



REPUBLIC OF KENYA



Gudka v Ole Koitaat; Sarone & another (Proposed Interested Parties) (Environment & Land Case E001 of 2021) [2023] KEELC 20313 (KLR) (2 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20313 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE E001 OF 2021**

EM WASHE, J

OCTOBER 2, 2023

BETWEEN

BHAVIN ASHWIN GUDKA PLAINTIFF

AND

PETRO SARUNI OLE KOITAAT RESPONDENT

AND

MERIS NOLKILORIT SARONE PROPOSED INTERESTED PARTY

NASHIPAE NOOLBARISHO PROPOSED INTERESTED PARTY

RULING

1. The proposed 1st and 2nd Interested Parties (hereinafter referred to as “the Applicants”) filed a Notice of Motion Application dated March 1, 2023 (hereinafter referred to as “the Applicants”) seeking for the following Orders;-
 - i. That this Application be certified as urgent and heard ex-parte in the first instance for the purposes of Prayer No. 2 and 4 hereof.(Spent)
 - ii. That for reasons set-out in the Certificate of Urgency, this Honourable Court do grant an urgent date when this application may be heard inter-partes.(Spent)
 - iii. That the Honourable Court be pleased to enjoin the proposed 1st and 2nd Interested Parties to this suit.
 - iv. That pending the hearing and determination of this Application, the Honourable Court be pleased to adjourn the hearing of this matter and more specifically the hearing that is scheduled for the 2nd of March 2023. (Spent)



- v. That the Honourable Court be pleased to grant a stay of proceedings pending the hearing and determination of Kilgoris Elc Case No. E002 Of 2023 Meris Nolkilorit Sarone & Another-versus- Leonard Ole Seme & 3 Others in which the Plaintiff herein is the 4th Respondent.
 - vi. That costs for this application be provided for.
2. The prayers sought in the Application have been supported with the grounds contained in the body and the supporting Affidavit sworn on the March 1, 2023 which can be summarised as follows; -
- a. The Applicants are the lawful and recognised wives of the Defendant herein.
 - b. The Applicants have been in occupation and use of the property known as L.R. NO. TRANSMARA/MOYOI/1489 (hereinafter referred to as “the suit property”) since 1989 and 1990 together with their children.
 - c. In essence therefore, the suit property is a matrimonial property in view of their marriage and occupation by the Applicants.
 - d. Unknown to the Applicants and without their express authority and/or consent, the Defendant/Respondent charged the suit property to Equity Bank Limited for a sum of Kshs 3,750,000/.
 - e. The Applicants state that the said Charge executed by the Defendant in favour of Equity Bank Limited was illegal, null and void ab initio for contravening various statutory provisions of the [Land Registration Act](#), No. 3 of 2012, [Land Act](#), No. 6 of 2012 and the [Matrimonial Properties Act](#).
 - f. Further to that, the Applicants claim that Equity Bank Limited in exercise of its statutory powers of sale disposed off the suit property to the Plaintiff herein without giving the mandatory Statutory Notices and only came to be aware of the said sale on the June 14, 2017.
 - g. It is on the basis of this discover that the Applicants filed the proceedings known as Kilgoris Elc Case No. E.002 Of 2023 Between Meris Nolkilorit Sarone & Another-versus- Leonard Ole Seme & 3 Others seeking for a declaration that the Charge dated August 5, 2014 is null and void ab initio.
 - h. The Applicants are therefore seeking to be joined in these proceedings because the eviction orders being sought herein would directly affect their occupation of the suit property and also their proceedings known as Kilgoris Elc Case No. E.002 of 2023.
 - i. In addition to the above, the Applicants are seeking to have this suit stayed pending the hearing and determination of their proceedings known as Kilgoris Elc Case No. E.002 OF 2023 because if this suit is determined before it, then their suit will be rendered nugatory.
3. The Application was duly served on the Respondents but its only the Plaintiff that filed Grounds of Opposition dated March 17, 2023.
4. The Grounds of Opposition dated March 17, 2023 oppose the application on the following basis; -
- a. The Application before the Honourable Court is an abuse of the Court process as the Applicants had already filed the proceedings known as Kilgoris Elc Case No. E002 OF 2023.
 - b. The Plaintiff/Applicant in the present suit is seeking to enforce his ownership rights as provided for under Section 99 of the [Land Act](#) No. 6 of 2012.



