



Kinyanjui t/a Nyakinyua Ndorua Kanini Kega v Kariuki & 2 others (Environment & Land Case 102 of 2023) [2023] KEELC 22611 (KLR) (2 November 2023) (Ruling)

Neutral citation: [2023] KEELC 22611 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT & LAND CASE 102 OF 2023**

YM ANGIMA, J

NOVEMBER 2, 2023

BETWEEN

**JOHN MBURU KINYANJUI T/A NYAKINYUA NDORUA KANINI
KEGA PLAINTIFF**

AND

DORIS N KARIUKI 1ST DEFENDANT

ESTHER MWIKALI 2ND DEFENDANT

TERY WANJIKU KARIUKI 3RD DEFENDANT

RULING

A. Applicants' Application

1. Vide a chamber summons dated 01.03.2023 brought under Order 1 rules 10 & 14 of the [Civil Procedure Rules, 2010](#) (the Rules) and all other enabling provisions of the law, the Applicants sought the following orders:
 - a. ...spent;
 - b. That the Applicants, Martha Wanjiku Macharia, Esther Nyakio Muhoro, Joseph Mwangi Muhihu (as officials of Nyakinyua Ndorua Kanini Kega Farmers Company) be joined and added as the 2nd Plaintiff in this suit.
 - c. That the honourable court do give directions that the filed pleadings be served upon the Applicants.
 - d. That pending the hearing and determination of this application and of the entire suit, the status quo obtaining at the time of filing the present suit be strictly maintained.
 - e. That the costs of this application be in the cause.



2. The summons was based upon the grounds set out on the face thereof. It was contended that the Applicants were officials of Nyakinyua Ndorua Kanini Kega Farmers Company (the company) on whose behalf the suit was filed. It was also contended that the Plaintiff, John Mburu Kinyanjui, was no longer a member of the company since he had sold his share in the company hence he was not in a position to properly articulate the interests of the company he claimed to represent. It was further contended that the Plaintiff had failed to inform the members of the pendency of the suit in consequence whereof the company had filed Nyahururu ELC No. 14 of 2022 over the same cause of action.
3. The application was supported by the affidavit of Martha Wanjiku Macharia sworn on 01.03.2023 and the exhibits thereto. She stated that she was the current chairperson of the company and that she was swearing the affidavit on behalf of its officials as well as the 580 members of the company. It was stated that the suit was filed in 2002 by the late Wanjiru Ngechu who was the secretary of the company at the material time.
4. It was stated that John Mburu Kinyanjui was not an official or member of the company and that he did not have any authority to act on its behalf. It was further stated that vide a sale agreement dated 14.12.2016 he sold his plot to Wagakinya Self Help Group which was in occupation and possession thereof. It was contended that the Applicants were thus proper and necessary parties to the suit without whose presence the court may not effectively and completely adjudicate and settle all the questions in controversy in the suit. The court was consequently urged to allow the application.

B. Plaintiff's Replying Affidavit

5. The Plaintiff, John Mburu Kinyanjui, filed a replying affidavit sworn on 19.07.2023 in opposition to the application for joinder of the Applicants in the suit. He stated that he was still a member of the company and that he was elected Assistant Secretary in 1996. He asserted that the 1st Applicant, Martha Wanjiku Macharia was a former official of the company who abandoned the company in 2006. He further stated that he had at all times acted in the best interest of the company.
6. It was contended that several attempts had been made to amicably settle any differences with the Applicants and to promote the interest of the company but the Applicants were always inclined to waste members' resources and to hinder the progress of the company.
7. The Plaintiff admitted that he had sold his plot within the company land but contended that he also bought another one elsewhere within the suit properties. The Plaintiff contended that the application for joinder was merely intended to delay the expeditious trial and disposal of the suit hence he urged the court to dismiss it with costs.
8. The 3rd Defendant filed a replying affidavit sworn on 23.08.2023 in opposition to the application, it was contended that the application was incompetent, bad in law, frivolous and otherwise an abuse of the court process. It was contended that the Applicants were not officials of the company and that there was no evidence that the members of the company had authorized them to present the instant application.
9. The 3rd Defendant stated that since the Applicants had filed their own suit vide Nyahururu ELC No. E014 of 2022 they should prosecute their claim separately. It was further stated that there was a leadership dispute amongst members of the company and that the Applicants should not be allowed to drag the Defendants into their internal disputes by joining the instant suit. The court was consequently urged to dismiss the application.



10. There is no evidence on record of the 1st Defendant having filed a response to the application despite having applied for more time to do so.

C. Applicants' Rejoinder

11. The Applicants filed a supplementary affidavit sworn by Martha Wanjiku Macharia on 26.07.2023 in response to the Plaintiff's replying affidavit sworn on 19.07.2023. She stated that the company had not engaged the law firm of Karanja Mbugua & Co. Advocates to act on its behalf in the matter. It was further stated that the said advocate was met with hostility when he attempted to meet the members of the company on the suit property. It was contended that the company's advocates were M/S. Wangechi Wangare & Co. Advocates.
12. It was contended that John Mburu Kinyanjui did not have the interest of the company at heart since had delayed for over 10 years in prosecuting the suit. It was the Applicant's position that the suit ought not to proceed without their input and participation since they were in actual occupation and possession of the land unlike the Plaintiff who had sold his plot. The Applicants also indicated that they intended to apply for consolidation of the two suits.

