



**Munyi v Karani & 20 others (Environment & Land Case
40 of 2014) [2023] KEELC 22544 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 22544 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT & LAND CASE 40 OF 2014
A KANIARU, J
OCTOBER 5, 2023**

BETWEEN

ESTON NJERU MUNYI PLAINTIFF

AND

JOSEPH GACHOKI KARANI 1ST DEFENDANT

MITI NTHIGA & 19 OTHERS 2ND DEFENDANT

RULING

1. I am called upon to make a determination on a Notice of Motion dated 27.10.2022 and filed on 03.11.2022. It is expressed to be brought under Order 1 Rule 10 & 15 of the [Civil Procedure Act](#) (Cap 21) and [Civil Procedure Rules](#) 2010. The applicant – Miti Nthiga is seeking to be joined as a 21st Defendant in this suit. I hereby set out the prayers sought ipsissima verba:
 - a) That this court enjoins the 21st Defendant in these proceedings.
 - b) That the cost of this application be provided for.
2. The application is premised on the grounds, inter alia, that the intended 21st Defendant is from the Rueru clan whose members are the original owners of Land Ref Mbeti/gachuriri/171, the suit land herein, and that the Plaintiff has subdivided the original land but failed to allocate the intended 21st Defendant his portion with a title. That he has been living on the said portion for all his years with his family which is inclusive of his grandchildren and that it is in the interest of justice that he be brought on board. Further that none of the parties in these proceedings will be prejudiced. That he himself shall be greatly prejudiced if the proceedings herein are conducted in his absence.
3. The application came with a supporting affidavit in which the intended 21st defendant reiterated the grounds set out in the Notice of Motion and added that the plaintiff had been carrying himself as the owner of the clan land ref Mbeti/gachururi/171, having first applied for the sub-division of the suit



land in favour of the clan but subsequently registering the parcels as his own leaving out the rightful owners of the portions. That he prays to be joined in the suit in order to urge for his interest.

4. The application was responded to vide a replying affidavit dated 03.02.2023 filed on the same date. It was drawn by the 6th Defendant – James Njiru Mwangi - on behalf of the 1st, 2nd, 3rd, 4th, 7th, 8th, 9th, 10th, 11th, 12th, 13th & 15th Defendants. He deposed, inter alia, that the suit land herein did not belong to Rueru clan but was instead registered in favour of Rueru Group and belonged to particular beneficiaries. He contended that the applicant was not one of them. That the 21st intended defendant had, *vide* Embu PMCC No. 84 of 1991, laid claim to the suit land herein but his plaint was struck out and suit dismissed on 11/11/1992.
5. That the 21st intended defendant did not file any other claim in respect of the suit property and that he has not demonstrated that he has any interest in the suit property to warrant him being joined as a Defendant in this matter. He contended further that the 21st intended defendant's claim that the suit land is property of clan land is a fact that they disagree with and therefore their interests in the suit property are conflicting. That the 21st intended defendant has his own parcels of land that were allocated to him by the clan, that is Mbeti/Gachoka/2814 and 5384, and that his application only serves to delay this matter further. He prayed that the application be dismissed with costs.
6. The 17th Defendant – Lilian Mbuya Mugo, also filed a replying affidavit on behalf of 16th, 18th, 19th and 20th Defendants. She deposed inter alia that the subject matter of this suit is several parcels of land which all originated from parcel no. Mbeti/gachuriri/171 and that the said land did not belong to Rueru Clan but was instead was registered in favour of Rueru Group. That the Applicant was not one of the 18 listed beneficiaries of the said parcel of land (She annexed copies of a letter dated 20th April 1976 by the Adjudication Officer and the Adjudication Record which purports to list the names of the 21 beneficiaries of the said parcel of land).
7. That the suit parcel of land was subdivided into 18 portions which were in the process of being transferred to the rightful beneficiaries but the plaintiff disrupted the process by filing a dispute at the Land Dispute Tribunal without involving all the concerned parties. That all the subdivisions were then registered in favour of the plaintiff who then consolidated them and thereafter subdivided them into several portions which are the subject of this suit. She deposed too that the 21st intended defendant had filed a claim pursuing the suit land herein but his plaint was struck out and suit dismissed. She prayed that the application be dismissed with costs.
8. The 21st intended defendant filed a further affidavit dated 30.01.2023, where he deposed that the issue of Mbeti/gachoka/2814 and Mbeti/gachoka/5364 does not arise here as Mbeti/gachoka/171 was owned by the same people owning Mbeti/gachuriri/171 where he is a member. That the original owners of Mbeti/gachuriri/171 and the 21st intended defendant have always been part and parcel of the group and that he has never moved out of it. Further that the purported list that the 17th Defendant is relying on is false and fictitious and its authenticity is suspect and that the same was elaborate on what was to happen and what happened. He deposed that the Land Adjudication officer advised on the changes that were to happen but that the list of the included members had not been availed by the 17th Defendant, which according to the intended 21st defendant was a deliberate move to deny him his share of the land.
9. The application was canvassed through written submissions. The 21st intended defendant was the only party that filed submissions and this was done on 24.04.2023. In his submissions he mainly reinforced his position as set out in his Affidavits.



