicant as interested party, He deposed that the interested party does not have direct personal stake in this proceedings and has not demonstrated how the decision of the court will affect it or the interest it seeks to protect.
6. He stated that the applicant has not clearly identified any proximate interest or stake to be protected and therefore the proposed party should not be joined as an interested party. He further deposed that the applicant views this matter as one of tax when it is not an issue for determination and that the proposed interested party has no direct stake in the present suit and should therefore litigate issues of taxes at the Tax Appeals Tribunal.
7. The 2nd Respondent further stated that the proposed interested party lacks an identifiable stake, a legal interest or duty in the proceedings as the suit before this Honourable Court revolves around Landlord and Tenant relationship and not issues of Domestic tax as described by the applicant. He stated that the allegations by the applicant are peripheral issues, so remote and does not assist this Court in any way
8. In conclusion, the 2nd Respondent deposed that Landlord Tenant relationship is governed by the doctrine of privity of contract and that the applicant has no stake in the present suit

Legal Analysis And Decision

9. I have considered the Chamber Summons application dated March 23, 2023, the supporting affidavit, the Replying affidavit and the applicable law as well as the rival submissions Order 1 Rule 14 CPR under which the application is brought provides as hereunder;

Any application to add or strike out or substitute a plaintiff or defendant may be made to the court at any time before trial by Chamber Summons or at the trial of the suit in a summary manner.”

10. In the case of *Kingori V Chege & 3 Others* (2002) 2 KLR 243 the learned judge set out the guiding principles for joinder of a party as follows;
 1. He must be a necessary party.
 2. He must be a proper party.
 3. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.
 4. The ultimate order or decree cannot be enforced without his presence in the matter.



5. His presence is necessary to enable the effectively and completely adjudicate upon and settle all questions involved in the suit.
11. Again in the case of *Civicon Limited V Kivuwatt Limited And 2 Others* (2015) eKLR, the court observed as follows;

Again the power given under the Rules is discretionary which discretion must be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...From the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in order 1 Rule 10(2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”

12. From the Memorandum of Appeal filed herein, it is clear that the dispute before the trial Magistrate was in respect of rent arrears which governed under the *Landlord and tenant (Hotels, Shops and Catering Establishments) Act* (cap 301). On October 31, 2022, the trial court issued an order for levy of distress of rent by breaking into the premises of the appellant and seizing the proclaimed property in recovery of rent arrears. The appellant has taken issue with the issuance of the said orders on appeal arguing inter-alia that the trial Court lacked jurisdiction o issue the said orders since the subject matter is a business premises and rent dispute which matter falls within the purview of the business premises and Rent Tribunal.
13. The present application seeks to join the Domestic Taxes Department as an interested party to these proceedings. I agree with the 2nd Respondent that the applicant has not clearly demonstrated that the proposed interested party is a proper and necessary party to enable this Court effectually and completely adjudicate upon and settle all questions involved in this appeal.
14. I also agree with the 2nd Respondent that the proposed interested party lacks an identifiable stake, legal interest or duty in these proceedings and the landlord tenant relationship is governed by the doctrine of privity of contract and the allegations by the applicant are peripheral issues regarding determination of who is liable to payment of Domestic tax which this Court lacks the requisite jurisdiction to determine.
15. The upshot of my finding is that the Chamber summons application dated March 23, 2023 is incompetent and the same is hereby dismissed with costs.

Orders accordingly.

DATED, READ AND DELIVERED IN THE OPEN COURT AT BUNGOMA THIS 6TH DAY OF JUNE, 2023

HON E C CHERONO

ELC JUDGE

In the presence of;



1. Mr Onyango H/B for Omeri for Respondent
2. Applicant/Advocate-absent
3. Joy C/A

