



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ELCA NO. E038 OF 2023

HELLEN WANJIKU MACHARIA.....
APPELLANT

VERSUS

PEMI PHARMACY LIMITED.....1ST
RESPONDENT

THE LAND REGISTRAR, KIAMBU.....2ND
RESPONDENT

PETER MUKANGU MWANGI.....3RD
RESPONDENT

***(Being an Appeal against the Ruling of Hon. M. A. Opondo,
SPM delivered in MCELCC E012 OF 2021 at Kiambu on 19th
April 2023)***

JUDGMENT

1. In the Ruling dated and delivered on 19/04/2023 in **CM ELC Case No. E012 OF 2021**, the Learned Hon. M. A. Opondo SPM held:

“21. This Court is of the view that the proposed interested parties’ application has met the threshold set out in the Muruatetu case (Supra).

Therefore, I allow the Application and make the following orders:

i. This Honorable Court grants leave for Peter Mukangu Mwangi to be enjoined as an Interested Party in this suit ...”

2. Vide a Memorandum of Appeal dated 3/05/2023, Hellen Wanjiku Macharia, the Appellant herein who was the Plaintiff before the trial Court in **Kiambu MCELC Case No. 12 of 2020** preferred this appeal challenging that particular Ruling delivered by the Senior Principal Magistrate Hon. M.A. Opondo on 19/04/2023.
3. The brief background to the matter at hand is that the Appellant herein sued the 1st and 2nd Respondents in a Plaint dated 24/11/2021 seeking a declaration that the Certificates of Title issued to the 1st Defendant for the suit property **GATAMAIYU/KAMBURU 3053 & KIAMBAA/THIMBIGUA/6492** are null and void and so she sought a revocation of these titles which were a replacement issued to the 1st Defendant and also a rectification of the records and register at the Land’s Registry in Kiambu.
4. Contemporaneously with the Plaint the Appellant also filed a Notice of Motion seeking injunctive orders against the 1st Respondent which were issued and the 2nd Respondent was also estopped from revoking the Certificates of Title in the meanwhile. The orders were issued by Hon. M. Kinyanjui (M/S) Principal Magistrate on 8/12/2021. At the same time,

she placed restrictions on the suit properties by requesting orally through the Ministry of Interior which authorized the same vide a letter dated 8/02/2021.

5. The restrictions were however removed vide an application dated 2/09/2021 which was filed as a Miscellaneous Application by the 1st Respondent and the Interested Party. The Court through Hon. G. Omodho (Ms) vide the order dated 14/10/2021 granted the order sought in that application.
6. Vide a Chamber Summons dated 17/10/2022 Peter Mukangu Mwangi filed an application under Order 1 Rule 10 (2) and Rule 14 of the Civil Procedure and Sections 3A, 1A and 1B seeking joinder to the suit since he had not been enjoined. Among other grounds he stated that in the interest of justice and for the Interested Party to be heard on his claim against the Plaintiff/Appellant it is imperative that he be enjoined as an Interested Party and to be included as a Defendant.
7. He averred in the Supporting Affidavit that on 6th September 2014 he entered into an agreement with Esther Mukami Thiong'o and he purchased one of the suit properties being **KIAMBAA/THIMBIGUA/6492** he paid Kesh 12,000,000 for the parcel as evidenced by annexure '**PMM-1**' being the bank transfer slip.
8. That on 6th May 2017 he entered into an agreement with one Susan Nyambura Ndichu and purchased the other suit property being **GATAMAIYU/KAMBURU 3053** as evidenced

by annexure '**PMM-2**' being the bank slip evidencing the payment made.

9. It was his averment that he had a domestic issued in July 2017 and upon consulting his family he agreed to transfer both parcels to a close relative but who was not a blood relative and that is how the Plaintiff was chosen since she was married to the Interested Party's brother.
10. According to the Interested Party it was implied that through understanding between the Interested Party and the Appellant that she would later transfer the property back to his name.
11. It is the Interested Party's contention that he has been in possession having collected the original titles to the suit property. That he has embarked on developing the suit properties and the Appellant did not object.
12. That later upon the Plaintiff separating from the brother of the Interested Party advertised the suit properties in the Kenya Gazette seeking issuance of provisional titles on the false misrepresentation that the title deeds were lost. The Interested Party challenged the issuance of provisional titles by presenting the original titles to the District Land Registrar and his objection was upheld.
13. That the Interested Party has come to learn that vide the suit filed in the Subordinate Court **ELC Suit No. 121 of 2021 Hellen Wanjiku Macharia vs PEMI Pharmacy Limited and the Land Registrar Kiambu** the Appellant is

