

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT**  
**AT ELDORET**  
**ELC CASE NO. E057 OF 2022**

VERONICA SUM (SUING AS THE ADMINISTRATRIX  
OF THE ESTATE OF THE LATE ERNEST SUM.....PLAINTIFF/RESPONDENT

*-VERSUS-*

JOEL SAMOEI.....DEFENDANT/RESPONDENT  
CELINE GEORGE.....PROPOSED 2<sup>ND</sup> DEFENDANT/APPLICANT

**R U L I N G**

1. The present Ruling regards a Notice of Motion dated 03.07.2025 (hereinafter referred to as “**the present Application**”) by one CELINE GEORGE (hereinafter referred to as “**the Applicant**”) seeking the following Orders; -
  - A. **THIS APPLICATION IS CERTIFIED URGENT, ITS SERVICE DISPENSED WITH AND THE SAME TO BE HEARD ON PRIORITY BASIS AT THE FIRST INSTANCE. (SPENT)**
  - B. **THE PROCEEDINGS IN THE INSTANT SUIT BE STAYED PENDING THE INTER-PARTE HEARING AND DETERMINATION OF THIS APPLICATION(SPENT).**
  - C. **THE PROPOSED 2<sup>ND</sup> DEFENDANT/APPLICANT, CELINE GEORGE IS HEREBY JOINED INTO THE INSTANT SUIT AS THE 2<sup>ND</sup> DEFENDANT AND ALLOWED TO PARTICIPATE IN THE PROCEEDINGS.**
  - D. **THE COSTS OF THE APPLICATION BE AWARDED TO THE PROPOSED 2<sup>ND</sup> DEFENDANT/APPLICANT.**
2. The facts in support of the prayers above are contained in the main body of the present Application and the supporting Affidavit attached thereto which are summarised as follows; -

- i) The Late Ernest Kipngetch Sum was the registered owner of the property known as Land Reference NO.2226 measuring approximately 1,300 Acres (hereinafter referred to as **“the suit property”**)
- ii) The Applicant herein did purchase a portion of 100 Acres on the suit property through an Agreement For Sale dated 18.01.1982 with the Late Ernest Kipngetch Sum at a Consideration of Kenya Shillings One Hundred and Forty Thousand (KShs.140,000/-) which was duly paid upon execution of the Agreement For Sale.
- iii) The Applicant thereafter took possession of the 100 Acres within the suit property in the year 1982 and is still in occupation of the same portion of land up to date.
- iv) On the 14.03.1984, the Late Ernest Kipngetch Sum herein did obtain a Consent from the Land Control Board for the sub-division of the suit property to facilitate the creation of a registrable number for the Applicant’s portion of land measuring 100 acres.
- v) Unfortunately, before the sub-division of the suit property and transfer of the 100 acres to the Applicant, the late Ernest Kipngetch Sum became unwell and subsequently did pass away in the same year 1984.
- vi) The 1<sup>st</sup> Defendant herein is an agent and/or employee of the Applicant whose occupation and use on the portion measuring 100 acres of the suit property is on behalf of the Applicant.
- vii) Consequently, the 1<sup>st</sup> Defendant has no proprietary interests on the suit property and cannot effectively defend the cause of action raised in the present suit by the Plaintiff.
- viii) The Applicant is therefore seeking this Court to be joined as the 2<sup>nd</sup> Defendant as the issues before the Court relate to the ownership of the 100 Acres within the suit property which was alienated through the Agreement For Sale dated 18.01.1982.