- c. The Plaintiff's/Respondent's suit is for recovery of land while the Applicants claim is the irregular selling of the suit property by Equity Bank Limited.
 - d. The Applicants had not approached the Court with clean hands as they had connived or colluded with the Defendant/Respondent to continue trespassing on the suit property.
 - e. The Applicants have not demonstrated any evidence to warrant a joinder or a stay of these proceedings as prayed for.
5. The Application was then heard by way of written submissions with only the Plaintiff/Respondent filing his submissions on the June 6, 2023.
 6. The Honourable Court has duly perused the Application before it, the Grounds of Opposition dated March 17, 2023 as well as the submissions by the Plaintiff/Respondent in details.
 7. The issues for determination can be summarised into two namely, whether or not the Applicants should be joined as interested parties and whether or not this suit should be stayed pending the hearing and determination of Kilgoris Elc Case No. E002 OF 2023.
 8. As regards the first issue of joinder, the applicants have introduced themselves as the wives of the Defendant herein.
 9. The Applicants have further made a claim that the suit property is a matrimonial property on which they reside and/or occupy with their children.
 10. These fundamental facts have not been disputed by the Plaintiff/Respondent in the Grounds of Opposition dated March 17, 2023.
 11. The Plaintiff/Respondent in this suit is seeking to evict the Defendant and/or his family from the suit property as the new owner having purchased the same from Equity Bank Limited through a public auction.
 12. Consequently, the Plaintiff's/Respondent's position is that this suit has nothing to do with the Applicants as it is now his private property and its only possession that he is seeking to obtain.
 13. Order 1 rule 10 (2) of the [Civil Procedure Rules](#), 2010 reads as follows; -

“The Court 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.”
 14. A perusal of the Plaint dated November 12, 2020 shows that the cause of action is strictly against the Defendant/Respondent for failing to hand over possession of the suit property to the Plaintiff/Respondent herein after the registration of his name.
 15. This issue of occupation and/or possession is one that can be determined without the participation of the Applicants herein.
 16. The Defendant/Respondent who was the Chargor is the one under obligation to explain why he has not vacated and/or given quiet possession to the Plaintiff/Respondent herein after the suit property was auctioned.



17. The Applicants in this Application are the wives of the Defendant/Respondent in this suit and their interests can be articulated through their husband the Chargor.
18. This Honourable Court therefore does not find any useful need to join the Applicants herein as interested parties in this suit.
19. The second issue for determination is whether or not this suit should be stayed pending the hearing and determination of the Applicants suit known as Kilgoris Elc Case No. E.002 of 2023.
20. In the Applicants suit known as Kilgoris Elc Case No. E.002 of 2023, the Applicants are seeking to challenge the entire exercise of Charging the suit property to Equity Bank Limited and the purported sale that passed the property to the Plaintiff/Respondent in this suit.
21. The Applicants submission is that if this suit is heard and determined before their suit known as Kilgoris Elc Case No. E002 of 2023 is concluded, then their suit will be rendered nugatory.
22. It is true that the eviction orders herein if granted will technically remove the Applicants from the suit property on the basis of the title issued to the Plaintiff/Respondent in this suit.
23. One of the issues for determination in the Applicants suit known as Kilgoris Elc Case No. E.002 of 2023 is whether the title held by the Plaintiff/Respondent in this suit was lawfully and validly processed by the auction undertaken by the chargee.
24. If the answer to this question is answered to the negative in the proceedings known as Kilgoris Elc Case No.e.002 of 2023, then the eviction orders issued in this proceeding will have rendered the other suit nugatory and an academy exercise.
25. In essence therefore, proceedings known as Kilgoris Elc Case No. E002 of 2023 are interlinked with the present suit.
26. Although this Honourable Court has declined the joinder of the Applicants in this suit, it is of the opinion that the two proceedings should be heard concurrently and determined at the same time to avoid confusing and/or issuing conflicting decisions.
27. In conclusion, therefore, this Honourable Court do hereby make the following Orders as relates to the Application dated March 1, 2023;-
 - a. The application dated March 1, 2023 be and is hereby dismissed.
 - b. This present suit be heard concurrently with the proceedings known as Kilgoris ELC case No.E002 of 2023.
 - c. The costs of this application will abide the outcome of the main suit.

DATED, SIGNED & DELIVERED Virtually in **KILGORIS ELC Court** on **2ND OCTOBER 2023**.

EMMANUEL. M. WASHE

JUDGE

IN THE PRESENCE OF:

Court Assistant: Mr. Ngeno

Advocates for the Applicants: Mr. Kere

Advocates for the Respondent: Mr. Wafula H/B Mr. O M Otieno & Mr. Kamwaro



