



**Mwaniki v Khandid (Environment & Land Case E011 of 2024)
[2025] KEELC 3744 (KLR) (12 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3744 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E011 OF 2024**

CA OCHIENG, J

MAY 12, 2025

BETWEEN

ANNE GATHIGIA MWANIKI PLAINTIFF

AND

SULEYMAN MOHAMED KHANDID DEFENDANT

RULING

1. What is before Court for determination is the Defendant’s Chamber Summons application dated the 30th October 2024 where he seeks for the following Orders:
 - a. That the Defendant /Applicant be granted leave to issue and serve a Third-Party Notice upon Abdillahi Muigai Muiruri and Kiambu Dandora Farmers Company Limited as per the annexed draft Third party notice marked “SMH4”.
 - b. That the Defendant /Applicant be granted leave to file out of time as per the order timelines.
 - c. Spent.
 - d. Spent.
 - e. That the costs of this application be provided for.
2. The application is based on grounds on its face. They include inter alia; that the Defendant will seek indemnity from the proposed Third Parties for any award that may be found to be liable from the Defendant to the Plaintiff. The application is premised on the Defendant’s supporting affidavit where he avers that on 13th December 2018, he entered into a Sale Agreement for sale of Plot No. 206 zone 11 Sossian, which is a portion of the land known as LR No. 11379/3 with Abdilahi Muigai Muiruri and pursuant to a Variation Agreement made on 9th December 2020, the aforementioned plot was varied to LR No. 11379/3 Plot Number 711 Zone 11 Sossian measuring 7.5 m by 23m and he was issued with a Share Certificate by Kiambu Dandora Farmers Company Limited.



3. He is apprehensive that if he is not granted leave to issue and serve a Third-Party Notice to the intended Third parties, he stands to suffer irreparable loss and damage. Further, that it is necessary that directions be given as regards the question of liability between the intended Third parties and himself and their joinder will avoid multiplicity of suits. He reiterates that he is a purchaser for value without notice.
4. The application is opposed by the Plaintiff who filed a replying affidavit. She contends that the application is instituted in bad faith and is deliberately calculated to delay the expeditious disposal of this suit, citing that there was no reference to it, when the matter was before the court for pretrial directions. Further, that the Defendant's claim against the purported Third parties has nothing to do with her claim against him. She points out that annexure SMH1 in the Defendant's affidavit in support of the instant application, which is a Sale Agreement dated the 13th December 2018 between the Defendant and Abdillahi Muigai Muiruri refers to I.R No. 11379/3 whereas the subject of her claim in this suit is LR 15400/77. She contends that the Defendant has treated this court's orders of 15th July 2024 with impunity as he has not complied with the order for deposit of rent.
5. The application was canvassed by way of written submissions.

Submissions

6. The Defendant in his submissions reiterates his averments as per the supporting affidavit and contends that in the event there was some issues with the property sold to him by the proposed Third parties, he is entitled to contribution or indemnity from them, since he relied on their representations as to ownership and proceeded to purchase the said property.
7. He submits that the question of ownership over the subject property is substantially the same question /issue arising between the Plaintiff and himself and should properly be determined not only as between the Plaintiff and himself but as between the proposed Third parties and himself. Further, that the joinder of Third Parties would be in line with the court's overriding objective of prompt and judicious conclusion of suits, as it would avoid multiplicity of suits between the parties herein.
8. To buttress his averments, he relied on the following decisions: Family Bank Limited v Mutisya & Another (Civil Appeal E076 of 2021) [2024] KEHC 5740 (KLR) (13 May 2024) (Judgment), Birmingham and District Land Company v London and North Western Railways Company (1887) 34CHD261 and Hass Petroleum (K) Limited v Lota Engineering and Construction Limited (Formerly Lota Excavations and Rentals Ltd); White Lotus Projects Limited (Intended 3rd Party) [2021] eKLR.
9. The Plaintiff in her submission contends that the claim for indemnity has no basis in law to justify a Third-Party Notice issuing in the matter as there is no nexus between the suit property and the alleged property that the Defendant purports to have purchased. Further, that if the Defendant has any claim against the alleged Third Parties for the alleged sale agreement and the property allegedly sold to him, he is at liberty to independently move the court and make the claim for the rights, he perceives to have against the alleged Third Parties. She submits that what the Defendant calls "representations as to ownership" received from alleged Third parties is not supported by any evidence before the court nor is it in the defence. Further, that the Defendant does not deserve this court's discretion as he is contempt of its orders of 15th July 2024 as he who seeks equity must do equity.
10. To buttress her arguments, she relied on the following decisions: Issam El Ayham Bayzid & Another v Tosema Investments Ltd & 2 Others [2006] eKLR and ASC Metal, Belgium v Blue Nile (East Africa) Limited & 2 Others [2018] eKLR.



