



Lapana Limited v County Government of Trans-Nzoia (Environment & Land Case 8 of 2023) [2025] KEELC 4629 (KLR) (17 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4629 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 8 OF 2023**

**CK NZILI, J
JUNE 17, 2025**

BETWEEN

LAPANA LIMITED PLAINTIFF

AND

THE COUNTY GOVERNMENT OF TRANS-NZOIA DEFENDANT

RULING

1. By an application dated 17/2/2025, the applicant seeks the court to join the Land Registrar Trans Nzoia District as a defendant in this suit. The reasons are contained on the face of the application and in a supporting affidavit sworn by Truphosa Otwala on 17/2/2025. It is deposed that the suit pertains to ownership of Title No. Kitale Municipality Block 10/443, claimed by the respondent. The applicant maintains that the suit land, as public land, is to be utilized for the benefit of the public in the county, whose registration land records are under the custody of the intended defendant.
2. The applicant deposes that the intended party is better placed to authoritatively verify and speak to the official government land records over the plot and therefore, is a necessary and proper party to the suit.
3. Moreover, the applicant deposes that the intended party is the only person capable of enforcing the ultimate orders or decree emanating from the suit. The applicant urges the court to find that the participation of the proposed defendant in the suit is vital and important, there will be a relief flowing from the said party. The applicant states that the law governing land regime in Kenya requires that disputes over land ownership be resolved by diving into the root of title, hence the joinder will result in the complete settlement of all the questions involved in the proceedings.
4. The application is opposed by the respondent through a replying affidavit sworn by Fredrick Sululu Masinde on 19/2/2025. It is deposed that the application was filed only three days before the scheduled hearing with the sole aim of scuttling the suit from proceeding. The respondent deposes that it was the applicant who demolished its buildings standing on the suit land on the night of 7/3/2023, hence



- the cause of action is only brought against the applicant and not the Land Registrar. The respondent terms the application as an afterthought, filed late since 28/2/2023 when the suit was filed.
5. Again, the respondent denies that the intended defendant is not a necessary or property party, hence the application fails the threshold set by the law on the joinder of parties.
 6. Similarly, the respondent deposes that it is not true that the suit land is public land and therefore it has no cause of action against the Land Registrar hence no reason exists to join it as a defendant.
 7. The applicant relies on written submissions dated 19/2/2025. It is submitted that the dispute before the court traces its root to the pre-independence regime, post-independence regime, and finally post-2010 regime and that the intended party being the custodian of the technical records on land matters could have a vital and sacrosanct input to the disposal of the suit. Reliance is placed on Order 1 Rule 10(2) of the Civil Procedure Rules and JMK -vs- MNK & Another [2015] eKLR, on the proposition that the Land Registrar has the technical ability and capacity to ascertain whether the legal process towards ownership of the suit property was followed.
 8. Further, the applicant submits that it has filed the application timeously and has also met the test for joinder as set out in Joseph Njau Kingori -vs- Robert Maina Chege & Others [2002] eKLR, Julius Meme -vs- Republic & Another [2004] eKLR and BWK -vs- Samuel Maina Kungu & Others [2021] eKLR and that the applicant will suffer no prejudice if the application is allowed.
 9. The applicant also submits that the intended party will help the court and the parties understand the history of the suit land, for it is not enough for a party to allege that he holds a certificate of lease or title to property without carrying out due diligence to establish the root of the title as held in Dina Management Ltd -vs- County Government of Mombasa & Others [2023] eKLR, hence the need to join the custodian of land records who has technical know-how for the same.
 10. The respondent relies on written submissions dated 19/2/2025. It submits that it purchased the suit land with developments therein, under a sale agreement dated 27/9/2018 for Kshs. 42,000,000/=, and a transfer was effected on 9/2/2019, following which a certificate of lease was issued to it as the fourth registered owner, which land has an interest of a 99-years leasehold with effect from 1/2/1993.
 11. In addition, the respondent submits that the application falls short of the guiding principles set in Order 1 Rule 10(2) of the Civil Procedure Rules and in the caselaw of Kingori -vs- Chege & Others [2002] 2 eKLR, for being brought too late, as an afterthought, it has no claim against the Land Registrar, no decree or orders could need enforcement by the Land Registrar, the Land Registrar is neither a necessary party nor a proper party and if need be, the Land Registrar can be called as a witness.
 12. Order 1 Rule 10(2) of the Civil Procedure Rules proves that a court may at any stage of the proceedings, with or without an application of either party and on such terms as may appear just, order that for joinder or substitution of a party whose presence whether as a plaintiff or defendant, may be necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit to be added.
 13. In *Deported Asian Property Custodian Board -vs- Jaffer Brothers Ltd* [1999] 1 EA 55, the court said that for a person to be joined on the ground that his presence was necessary, it has to be shown that the orders sought by the plaintiff would legally affect the interests of that person and it was desirable for the avoidance of multiplicity of suits to have the person joined, to be bound by the decision of the court in that suit. As to a co-defendant, the court observed that the defendant has to show that it cannot effectually set a defense it desires to set up, unless that person is joined in it or unless the orders to be made bind that person.