- ix) The Applicant did further plead that the reliefs sought by the Plaintiff herein would lead to her eviction on the suit property without a fair hearing on the same.
  - x) The Applicant therefore sought this Court to grant the prayers sought in the present application thereof.
3. The present Application was duly served on the Plaintiff herein who did file a Replying Affidavit dated 24.07.2025.
4. In the Replying Affidavit dated 24.07.2025, the Plaintiff did oppose the present Application on the following grounds; -
- i) The Plaintiff herein did plead that the present Application was Res Judicate and/or Sub Judice for the reason that there was another proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO. E054 OF 2025 between CELINE GAKURU GEORGE -VERSUS- VERONICA CHEPSAT SUM & EDEL CHEPKORIR SUM.
  - ii) The deponent of the Replying Affidavit did state that the Administrator of the Estate of Ernest Kipngetich Sum was unwell and consequently, a Letter of Guardian Ad Litem was issued to her on the 20.03.2024.
  - iii) According to the Plaintiff, the dispute over the portion of land measuring 100 acres on the suit property was determined through a Judgement dated 20.11.2017 in the proceedings known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 418 OF 2012.
  - iv) However, despite the Judgement pronounced on the 20.11.2017 in the proceedings known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 418 OF 2012, the 1<sup>st</sup> Defendant and the Applicant herein have remained in the suit property thereby necessitating the Plaintiff to make numerous complaints to the law enforcement offices.

- v) In addition to the above, the 1<sup>st</sup> Defendant in the present file was Ordered to vacate the suit property through the Orders dated 13.03.2023 but failed, neglected and/or refused to do so.
  - vi) Consequently thereof, the Court did find him in contempt of the Court Orders issued on the 13.03.2023 and was a total fined Kenya Shilling Nine Hundred Thousand (KShs.900,000/-) on 28.04.2025.
  - vii) The Plaintiff further did plead that the Applicant herein was a party in another proceeding known as ELDORET SUCCESSION CAUSE NO. 23 OF 1985 which she sought to rely upon the application for joinder as an Interested Party in the proceedings known as ELDORET SUCCESSION CASE NO. 38 OF 2018.
  - viii) In conclusion therefore, the Plaintiff did plead that the efforts by the Applicant to be joined in this suit was to re-litigate a dispute that had already been concluded and the therefore the present Application should be dismissed.
5. The Court did direct that the present Application be canvassed by way of written submissions.
6. In compliance with the above direction, the Applicant filed the submissions dated 12.11.2025 while the Plaintiff did file their submissions on the 19.08.2025.
7. The Court has carefully perused the present Application, the Response thereof, the submissions and identified the following issues for determination; -
- ISSUE NO.1- WHETHER OR NOT THE APPLICANT HEREIN SHOULD BE JOINED AS A DEFENDANT?**
- ISSUE NO. 2- WHETHER OR NOT THE PRESENT APPLICATION IS MERITED?**
- ISSUE NO.3- WHO BEARS THE COSTS OF THE PRESENT APPLICATION?**
8. The Court having identified the above-mentioned issues for determination, the same will now be discussed as provided below.

**ISSUE NO.1- WHETHER OR NOT THE APPLICANT HEREIN SHOULD BE JOINED  
AS A DEFENDANT?**

9. The first and main issue for determination is whether or not the Applicant herein should be joined as a Defendant.
10. According to the Applicant, the portion of 100 Acres which is in occupation and use by the 1<sup>st</sup> Defendant on the suit property belongs to the Applicant herein.
11. The Applicant did acquire ownership rights of the 100 acres of the suit property through an Agreement For Sale dated 18.01.1982 with the late Ernest Kipngetich Sum.
12. Unfortunately, the Late Ernest Kipngetich Sum did rest in the year 1984 before the portion of 100 acres on the suit property would be excised from the suit property and transferred to the Applicant herein.
13. Consequently, the present suit herein has been instituted against an agent and/or employee of the Applicant yet the issues for determination will affect the legality and ownership of the 100 acres within the suit property which is the asset of the Applicant.
14. As such, the Applicant did plead and submit that it is a necessary party and in particular the substantive Defendant.
15. The Plaintiff on the other hand did acknowledge that there was a dispute between the Late Ernest Kipngetich Sum and the Applicant herein over the alleged purchase of 100 acres on the suit property.
16. The Plaintiff did plead and submit that the dispute over the alleged purchase of 100 acres on the suit property was litigated in the proceedings known as ELDORET ENVIRONMENT & LAND CASE NO. 418 OF 2012 which was determined through a Judgement dated 20.11.2017.