Analysis and Determination

11. Upon consideration of the instant Chamber Summons application including the respective affidavits and rivaling submissions, the only issue for determination is whether the Defendant should be granted leave to issue Third Party Notices to the proposed Third parties.
12. The Defendant seeks leave to issue Third Party Notices upon Kiambu Dandora Farmers Company Limited and Abdilahi Muigai Muiruri in this suit, claiming he purchased the suit property from Abdilahi Muigai Muiruri, but which land emanated from Kiambu Dandora Farmers Company Limited.
13. I note the Plaintiff through a Plaint dated the 15th January, 2024, sought for judgement against the Defendant for:
 - a. A declaration that the Plaintiff is the rightful and registered owner of the parcel of land known as Grant Number IR 115504, LR No. 15400/77;
 - b. A declaration that the Defendant has illegally and wrongfully trespassed into the Plaintiff's property known as Grant Number IR 115504, LR No. 15400/77 in violation of the Plaintiff's right to her property with an order for the Defendant to vacate the property and in default orders of eviction to issue against the Defendant;
 - c. A permanent injunction to issue restraining the Defendant herein his employees, servants, agents or any other person authorized by or claiming through the Plaintiff from trespassing into, entering, occupying, selling, sub dividing, leasing, constructing and or by any manner whatsoever interfering with the Plaintiff's title to the property known as Grant Number: IR 115504, LR No. 15400/77;
 - d. Damages for trespass and illegal occupation of the Plaintiff's property Grant Number: IR 115504, LR No. 15400/77;
 - e. Exemplary/aggravated and/or punitive damages against the Defendant for the conversion use and continued use of the Plaintiff's property over the period of the trespass January, 2021 to the date of surrender and handing over vacant possession of the property to the Plaintiff to be assessed and quantified and proved at the hearing hereof;
 - f. Costs of this suit and interest at court rates thereon;
 - g. Any other relief that this Honourable Court may deem fit to grant.
14. The Plaintiff claims to be the proprietor of the suit property and has produced a Certificate of Title to that effect. She states that the Defendant has encroached on her land, put up permanent structures thereon and is drawing rent therefrom. The Defendant vide his Defence dated the 19th June, 2024 denied the Plaintiff's averments in the Plaint and insists he is the owner of the suit property which was to be hived off the larger 11379/3 Plot 129 Zone 173 by Kiambu Dandora Farmers Company Ltd. The Defendant explains that he purchased the suit property from one Abdilahi Muigai Muiruri vide Sale Agreement dated the 13th December, 2018. Further, that Abdilahi Muigai Muiruri purchased the land from Kiambu Dandora Farmers Company Ltd.
15. The instant application has been vigorously opposed by the Plaintiff who contends that there is no relationship between the suit property and what the Defendant claims to have purchased.



16. On joinder of a Third Party, Order 1 Rule 15 (1) of the Civil Procedure Rules provides as follows;

“(1) Where a defendant claims as against any other person not already a party to the suit (hereinafter called the third party)—

- (a) That he is entitled to contribution or indemnity; or
- (b) That he is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or
- (c) That any question or issue relating to or connected with the said subject-matter is substantially the same question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party or between any or either of them,

He shall apply to the Court within fourteen days after the close of pleadings for leave of the Court to issue a notice (hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers ex parte supported by affidavit...”

17. On close of pleadings, Order 2 Rule 13 of the Civil Procedure Rules provides that:

“The Pleadings in a suit shall be closed fourteen days after service of the reply or defence to counterclaim, or, if neither is served, fourteen days after service of the defence, notwithstanding that any order or request for particulars has been made but not complied with.”

18. On joinder of a Third Party, the Court in *Kenya Commercial Bank v Suntra Investment Bank Ltd* [2015] KEHC 8144 (KLR), held that:

“In law, a third party is enjoined in a suit at the instance of the Defendant and through the set procedure under Order 1 rule 15 – 22 of the Civil Procedure Rules. And, liability between the Defendant and the third party is determined between the Defendant and the third party, but of course, after the court is satisfied that there is a proper question to be tried as to liability of the third party and the Defendant, and has given directions under Order 1 rule 22 of the Civil Procedure Rules.”