14. In *Civicon Ltd -vs- Kivuwatts Ltd & Others* [2015] eKLR, the court observed that the power to join is discretionary with the objective being to bring on record all the persons who are parties to the dispute relating to the subject matter so that the dispute may be settled in their presence without any protraction inconvenience and to avoid multiplicity of proceedings. The test is that any party reasonably affected by the pending litigation would qualify as a necessary and proper party.
15. In *Julius Meme*, (supra), the court held that joinder is permissible if the presence will result in the settlement of all questions involved in the proceedings, it will protect the rights of a party likely to be adversely affected in law and would prevent proliferated litigation.
16. In *Commercial Bank of Africa Ltd -vs- Isaack Kamau Ndirangu* Civil Appeal No. 157 of 1997 and *Mwanzi Road Properties Ltd -vs- Maina Muchiri* [1996] eKLR, the court defined an adversely affected person by a decision as where it may be difficult to see how the suit against one defendant can be separated from the suit against the intended party.
17. Applying the foregoing case law to the instant suit, the plaintiff sued the defendant by an amended plaint dated 17/3/2023 out of interference, trespass to, and destruction of developments on the suit land which took place on 15/2/2023 and the night of 7/3/2023 while aware of a temporary order of injunction by this court issued on 27/2/2023.
18. The plaintiff prays for declaratory orders of ownership, and that the acts of the defendant amounted to trespass with no justification, general and exemplary damages, and special damages of Kshs.6,850,000/=, temporary and permanent injunction.
19. The defendant opposed the suit through a statement of defense dated 6/11/2024 maintaining that the suit land is public land over which the defendant has no proprietary interest. It is averred that there was an enforcement notice issued before the events of 7/3/2023, since the suit land forms part of Kenyatta Stadium land.
20. It is pleaded by the defendant that the plaintiff prematurely rushed to court and sought orders which were an abuse of the court process, and obtained by misleading the court. The defendant maintains that it has a legal, lawful, and beneficial interest in the land which is part of reserved government land, for putting up public utilities. Even without filing a bonafide counterclaim, the defendant prays for a declaration that it owns the suit land and seeks a permanent injunction to restrain the plaintiff from entry into, or interference with the land. The purported statement of defense and counterclaim has no verifying affidavit.
21. Coming to the list of documents accompanying the statement of defense, the defendant has mentioned letters dated 24/5/2024 and 22/2/2023 from the Director of Surveys and the National Director of Physical Planning. Equally, the defendant has attached a registration of titles ordinance grant No. IR 19234. There is no indication of any report or involvement of the Land Registrar, Trans Nzoia District regarding the suit land before, during, and after the cause of action arose.
22. The role of the Land Registrar Trans Nzoia County has not been pleaded in the statement of defense, to have been a party, privy, and a participant when the cause of action arose such that it can be said that some reliefs or claims flow or affect it such that it can be said that the suit cannot be defended, heard or determined without the participation as a co-defendant in the suit.
23. A cause of action is defined as acts on the part of the defendant that give rise to a cause for complaint for the plaintiff. See *D.T. Dobie (K) Ltd -vs- Muchina* [1980] KECA 3 (KLR). In *PMK -vs- MWM & Another* [2015] KECA 524 [KLR], the court cited *Mbaki & Others -vs- Macharia & Another* [2005] 2 EA 206 on the right of a party to be heard if it will be prejudiced or affected by a decision especially