D. Directions on Submissions

13. When the application was listed for inter partes hearing it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the Plaintiff's submissions were filed on 06.09.2023 but the submissions of the rest of the parties were not on record by the time of preparation of the ruling.

E. Issues for Determination

14. The court has perused the Applicants' chamber summons dated 01.03.2023, the Plaintiff's and the 3rd Defendant's replying affidavits in opposition thereto as well as the Applicants' supplementary affidavit. The court is of the opinion that the following issues arise for determination herein:
 - a. Whether the Applicants have made a case for their joinder in the proceedings.
 - b. Whether the status quo obtaining at the time of filing suit should be maintained.
 - c. Who shall bear costs of the application.

F. Analysis and Determination

a. Whether the Applicants have made a case for their joinder in the proceedings

15. The court has considered the material and submissions on record on this issue. Whereas the Applicants contended that they had demonstrated good grounds for their joinder in the proceedings the Plaintiff and the 3rd Defendant were of a contrary view. The court has noted that whereas the Applicants contended to be officials of the company, the Plaintiff contended that he was an Assistant Secretary of the company.
16. Order 1 rule 10 of *the Rules* stipulate as follows:
 1. Where a suit has been instituted in the name of the wrong persons as Plaintiff, or where it is doubtful whether it has been instituted in the name of the right Plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and



that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as Plaintiff upon such terms as the court thinks fit.

2. 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.
 3. No person shall be added as a Plaintiff suing without a next friend or as the next friend of a Plaintiff under any disability without his consent in writing thereto.
 4. Where a Defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new Defendant and, if the court thinks fit, on the original Defendants.
17. The court is satisfied on the basis of the material on record that the Applicants appear to be members and officials of the company. It would appear from a copy of the minutes of the company dated 2004 that some of the Applicants have participated in the meetings of the company as officials. Whether they were properly elected or appointed is a totally different inquiry which does not belong to this court. The court is thus of the view that the Applicants have a stake in the proceedings and outcome of the instant suit. Their joinder shall be necessary for the purpose of effectively and completely adjudicating upon and settling the issues in controversy once for all. The court is thus inclined to join them collectively as the 2nd Plaintiff in the suit.
18. The court shall further direct that the Plaintiff, John Mburu Kinyanjui, shall serve the Applicants with copies of all the pleadings, affidavits, pleadings and other documents filed in the instant suit. The Defendants shall similarly serve the Applicants' advocates with copies of all pleadings and documents they have filed in the instant suit.

b. Whether the status quo obtaining at the time of filing suit should be maintained

19. Although the Applicants prayed for a status quo order pending the hearing and determination of the suit, they did not lay basis for such order. The court has noted that they did not either in their supporting affidavit or supplementary affidavit lay any legal and factual foundation for the order. They did not inform the court what kind of status they wanted maintained and what was the status obtaining at the time of filing the instant suit in 2002. In the premises, the court is not inclined to grant the status quo order sought.

c. Who shall bear costs of the application

20. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons v Twentsche Overseas Trading Co. Ltd* [1967] EA 287. Although the Applicants have partially succeeded in their application, the court is of the opinion that costs should be in the cause since the main suit is yet to be heard.



G. Conclusion and Disposal Order

- 21. The upshot of the foregoing is that the court finds merit in the Applicants’ prayer for joinder in the proceedings but not the prayer for a status quo order. Consequently, the court makes the following orders for disposal of the chamber summons dated 01.03.2023:
 - a. An order be and is hereby made for the joinder of Martha Wanjiku Macharia, Esther Nyakio Muhoro, and Joseph Mwangi Muhihu as the 2nd Plaintiff in the suit to represent Nyakinyua Ndorua Kanini Kega Farmers Company.
 - b. The prayer for an order of status quo is hereby declined.
 - c. The Plaintiff, John Mburu Kinyanjui shall serve the Applicant’s advocates with copies of all the pleading, applications, affidavits and other documents filed in the instant suit within 14 days from the date hereof.
 - d. The Defendants shall similarly serve the Applicants with copies of all the pleadings, affidavits and other documents they have filed in the instant suit within 14 days from the date hereof.

Orders accordingly.

RULING DATED AND SIGNED AT NYANDARUA THIS 2ND DAY OF NOVEMBER, 2023 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

In the presence of:

Ms. Masheti holding brief for Mr. Karanja Mbugua for the Plaintiff

N/A for the 1st Defendant

Ms. Wangare for the 3rd Defendant

N/A for the 2nd Defendant (deceased)

Ms. Wangechi for the Applicants/Intended 2nd Plaintiff

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Y. M. ANGIMA

JUDGE