seeking to cancel the registration of the 1st Respondent on account of fraud but the Interested Party contends that the Appellant seeks to dispossess him of his property. Thus, he avers that the outcome of the suit in the lower Court shall have a direct bearing on the interest of the Interested Party and therefore he should be enjoined as an Interested Party and Defendant to protect his interests since the Plaintiff/Appellant will suffer no prejudice with his joinder.

14. On her part the Appellant filed Grounds of Opposition dated 6/02/2023 and averred that the Interested Party had no locus standi in the suit, terming the application as misconceived, bad in law, frivolous, vexatious and an abuse of the Court process. She asked the Court to dismiss the application.
15. The Senior Principal Magistrate found for the Interested Party and granted leave for Peter Mukangu Mwangi to be enjoined to the suit as an Interested Party. At the same time the Court directed all parties to file any amended pleadings, lists of witnesses together with witness statements and lists of documents together with copies and to include the Interested Party as a Defendant.
16. Aggrieved by the trial Court's decision, the Appellant preferred the current appeal on the following grounds;
 - 1) The Learned Trial Magistrate erred in Law and in fact and misdirected herself by not considering and taking into account the Appellant's Grounds of

Opposition and insisting on joining the 1st Respondent as an Interested Party to the suit, despite ample evidence of the existence of a parallel suit by the 1st Respondent proceeding in a Court of competent jurisdiction

- 2) The fore going notwithstanding the learned trial Magistrate's gross misdirection in fact and in law by failing to appreciate the Appellant's Grounds of Opposition that clearly demonstrated dismissal of an application for consideration of the parallel suit filed by the 3rd Respondent and the suit that is subject of this appeal by the Appellant herein was counterproductive.
- 3) That the learned trial magistrate erred in law and fact by relying on extraneous considerations and inferences and/or misapprehended the law by making a determination on the existence of a resulting trust between the Appellant and 1st Respondent which issue is under consideration in another Court of competent jurisdiction and thereby arriving at an erroneous decision.
- 4) That by relying on extraneous considerations and inferences the learned magistrate erred in law and fact because by relying on such inferences the same had the possibility of misleading the Court to arrive at wrong findings, determination and/or decision on

the existence of a direct interest accruing to the 3rd Respondent in the suit by the Appellant

- 5) That by further failing to rely on Appellant's Grounds of Opposition the learned trial Magistrate erred in Law and fact by considering the substance of the claim before another Court of competent jurisdiction thereby failing and/or altogether neglecting to consider, factor and allow applicability of the *sub judice* rule against the 3rd Respondent herein hence arriving at a wrong decision against the Appellant.
- 6) The Learned trial Magistrate misdirected herself in law and fact in affirming the erroneous and illegal position that the 3rd Respondent be joined as a Defendant in the suit by the Appellant in the absence of an identifiable cause of action against him potentially introducing a new cause of action and altering the nature of the suit.
- 7) The Learned trial Magistrate misdirected herself in law and fact in affirming the erroneous and illegal position that the Respondent has the liberty to forum shop and litigate a claim in more than one Court having competent jurisdiction in Kenya.
- 8) The Learned trial magistrate greatly misdirected herself in treating the submissions of the Appellant very superficially thereby arriving at a wrong conclusion

9) That the learned trial magistrate erred in law in delivering a Ruling that was wrong by affirming an irregular legal position

17. The Appellant in his appeal sought for the following orders;

i. That the Ruling of the learned Magistrate delivered on 19th April, 2023 in the Chief Magistrate's Court at **Kiambu MCELCC/E012 of 2021** allowing the 3rd Respondent's application be set aside and/or vacated.

18. When this Appeal came for directions, it was agreed that the same be canvassed by way of written submissions.

19. The Appellant filed submissions dated 30/10/2023 and submitted that the 3rd Respondent/Interested Party should not be enjoined since his joinder to the suit adds no probative value. That if the Interested Party wanted to litigate on the issues, he should have filed his own suit instead of seeking to be enjoined.