- where serious allegations are made against such a party. In this suit, the plaintiff has not pleaded any involvement of the intended party to the cause of action.
24. There is no mention in the defendant's pleadings about the involvement of the intended co-defendant in the series of events leading to the cause of action. Public land falls under the custody, management, and superintendence of the National Land Commission. In *Mugenyu -vs- County Government of Nyeri & Others* Civil Appeal E067 of 2023[2025] KECA 593 [KLR] (21st March 2025) (Judgment), the court said that Article 62 of *the Constitution* defines what is public land.
 25. In *Kiptorus & Another -vs- Shajanand Holdings Ltd* Civil Appeal 275 of 2019 [2015] KECA 467 [KLR] (7th March 2025) (Judgment), the court cited *Dina Management Ltd* (supra), that a proprietor must demonstrate that the acquisition was legal, formal and free of any encumbrances.
 26. The court observed that the National Land Commission under *the Constitution* is the one responsible for managing public land on behalf of the National and County Governments. The court cited *Wambui -vs- Mwangi & Others* [2021] KECA, that the sanctity of title vested in a title holder is only challengeable on account of fraud or misrepresentation. Further, the court cited *Benja Properties Ltd -vs- Syedna Mohammed Sahed & Others* [2015] KECA 457 (KLR), where it was observed that a title is protected under Section 23 of the Registration of Titles Act repealed and *the Constitution*.
 27. The court observed that the joinder of the National Land Commission and the Land Registrar was relevant for them to shed light as to the rightful owner of the suit property. The court found that National and County Governments have the mandate to challenge a title irregularly, illegally, and unprocedurally issued over public land and failure to do so would render the title under challenge unimpeachable. The court cited the *National Land -vs- Attorney General & Others* [2014] eKLR, that the National Land Commission on behalf of National and County Governments, has a responsibility to ensure that any titles issued over public land are legitimate, as it has oversight over the integrity of public land titles.
 28. The court held that it was not the duty of a court to compel the attendance of officers of National and County Governments and Land Registrar to testify, otherwise, it would be descending onto the arena of the conflict.
 29. Applying the foregoing case law, the applicant in my view has failed to demonstrate how, in the light of the cause of action and the limited statutory and constitutional mandate of the Land Registrar regarding public land, can be said to be a necessary and relevant party whose role as a co-defendant is critical to the effectual and complete adjudication of a dispute or question raised in a cause of action solely based on an alleged trespass, harassment, and demolition of developments on private land by the agents, servants or employees of the applicant on the night of 7/3/2023.
 30. The defendant has not counterclaimed or pleaded any particulars of fraud or illegality in the issuance of a certificate of lease registered in favor of the plaintiff for 99 years with effect from 1/2/1993. The defendant has not pleaded any non-involvement in the issuance of the certificate of lease by the government. A certificate of lease is prima facie evidence of ownership to be taken as such by a court of law under Sections 25 and 26 of the *Land Registration Act*. There are no reliefs sought by the plaintiff flowing from the intended party.
 31. The upshot is I find the application lacking merits. It is dismissed with costs.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 17TH DAY OF JUNE 2025.

In the presence of:



Court Assistant - Dennis

Ndarwa for the plaintiff present

Mwanga holding brief for Alakonga & Orengi for the defendant present

HON. C.K. NZILI

JUDGE, ELC KITALE.

