



**Njiru Ageria Dev Co Ltd & 3 others v Kiratu & 3 others; Family Bank Limited
(Interested Party); Registrar of Companies (Proposed Defendant) (Civil Suit
E095 of 2019) [2023] KEHC 20239 (KLR) (Commercial and Tax) (14 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20239 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E095 OF 2019
FG MUGAMBI, J
JULY 14, 2023**

BETWEEN

**NJIRU AGERIA DEV CO LTD 1ST RESPONDENT
FRANCIS MWANGI GITHUA 2ND RESPONDENT
S KAIRU WAINAINA 3RD RESPONDENT
NJUGUNA NG'ANG'A 4TH RESPONDENT**

AND

**WAWERU KIRATU 1ST APPLICANT
ALEXANDER ONON 2ND APPLICANT
EDWARD NDIRANGU NDERITU 3RD APPLICANT
LILIAN WAMBUI WAWERU 4TH APPLICANT**

AND

FAMILY BANK LIMITED INTERESTED PARTY

AND

REGISTRAR OF COMPANIES PROPOSED DEFENDANT



RULING

1. Before the court is the application dated November 8, 2022 brought under section 1A, 1B, 3A of the Civil Procedure Act Cap 21 of the Laws of Kenya, Order 1 Rule 10 and 14 of the Civil Procedure Rules, Article 159(2)(d) of the Constitution of Kenya 2010 and all other enabling provisions of the law.
2. It seeks the following orders;
 - i. Spent
 - ii. That the Registrar of Companies be joined to the suit as the 5th defendant.
 - iii. That the plaint be amended accordingly.
 - iv. That leave be granted to all parties to amend their pleadings accordingly.
 - v. That all parties be and are hereby directed to serve their amended pleadings, documents and witness statements upon the Registrar of Companies within fourteen (14) days hereof.
 - vi. That the Registrar of Companies be and is hereby directed to file a defence, company records and a witness statement within fourteen (14) days of service of the amended pleadings.
 - vii. That the honourable Deputy Registrar to effect service of the orders herein upon the Registrar of Companies.
 - viii. That costs of this application be provided for.
3. The application is premised on the grounds spelt out on the face of it and is supported by an affidavit dated November 8, 2022 sworn by Waweru Kiratu, the 1st applicant, on behalf of the 2nd, 3rd and 4th applicants.
4. The totality of the applicants' case is that there is a likelihood that this Honourable Court will make orders directed at the Registrar or Companies concerning directorship and company records of the 1st respondent, hence the need to join the Registrar as a party to the suit. It has also been stated that the Registrar will be instrumental in producing company records for scrutiny and further orders in her capacity as the legal custodian of this information.
5. The applicants submit that the court had issued orders for the Registrar to file a report, which the Registrar failed to fully comply with. That instead, there had been an assertion by the Registrar that the process of linking the 1st respondent company may have been marred with illegalities. These allegations had led to the recall of all online searches and the CR12 which go to the root of the dispute before the Court. The applicants aver that the Registrar will be instrumental in proving the alleged fraudulent dealings as well as ascertaining the true records of the company. These matters, it is submitted, cannot be litigated without such joinder.
6. The application is opposed through a replying affidavit sworn by Francis Mwangi Githua, the 2nd respondent and sworn on behalf of the 1st respondent, on September 19, 2022. The 2nd respondent's main point of contention is that the applicants have not demonstrated why it is necessary to join the Registrar of Companies in the suit, or what reliefs will be sort against the office. This is more so



considering the fact that the dispute relates to who are the bona fide officials of the company. For these reasons the respondents term the application as frivolous and an abuse of the court process.

7. The respondents have pointed out that the Registrar had been directed by the court to file a report which as stated by the applicants, was found to be of no probative value. The respondents find it curious that the application for joinder of the Registrar has been brought by the defendants and not the plaintiffs whose case it is. The respondents submit that they do not seek any remedy or assistance from the Registrar of Companies.

Analysis

8. Parties canvassed the application by way of written submissions both dated December 16, 2022, which I have carefully considered together with the pleadings and evidence presented by each party.
9. The bone of contention in the current proceedings relates to the directorship of a limited liability company. The question that this court is required to answer is whether this and the reasons that have been stated by the applicants are sufficient to join the Registrar's office to the suit, as a defendant.
10. The applicants invoked the provisions of Order 1 Rule 10 (2) of the *Civil Procedure Rules* and correctly so. In exercising the discretion granted under this provision for joinder of parties to a suit, this court must be cognizant of what constitutes a necessary party in a suit. It is well settled that a necessary party is one against whom there is a direct and real right or interest in the reliefs sought or one whose presence is necessary for purposes of passing an effective decree. The party must be present for the court to effectually and completely adjudicate upon and settle all the questions involved in the suit.
11. Certainly, all parties necessary for the effectual determination of a dispute should be joined to the proceedings (See for instance; *Kizito M Lubano v KEMRI Board of Management & 8 Others* [2015] eKLR, *Werrot and Company Ltd & Others v Andrew Douglas Gregory & Others* [1998] eKLR).
12. Turning back to the question before the court, and against the background as I have stated, it is trite that the Kenyan legal system is founded on adversarial principles. A suit belongs to a plaintiff and it is he who must prove the wrong committed to him against the wrong doers he alleges. That the defendants/ applicants have come before the court without a counterclaim to pray for the joining of a party that the plaintiffs/respondents find not necessary is indeed strange.
13. This is predicated on the clear submission by the respondents that they have no claim whatsoever against the Registrar of Companies. The remedies sought in the plaint are in the nature of injunctive reliefs and are against the applicants and not against the Registrar of Companies.
14. To allow the joinder of the Registrar of Companies would be to force a dispute between parties where there is none. In fact, the respondents have referred the court to similar sentiments that were raised in *Carol Construction Engineers Ltd v Naomi Chepkorir Langat* [2019] eKLR.
15. A necessary party to a suit should not be confused with a necessary witness in a trial. A necessary party does not refer to a party who has relevant evidence to give. The questions that the applicants have stated as being critical for clarification by the Registrar would only make the Registrar a necessary witness who may be called before court by either party to testify. This was held in *Amon v Raphael Tuck & Sons Ltd* (1956) 1 All ER 273, cited with approval in *Pizza Harvest Limited v Felix Midigo* [2013] eKLR.
16. In any case, the Court also has powers to summon a witness to testify, if in the Court's view such witness has information that would be useful in deciding in a matter that is before the court.



Determination and Orders

17. In conclusion therefore, I find that the application dated November 8, 2022 is without merit and it is dismissed with costs to the respondents.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 14th DAY OF JULY 2023.

F. MUGAMBI

JUDGE

Court Assistant: Ms. Lucy Wandiri.

