



Wanjiru & 3 others v Tumbo & 9 others; Angachi & another (Applicant) (Environment & Land Case E431 of 2021) [2022] KEELC 2238 (KLR) (5 May 2022) (Ruling)

Neutral citation: [2022] KEELC 2238 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E431 OF 2021**

EK WABWOTO, J

MAY 5, 2022

BETWEEN

MERCY WANJIRU 1ST PLAINTIFF

PETER MAINA NDEGWA 2ND PLAINTIFF

AND

AYUB ASINASIO ANGACHI 1ST APPLICANT

EMILY ADHIAMBO MAKUNDA 2ND APPLICANT

AND

CICILIA TUMBO 1ST DEFENDANT

GILBERT OMWENGA 2ND DEFENDANT

JONNAH NZIOKA 3RD DEFENDANT

SIMON MAINA 4TH DEFENDANT

JOSEPH MATHENGE MWAI 5TH DEFENDANT

HARUN WACHIRA 6TH DEFENDANT

PETER MARIRA GIKONYO 7TH DEFENDANT

WYCLIFFE ONYANGO 8TH DEFENDANT

ANTHONY KILONZO 9TH DEFENDANT

**WILFRED KIPTUM KITUR KIMALAT (SUED AS THE DULY APPOINTED
ATTORNEY OF JAMES KIPKOECH) 10TH DEFENDANT**

AND

AYUB ASINASIO ANGACHI APPLICANT



RULING

1. Ayub Asinasio Angachi and Emily Adhiambo Makunda moved this court through a Notice of Motion Application dated 8th February 2022, seeking for the following orders: -
 - a) Spent.
 - b) That an order do issue joining Ayub Asinasio Angachi and Emily Adhiambo Makunda, the Applicants herein as the 11th and 12th Defendants in the matter herein.
 - c) That the suit herein be amended to reflect the addition of the Applicants as the 11th and 12th Defendants respectively and the Amended Plaint be served upon the parties.
 - d) That an order do issue directing the Plaintiff to avail the pleadings filed in this suit, to Counsel for the Applicants so that the Applicants may be able to respond to the same.
 - e) That costs be in the cause.
2. The Application is supported by grounds stated on its face as well as the supporting Affidavit of Ayub Inyanasio Angachi, sworn on 8th February 2022. In a lengthy affidavit, the Applicant deposed and demonstrated why and how their joinder to the suit will be necessary. He also demonstrated how the applicants have an interest in the matter which necessitates this court to include them as necessary parties.
3. The application was opposed. The Plaintiffs filed a replying affidavit sworn by 2nd Plaintiff Peter Maina Ndegwa on 11th February 2022, The gist of which was that together with the 1st Plaintiff, they were the registered owners of property known as L.R No. Nairobi/Block/107/1131 which was distinct from what the Intended applicants claim to own L.R No. Nairobi/Block/107/I/1131. He also deposed that proceedings in respect to *NAIROBI CMCC NO. 10424 OF 2018* as well as *NAIROBI ELC NO. 824 OF 2016* were in respect to L.R No. Nairobi/Block/107/I/1131 and not L.R No. Nairobi/Block/107/1131 and hence therefore the intended applications failure to conduct due diligence should not be cured by joining the present suit.
4. The Defendants did not oppose the application. Pursuant to the directions of the Court issued on 14th February 2022 the Court directed that the application be canvassed through written submissions. The Plaintiffs filed their written submissions dated 9th March 2022 while the Applicants filed their written submissions dated 1st March 2022.
5. The Applicants submitted that the Plaintiffs seek to impeach the title of the 10th Defendant. In attempting to do so, they have annexed letters from the Director of Survey, and Nairobi Metropolitan Services. The content of those letters are that the numbering of land reference numbers Nairobi/Block/107/1/1118-1134 does not exist and that the correct numbering of parcels of land in Umoja the area is Nairobi/Block/107/1131-1132 and that they derive their ownership and possession of Plot number 5 and 6 from the title of the 10th Defendant. According to the title of the 10th Defendant, his parcel number is Nairobi/Umoja/Block/107/1/1131 (Annexure AIA-4) According to the lease agreement which preceded the title (Annexure AIA-3), the parcel number allotted to the 10th Defendant Nairobi/Block 107/1131 which was erroneously amended by hand to reflect it as Nairobi/Block/107/1/1131 by an advocate known as Mercy Mugo. The lease was prepared by Ezekiel Oduk Advocates.



6. It was further submitted that the Applicants and all the Defendants derive their ownership and possession of the suit property from the 10th Defendant's title. The 10th Defendant has been in possession of the property since 1998. The Plaintiff claims that the 10th Defendant is in possession of its property using documents of another property altogether.
7. Citing the case of Eldoret High Court Civil No. 136 of 2000: *Joseph Njau Kingori -vs- Robert Maina Chege & 3 others* [2002] eKLR where Nambuye J.(as she then was) enumerated four aspects to look at before joining a party to a suit to wit: i) Is a necessary party? ii) A proper party; iii) There is a relief flowing from him to the plaintiff and iv)The ultimate order or decree cannot be enforced without his participation in the proceedings. They submitted that they had met the four aspects and hence there was need for them to be joined to these proceedings.
8. The Plaintiffs on their part maintained their position that the Applicants had should not be joined in the proceedings since the they were the registered owners of property known as L.R No. Nairobi/Block/107/1131 which was distinct from what the Intended applicants claim to own L.R No. Nairobi/Block/107/I/1131.
9. It was further submitted that the mere fact that the Intended Applicants claim to have bought plots within Nairobi/Umoja/Block 107/1/1131 from James Kipkoech who is sued herein as the 10th Defendant does not of itself mean that the said land, namely Nairobi/Umoja/Block 107/1/1131, must be the physical land under contention in this suit since in any event, the said 10th Defendant may own or claim more than one parcel of land in the Republic of Kenya. It would therefore be a huge waste of judicial resources to enjoin the Applicants into a suit whose subject is Nairobi/Block 107/1132 only to establish midstream that indeed Nairobi/Umoja/Block 107/1/1131 relates to a separate parcel of land on the ground.
10. It was argued that Application ought to fail since: a) the intended Defendants have not established that they have an identifiable stake or legal interest in the subject matter of the suit being Nairobi/Block 107/1131 claimed by the Plaintiff; b) being strangers to the matter under contention, the Intended Defendants cannot then aid the court in determining whether the Plaintiff is entitled to the orders sought in the Plaint. c) the intended Defendants do not stand to suffer any prejudice since there is no evidence that the land they claim to own is different from the one under contention in the present suit.
11. I have considered the application and the response that was filed. In my considered view, the sole issue that arise for determination is whether Ayub Asinasio Angachi and Emily Adhiambo Makunda ought to be joined in this suit as a 11th and 12th Defendants respectively.
12. Order 1 Rule 10, (2) of the *Civil Procedure Rules*, which provision states as follows;