17. However, despite the Judgement of the ELDORET ENVIRONMENT & LAND CASE NO. 418 OF 2012 pronounced on the 20.11.2017, the 1<sup>st</sup> Defendant who is a stranger in the suit property but is alleged to be an agent and/or employee of the Applicant herein refused, neglected and failure to vacate the suit property.
18. Based on the above conduct, the Plaintiff herein did file the present suit seeking for eviction of the 1<sup>st</sup> Defendant.
19. However, the Court did Order that the 1<sup>st</sup> Defendant do vacate the suit property pending the hearing and determination of the present suit on the 10.03.2023.
20. Unfortunately, the 1<sup>st</sup> Defendant once against failed, neglected and/or refused to comply with the Orders of the Court made on the 10.03.2023 and was found to be in Contempt of the same on the 28.04.2025 and was fined a sum of Kenya Shillings Nine Hundred Thousand (KShs.900,000/-).
21. In essence, the Plaintiff averred that the Applicant's efforts to be joined in the present suit as a Defendant is in an effort to re-litigate the issues resolved in the judgement pronounced on the 20.11.2017 in the proceedings known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 418 OF 2012.
22. To resolve this issue, the Court is guided by the provisions of Order 1 Rule 3 of the Civil Procedure Rules, 2010 which state as follows; -

***“All persons may be joined as Defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative where, if separate suits were brought against such persons any common question of law or fact would arise.”***

23. According to the above proviso, there are a number of ingredients that a Court should look at while considering an application for joinder as a Defendant.
24. The first ingredient is whether or not the reliefs sought by the Plaintiff or the Court can likely give in favour of the Plaintiff will directly and/or indirectly affect the right of the Applicant seeking to be joined as a Defendant.
25. In the present suit, the Plaintiff herein is seeking a Permanent Injunction against the Defendant from trespassing, encroaching and/or developing any structures of the suit property herein.
26. In addition to the above, the Plaintiff is seeking for an Order of demolition of all the developments and structures that are in the use and occupation of the Defendant on the suit property herein.
27. The cause of action pleaded by the Plaintiff is that the Estate of Ernest Kipngetch Sum are the lawful registered owners of the suit property and the Defendant is a trespasser on the same.
28. The Defendant did file a Statement of Defence dated 09.06.2025 in which he did disclose and admit that his occupation on the suit property was on instructions of the Applicant herein who had purchased a portion 100 acres through an Agreement For Sale made in 1982 and took occupation in the same year.
29. The Plaintiff in response to this fact by the 1<sup>st</sup> Defendant and the Applicant pleaded that the issue of the alleged Agreement For Sale between the Applicant and the late ERNEST KIPNGETCH SUM was litigated in the proceedings known as ELDORET ENVIRONMENT & LAND CASE NO. 418 OF 2012 and the judgement pronounced on the 20.11.2017.
30. As such, the attempt by the Applicant herein to be joined in the present suit as a Defendant based on the Agreement For Sale dated 18.01.1982 is to re-open and/or re-litigate on issues that have already been determined by a Court of competent jurisdiction.

31. Looking at the two positions by the Plaintiff and the Applicant, it is important to confirm the causes of actions in the present suit and the proceeding known as ELDORET ENVIRONMENT & LAND CASE NO. 418 OF 2012.
32. According to the Judgement pronounced on the 20.11.2017 in the proceedings known as ELDORET ENVIRONMENT & LAND COURT CASE NO.418 OF 2012, the matter had been instituted by the Applicant herein against the Plaintiff herein.
33. The Applicant's cause of action in the proceedings known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 418 OF 2012 was the ownership of the 100 acres within the suit property based on the Agreement for Sale executed on the 02.07.1984 for a consideration of Kenya Shillings Eight Hundred Thousand (KShs.800,000/-).
34. In the reliefs sought by the Applicant in the proceedings known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 418 OF 2012 was an Order of Specific Performance directed to the Plaintiff herein to excise the 100 acres within the suit property and transfer the same to the Applicant.
35. However, in its judgement dated 20.11.2017 in the proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 418 OF 2012, the Court did make the following finding; -  
  

***“This Agreement was entered into on the 02.07.1984. However, the same was entered into without the consent of the Chargee (Agricultural Finance Corporation) and therefore, the same is not enforceable.”***
36. In essence therefore, the legality of the Agreement for Sale dated 02.07.1984 over the portion of 100 acres on the suit property between the Plaintiff herein and the Applicant was determined with finality.
37. As regards the present suit, the cause of action pleaded by the Plaintiff against the Defendant herein is that of trespass and encroachment on the suit property.