19. The Plaintiff argues that a third party notice cannot issue since the subject matter of the suit being LR 15400/77 I.R 115504 is dissimilar to the subject matter of the claim herein which LR No. 11379/3 Plot Number 711 Zone 11 Sossian. I however note that, this is the suit property wherein the Defendant has constructed permanent structures and as a Court, I cannot disregard this fact.

20. The Court of Appeal stated that for a Third-Party Notice to issue, the cause of action ought to bind the Plaintiff, Defendant and Third Party. It stated as follows in *Savji Harji Varsani v Kanjee Naranjee (Kenya) Ltd* [1977] KECA 10 (KLR):

“Be that as it may Kneller J was satisfied that, in his words: The [tenant], [the landlord] and third parties are bound together by the same facts. The issue in the end will be who is



ultimately liable for the damage, if any, suffered by the [tenant] “it is better to have all these matters thrashed out in one suit....In other words, the judge was satisfied that the landlord’s claim against the applicant as Third Party was connected with the original subject matter of the suit and that the was a question relating to, or connected with, the original subject matter which was substantially the same and should be properly determined not only between the tenant and the landlord but also between the landlord and the Third party. The cause of complaint is the same; damage to property by rain water. All the parties were, so to speak, at the scene. The relief sought is the same; damages. The causes of action are the same; negligence and nuisance....”

21. From a perusal of the records, I note the Defendant filed its Defence on 19th June, 2024 but the Plaintiff never filed a Reply to Defence. It is hence my opinion that pleadings ought to have closed by 3rd July, 2024. I note the Defendant has not explained the cause of delay in seeking leave to institute Third Party proceedings. Be that as it may, the Plaintiff in her Plaint confirmed that the Defendant trespassed on the suit property and built a permanent structure thereon.

22. On enlargement of time, Section 95 of the *Civil Procedure Act* stipulates thus:

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”

i. Further, Order 50 Rule 6 of the Civil Procedure Rules states that:

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed: Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.”

23. In the case of *Thachmaanz Ltd v Pride Inn Ltd* [2016] eKLR the Court while dealing with an application for leave to institute third party notice which was filed late, held as follows:

“As correctly pointed out by the Plaintiff the delay is not explained by the Defendant and had it been inordinate then the Court would have outrightly declined to entertain the Application out of time. However, because the Application was filed about 60 days late and before the date set for Case Management Conference this Court is of the view that the delay is not inordinate. An explanation of delay is of vital importance when the delay is extensive. The delay here not being extensive, is excused for the sake of considering the Application on merit. Justice may be better served in that way.”



24. Further, in the case of Yafesi Walusimbi -vs- Attorney General of Uganda (1959) EA 223, the Court emphasized that:

“In order to join a third party the subject between the third party and the defendant must be the same as the subject matter between the plaintiff and the defendant and the original cause of action must be the same.”

25. Insofar as the Defendant filed this application late and has not explained the reason of delay, noting that this matter has not been set down for hearing, and the Plaintiff has not stated what prejudice she stand to suffer if the vendor is joined in these proceedings, I find that in the interest of justice, it would be pertinent if the vendor including the party where the Defendant’s parcel of land emanated from, were brought on board to provide certain answers in respect to the dispute herein.

26. It is against the foregoing, while relying on sections 3 and 3A of the Civil Procedure Act including Order 1 Rule 15 (1) of the Civil Procedure Rules as well as associating myself with the judicial authorities cited above, I find that the proposed Third Parties indeed meet the criteria set out for a Third Party and their involvement will be necessary to enable the court effectually and completely adjudicate upon this suit. I further find that no prejudice will be suffered by the Plaintiff if the proposed Third Party are joined in these proceedings since this matter has not proceeded for hearing.

27. In the circumstances, I will proceed to allow the Defendant’s Chamber Summons application dated the October 30, 2024 and direct that the Third Parties be served with a Notice, within fourteen (14) days from the date hereof. I further direct that upon service, the Third Parties do file their respective responses within fourteen (14) days.

28. The costs will be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12TH DAY OF MAY 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Mohamed for Defendant

Court Assistant: Susan