“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.”
13. The Black's Law Dictionary defines “interested party” as;-

“A party who has a recognizable stake (and therefore standing) in a matter.”



14. The highest Court in *Francis Kariuki Muruatetu & another v Republic & 5 others* [2016] eKLR set out the broad principles to be considered in an application for joinder to proceedings:-

“From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party: one must move the court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

- i) The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
- ii) The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the court. It must also be clearly outlined and not something remote.
- iii) Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the court...”

15. Lenaola J. (as he then was) in *David Nyekorach Matsanga and another vs Philip Waki and 3 others* [2015] eKLR, said as follows:-

“The issue of enjoining a party as an Interested Party was addressed by the Supreme Court in *Communications Commission of Kenya & 4 others v Royal Media Services Ltd & 7 others* (2014) eKLR in the following words;

“An Interested Party is one who has a stake in the proceedings, though he or she was not a party to the cause ab initio. He or she is the one who will be affected by the decision of the Court when it is made either way. Such a person feels that his or her interests will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. A party could be enjoined in a matter for the reason that;

- i. Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
- ii. Joinder to provide protection of the rights of a party who would otherwise be adversely affected in law;
- iii. Joinder to prevent a likely course of proliferated litigation.

....As was stated in *Communication Commission of Kenya & others* (supra), a party adversely affected, would need to join proceedings filed by another to protect its interests and also to avoid proliferated litigation.”

16. On the ground that joinder can be permitted to allow a party to protect its right which would otherwise be adversely affected in law if absent, Mativo J. in *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others* [2017] eKLR states:-

“The test is not whether the joinder of the person proposed to be added as an interested party would be according to or against the wishes of the petitioner or whether the joinder would



involve an investigation into a question not arising on the cause of action averred by the petitioner. It is whether the intended interested party has an identifiable stake, or a legal interest or duty in the proceedings.

A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights ...”

17. On the threshold to be reached by a party seeking joinder, the holding by Muriithi J. in *Benjamin K Kipkulei v County Government of Mombasa & another* [2015] eKLR is useful:-

“...The test for joinder of a party as an interested party is not that the applicant must show a stake or interest that must prevail in the suit, as that is not possible before the full hearing of the matter; the applicant should demonstrate a legal interest that calls for hearing before a decision on the dispute before the court is adjudicated. In common judicial parlance, I would say that the applicant ought to show on ‘an arguable case’ basis that he has an interest recognized in the law and capable of protection. As a registered proprietor of the suit property upon public auction which is subject of challenge in these proceedings, the proposed party has an identifiable stake and legal interest in the property the subject of, and therefore an interest in, the proceedings before the Court.”

18. Essentially therefore, any person who, though not a party to proceedings pending in court, has an interest in the subject matter of such proceedings to the extent that they will be affected by the decision of the court whichever way the decision goes, then such person qualifies to be termed as an interested party and ought to be allowed to join such proceedings to protect his or her interests.

19. I have considered the Applicants’ averments that they derive their ownership and possession of Plot number 5 and 6 from the title of the 10th Defendant. According to the title of the 10th Defendant, his parcel number is Nairobi/Umoja/Block/107/1/1131 (Annexure AIA-4) According to the lease agreement which preceded the title (Annexure AIA-3), the parcel number allotted to the 10th Defendant Nairobi/Block 107/1131 which was erroneously amended by hand to reflect it as Nairobi/Block/107/1/1131. I have also perused the annexures to their affidavits and it appears that, indeed the Applicants have a stake in these proceedings and it will only be in the interests of justice that they be joined as necessary parties to the suit.

20. Consequently, the Application dated 8th February 2022 is disposed in the following terms;

- i. The intended applicants are hereby joined as 11th and 12th Defendants respectively.
- ii. The 11th and 12th Defendants are hereby granted 14 days from today to file and serve their pleadings in this suit.
- iii. Upon service, the Plaintiffs and the 1st to 10th Defendants are granted leave of 14 days to respond to the pleadings filed by the 11th and 12th Defendants if need be.
- iv. This matter shall be fixed for mention at a date to be issued after delivery of this ruling.
- v. Costs shall abide the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF MAY 2022.

E. K. WABWOTO

JUDGE

In the Virtual Presence of:-



Mr. Kamau for the Plaintiffs

Ms. Nyaboke h/b for Ms. Wamuyu for the 1st- 9th Defendants.

N/A for 10th Defendant.

Mr. Kiptoo for the 11th and 12th Defendants.

Court Assistant: Caroline Nafuna.