38. The reliefs sought are a permanent injunction and eviction against the Defendant who is still in occupation and use of the 100 acres within the suit property registered in the name of the Plaintiff.
39. Consequently therefore, the reliefs sought by the Plaintiff or any other orders that may be issued by this Court will only be directed to the Defendant based on whether he is a trespasser or not.
40. The Judgement pronounced on the 20.11.2017 in the proceedings known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 418 OF 2012 had already determined the ownership of the 100 acres as between the Plaintiff herein and the Applicant.
41. The Applicant's allegation that he is the beneficial owner of the portion of land measuring 100 acres within the suit property based on the Agreement For Sale dated 02.07.1984 is actually *Res Judicata* and any attempt to have a second bite at the cherry.
42. The second ingredient in the consideration of an application for joinder of a Defendant is the transaction that resulted to the litigation before the Court.
43. According to the Plaintiff in the present suit, the transaction and/or cause of action against the Defendant is trespass on the suit property.
44. On the other hand, the transaction and/or cause of action being relied upon by the Applicant herein against the Plaintiff is the Agreement For Sale dated 02.07.1984.
45. The transactions and/or causes of actions between the Plaintiff and the Defendant in the present suit are different from the transaction and/or cause of action between the Plaintiff and the Applicant.
46. In fact, on the basis of the finding in Ingredient No. 1, the legality of the transaction between the Plaintiff and the Applicant in regards to the

Agreement For Sale dated 02.07.1984 was fully determined by a Court of law and there is nothing more to litigate.

47. The third and last ingredient is whether there is any question of law and fact that can arise between the parties in the litigation.
48. In the present suit between the Plaintiff and the Defendant, the issue of law and fact that arises is whether the occupation and use of the 100 acres on the suit property is lawful or not.
49. The issue that the Applicant if joined in the present suit will raise is whether the Agreement For Sale dated 02.07.1984 over the portion of 100 acres on the suit property belongs to the Plaintiff or the Applicant.
50. Once again keeping in mind that the issue as to whether the Agreement For Sale dated 02.07.1984 was legal and binding or not was determined in the Judgement pronounced on the 20.11.2017, then the same cannot be entertained in the present suit.
51. In essence therefore, this Court is of the considered view and finding that the Applicant herein is not a necessary party in the present suit as all the issues it seeks to raise for determination were resolved in the Judgement pronounced on the 20.11.2027 in the proceedings known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 418 OF 2012.

#### **ISSUE NO. 2- WHETHER OR NOT THE PRESENT APPLICATION IS MERITED?**

52. Based on the finding in Issue No. 1 hereinabove, the Court hereby makes a finding that the present suit is not merited.

#### **ISSUE NO.3- WHO BEARS THE COSTS OF THE PRESENT APPLICATION?**

53. Keeping in mind that the present application is not merited, the Applicant is condemned to pay the costs to the Plaintiff.

#### **CONCLUSION**

54. In conclusion, the Court hereby makes the following Orders in determination of the present Application; -

**A. THE NOTICE OF MOTION DATED 03.07.2025 IS NOT MERITED AND THEREFORE DISMISSED FORTHWITH.**

**B. THE APPLICANT CELINE GEORGE IS CONDEMNED TO PAY COSTS TO THE PLAINTIFF HEREIN ONLY.**

**DATED, SIGNED & DELIVERED** Virtually at **ELDORET ELC** this **15<sup>TH</sup> DAY OF DECEMBER 2025.**

**EMMANUEL.M. WASHE**  
**JUDGE**

**IN THE PRESENCE OF:**

Court Assistant: Brian

Counsel for Plaintiff: Ms. Isiaho holding brief for Mr. Gichana for the Plaintiff/Respondent (N/A)

Counsel for the Defendant: Mr. Bett for the Defendant (N/A)  
Mr. Kenei for the Applicant