20. The Appellant further contends that the Interested Party had other parallel proceedings being **MCELC/E002/2024** which he sought to have consolidated with the instant suit but it was declined for want of meeting the requisite principles set out in consolidation of suits since the two suits raised different questions of law. At the same time the Magistrate stated that it was too early to consolidate.

21. The Appellant submits that the Magistrate thus erred for failing to consider the submissions they filed and this led to an error in law and fact in the Ruling delivered.
22. According to the Appellant the finding by the Learned Magistrate of existence of an implied trust between the Appellant and the 3rd Respondent was an error since there was no existence of facts to support this finding. In their submissions the Appellant relied on case of **Skov Estate Limited & 5 Others vs Agricultural Development Corporation & Another [2015]eKLR**.
23. On their part, the 1st to 3rd Respondent identified one central issue being whether the trial Court erred in finding that the 3rd Respondent should be included as an Interested Party/3rd Defendant and who should pay costs.
24. They submitted that they proved that they not only bought the suit property vide the sale agreement submitted by that they had title deeds, they showed proof of payment for the suit property by producing bank statements showing wire of funds and they also produced pictures depicting actual possession by the 3rd Respondent/Interested Party.
25. The Respondents submitted that the Appellant did not show demonstrable proprietary interest in the suit property. They relied on the cases of **Francis Kariuki Muruatetu & Another- vs- Republic & 5 Others Petition No. 15 as Consolidated with No. 16 of 2013 (216)eKLR** and **Shah vs Mbogo & Anot (1968)**.

26. It was the Respondents' submission that the Appellant will suffer no prejudice since she will have an opportunity to defend her property rights against claims by the 3rd Respondent. The 3rd Respondent urged the Court to dismiss the appeal.

Analysis and Determination

27. I have considered the Memorandum of Appeal, the Record of Appeal and the submissions by the parties. The application for joinder by the 3rd Defendant/Interested Party involved the exercise of judicial discretion by the Learned Judge and, generally, joinder application if interest of those seeking joinder is clearly should be freely allowed if this can be made without injustice to the other side.

28. A party seeking to be joined must show a direct, legally recognized interest, potential prejudice if excluded, and relevant submissions. Joinder applications by law are generally considered while proceedings are ongoing. The Court exercises its discretion to ensure all questions in the suit are fully resolved.

29. The Court's authority to add a party is primarily based on Order 1 Rule 10(2) of the Civil Procedure Rules.

30. The provisions of Order I rule 10(2) of the Civil Procedure Rules, 2010 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.” [emphasis is mine].

31. The rules of joinder of parties to a suit are settled. In the case of **Joseph Njau Vs Robert Maina & 3 Others HCCC NO. 136 of 2000**, the Learned Judge enumerated the guiding principles as thus; the party must be a necessary party; must be a proper party; in case of a Defendant there must be relief flowing from that Defendant to the Plaintiff; the ultimate order or decree cannot be enforced without his presence in the matter; his presence is necessary to enable the Court to effectively and completely adjudicate upon and settle all questions involved in the suit.
32. The Court of Appeal has equally set down the necessary threshold to be met for joinder of parties in the **Civil Appeal Case of Francis Kariuki Muruatetu & Anor. Vs Republic & 5 Others (supra)** where the Court held that the Applicant must demonstrate the personal interest that she has in the matter by laying sufficient grounds before the Court; the

prejudice she would suffer if she is not enjoined as Interested Party; set out the case that she intends to make before the Court and demonstrate the relevance of the evidence being proffered to the Court in determining the issue in controversy.

33. **Black's Law Dictionary 9th Edition at page 1232** defines an Interested Party as;

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

34. The **Cambridge Dictionary** (online) defines an Interested Party as ***"any of the people or organizations who may be affected by a situation."*** The term is defined in the **LexisNexis Website** as ***"any person (other than the Claimant and Defendant) who is directly affected by the claim."*** It has been stated further in the Website that a person will be directly affected by the claim if he or she will be affected by the grant of a remedy in the proceedings.

35. In **Judicial Service Commission v Speaker of the National Assembly & Another [2013] eKLR**, the High Court stated that the Interested Party-

"... is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to urge the Court to make a determination favourable to his stake in the proceedings."