10. Joinder of parties is governed by Order 1, Rule 3 of the *Civil Procedure Rules* which provides;
- “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 or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.”
11. The court in the case of *Lucy Nungari Ngigi & 128 others v National Bank of Kenya Limited & another [2015]* eKLR
- “Therefore, joinder of parties is permitted by law and it can be done at any stage of the proceedings. But, joinder of parties may be refused where such joinder will lead into practical problems of handling the existing cause of action together with the one of the party being joined; is unnecessary; or will just occasion unnecessary delay or costs on the parties in the suit. In other word, joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible to or totally different from existing cause of action or the relief. The determining factor in joinder of parties is that a common question of fact or law would arise between the existing and the intended parties. This is the test I shall apply in this case.”
12. The intended 21st Defendant is seeking to be joined in this suit as he contends that he is directly affected by it because he is a beneficiary of the suit land, Mbeti/gachuriri/171. He says he lives on the same land together with the other defendants as well as the plaintiff. He also contends that the list of beneficiaries of the suit land produced by the other Defendants, wherein he is not listed as a member of the group, is fictitious and cannot be authenticated.
13. I do not wish to make a determination on the authenticity of the said list as that is a matter for trial but it is noteworthy that the center of this suit is land parcel Mbeti/gachuriri/171 which all the parties are laying claim to, including the intended 21st Defendant. He is also said to live on the suit land, a fact which has not been disputed by the other defendants and therefore I find that he is directly affected by this suit.
14. I realize well that joinder of a party as a defendant where that party is the one applying to be so joined is not a very straightforward affair. This is so because it is the plaintiff who decides who to sue. The court therefore needs to be careful so as not to impose on the plaintiff a party he never intended to sue. (Please see *Evanson Waitiki Vs Kenya Power & Lightning Company Limited: ELC NO. 87 OF 2012, Mombasa*, where Yano J quoted with approval the decision of Munyao J in *Joseph Leboo & 2 Others Vs Director Of Forest Services & Another: [2013]* eKLR.)
15. But it is not an inexorable legal position that a party can not be joined as a defendant on his own application. Each case should be assessed in light of its own circumstances. Where it becomes clear to the court that the ends of justice can not be effectively met without joinder of the applying party as a defendant, then such joinder should be allowed. In this matter itself, the disputes revolves around Land parcel No. Mbeti/gachuriri/171, which has been subdivided into several portions registered in the plaintiffs name. Among other reliefs, the plaintiff wants the defendants to be evicted from the land. The intended 21st defendant says he lives on the land and the orders made by the court might affect him. Further, the intended 21st defendant not only lives on the land but he also claims the portion he occupies – said to about 30 acres – as his own. It is important to appreciate that the plaintiff views the entire land as his own. The defendants are resisting this and that is why they filed replying affidavit?



The intended 21st defendant is not sued but like the other defendants, he is claiming a portion of the land as his own.

16. It is not very clear to me why the plaintiff did not deem it fit to sue the 21st intended defendant. To this court, given the information available at this stage, it seems likely that the court may make orders which may end up affecting the intended 21st defendant. It would be therefore unfair to reject his plea for joinder. He needs to be allowed to join the suit to agitate for and/or safeguard his interest. The imperative of justice in this case requires that joinder be allowed. Such joinder obviates the injustice that may arise where orders affecting the intended 21st defendant are made without affording him a chance to be heard. I need to point out that neither the plaintiff nor the defendants who are already sued have shown well the likely prejudice that such joinder will cause.
17. In my opinion, the determination of the real issues in controversy between the Plaintiff and the Defendants will need all concerned parties to be before the court. This not only prevents duplication of efforts but also allows the court to determine the reliefs sought and address all common issues of fact and law arising among the parties. Accordingly, to enable the court determine the real issues in dispute among all the parties, the intended Defendant should be joined in the suit. Ultimately, I allow the intended 21st Defendant's application and order that he be joined as the 21st Defendant in this suit. The Plaint shall then be amended to reflect the same within 14 days of today. Costs to be in the cause.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 5TH DAY OF OCTOBER, 2023.

A.K. KANIARU

JUDGE

In the presence of Kamuga for Murigu for 14th & 21st defendants; Mageto for Rose Njeru for 16th, 17th, 18th, 19th & 20th defendants and in the absence of Makori for 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, & 15th defendants

Court assistant: Leadys

Interpretation: English/Kiswahili

A.K. KANIARU

JUDGE