36. In **Trusted Society of Human Rights Alliance v Mumo Matemo & 5 Others** [2014] eKLR, at Para 18, the Supreme Court defined the term as-

“... one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is 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 interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause.”

37. The Court in determining whether or not a person is indispensable or a necessary party, the Court must carefully examine the facts of the case, the relief sought and the nature and extent of the absent parties' interest in the controversy raised in the suit.

38. From the foregoing, it is definite that an Interested Party is a person or a legal entity that would be directly affected by the decision of a case either determined before a Tribunal or a Court of Law especially if it is determined in favour of the adversary.

39. A perusal of the Ruling of the Hon Magistrate indicate that the conditions set out for joinder to a suit were considered. The Hon Magistrate relooked at paragraph 37 in the **Francis Kariuki Muruatetu case (supra)** and came to the conclusion that the Applicant had shown that he will be

affected by the decision of the Court regarding the two parcels of land.

40. My own consideration of the Ruling and the facts point to one conclusion that the Learned Magistrate did not err.

41. The circumstances in which an Appellate Court may interfere with the exercise of judicial discretion by a Judge are limited. In **Mbogo & Another v Shah [supra]** it was held follows:

“... a Court of Appeal should not interfere with the exercise of the discretion of a single Judge unless it is satisfied that the Judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the Judge has been clearly wrong in the exercise of his discretion and that as a result there has been injustice ...”

42. In **Departed Asians Property Custodian Board v Jaffer Brothers Ltd [1999] 1 EA 55** it was held as follows:

“A clear distinction is called for between joining a party who ought to have been joined as a Defendant and one whose presence before the Court is necessary in order to enable the Court effectually and completely adjudicate upon and settle all questions involved in the suit. A party may be joined in a suit, not because there is a

cause of action against it, but because that party's presence is necessary in order to enable the Court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter...For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders, which the Plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the Court in that suit. Alternatively, a person qualifies, (on an application on behalf of a Defendant) to be joined as a co-Defendant, where it is shown that the Defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person."

43. It is alleged that the Plaintiff/Appellant is holding the said suit properties in trust for the 3rd Respondent. It is further alleged that the Appellant took out a Gazette Notice claiming loss of titles to the suit properties which was not true. All this time she knew that the titles were in the custody of the 3rd Defendant/Interested Party.

44. It is therefore evident that the participation of the Intended Interested Parties in the Magistrate's Court proceedings is not only necessary to enable the Court to effectually and completely adjudicate upon and settle all the questions in controversy, but also imperative, given that the orders which the Honorable Magistrate's Court may issue are likely to affect the legal rights and interests of the 3rd Respondent/Interested Party.

45. Moreover, considering the nature of the transaction giving rise to the dispute, and the relationship between the existing and Intended Interested Parties, the Court finds it desirable in the interest of justice and for the avoidance of a multiplicity of suits to join the said parties, so that they may be bound by the outcome of these proceedings. I rely on the case of **Martin Kirima Baithambu v Jeremiah Miriti [2017] eKLR**, where the Court pronounced itself as hereunder:

“The pragmatic reality has been for Courts to add parties in a suit based on guarantee if it is desirable to add such party so that the Court can resolve all the matters in controversy effectually and completely. Aptly here would be to invoke the procedure provided under Order 1 Rule 15 of the Civil Procedure Rules. I say these things for the sake of jurisprudence.”

46. Having considered the issues raised in the appeal and the submissions by the parties herein, I find the finding of the Honorable Magistrate to be sound and needs no interference.

47. Wherefore, the instant Appeal lodged by way of a Memorandum of Appeal dated 3/05/2023 is hereby dismissed with costs to the 1st and 2nd Respondents.

48. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 21ST DAY OF JANUARY, 2026 VIA MICROSOFT TEAMS.

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**MOGENI J
JUDGE**

In the presence of:

Mr. Kinyua for the Appellant

Mr. Ngetich holding brief for Mr. Kirwa for 1st Respondent

Ms. Njuguna for 2nd Respondent

Mr. Ngetich holding brief for Mr. Kirwa for 3rd Respondent

Mr. Melita - Court Assistant

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**MOGENI J
JUDGE**