



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MURANG'A**

**ELC NO. 242 OF 2017**

**BENSON MAINA GATHITHI MUGL.....1<sup>ST</sup> PLAINTIFF/ RESPONDENT**

**CATHERINE NJERI KAMBO.....2<sup>ND</sup> PLAINTIFF/ RESPONDENT**

**ABDALLA JUMA.....3<sup>RD</sup> PLAINTIFF/ RESPONDENT**

**KENNETH MARUBU.....4<sup>TH</sup> PLAINTIFF/ RESPONDENT**

**ANTONY W. NG'ANG'A.....5<sup>TH</sup> PLAINTIFF/ RESPONDENT**

**CHEGE PHARIS.....6<sup>TH</sup> PLAINTIFF/ RESPONDENT**

**BENSON MUGORO.....7<sup>TH</sup> PLAINTIFF/ RESPONDENT**

**SILVIA NYAMBURA.....8<sup>TH</sup> PLAINTIFF/ RESPONDENT**

**BONIFACE NGANGA NGARA.....9<sup>TH</sup> PLAINTIFF/RESPONDENT**

**BIATO ITIMU.....10<sup>TH</sup> PLAINTIFF/ RESPONDENT**

**JOHN IRUNGU.....11<sup>TH</sup> PLAINTIFF/ RESPONDENT**

**CYRUS GATHIGA.....12<sup>TH</sup> PLAINTIFF/RESPONDENT**

**FRANCIS THIONG'O**

**As delegates of KENYA AFRICAN NATIONAL**

**UNION (KANU) KIHARU BRANCH.....13<sup>TH</sup> PLAINTIFF/RESPONDENT**

**VS**

**JOHN S. NJIRE MAINA.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**KENYA AFRICAN NATIONAL**

**UNION (KANU) HEAD OFFICE.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**AND**

**SIMON MACHARIA KAIRU.....INTENDED INTERESTED PARTY/APPLICANT**

**RULING**

1. Simon Macharia Kairu filed a Notice of Motion on 22/9/07 seeking to be enjoined into the suit as a party. The basis of his application is

that he is a tenant in the suit premises known as Loc.11/Maragi/1193/82 Mukuyu market. That the 1<sup>st</sup> Defendant has been trying to recover rent through an auctioneer.

2. Further that the 1<sup>st</sup> Defendant has written several demands to him which has prompted him to file a suit in the Nairobi business premises tribunal case No. 22 of 2017. That the injunction into the suit is to protect this interests as he has been paying rent to the suit branch officials of the Kenya African National Union.

3. The application is opposed by the 1<sup>st</sup> Defendant who filed grounds of opposition dated 29/1/17 as follows;

a) The application is without merit.

b) The purported interest of the Applicant in the outcome of this case is one of a curious outsider and not a legal interest.

c) The Principal dispute and the subject matter of this suit is ownership of Plot No. Loc.11/Maragi/1193/82 and the dispute is between the Plaintiffs and the two Defendants. It has nothing to do with the Applicant's interest as a tenant in the Premises.

d) The Applicant has disclosed that his only interest in the property is that of a tenant, hence his reliefs (if any) lie elsewhere and he indeed has applied for relief at the Business Premises Rent Tribunal.

e) The Plaintiffs have sued the two Defendants in their capacity "as delegates of the KENYA AFRICAN NATIONAL UNION (KANU) KIHARU BRANCH". Since the Applicant does not claim to be such a delegate his interest in this suit is at best one of idle curiosity and at worst of only nuisance value.

f) In his affidavit dated 22<sup>nd</sup> September, 2017 at paragraph 1 the Applicant deposed that he is a tenant "in the premises known and described as Loc.11/Maragi/1193/82 IN Mukuyu market and owned by the second Defendant". Since pleadings on record so far show that the 2<sup>nd</sup> Defendant sold the property to the 1<sup>st</sup> Defendant, the Applicant has no case against any of the Defendants.

4. The 1<sup>st</sup> Defendant in his Replying Affidavit filed on 30/11/17 deponed that the Applicant is a tenant in the suit property. That the subject matter of the suit is ownership and not tenancy. That the said Applicant had on 25/4/17 tried to get into the suit through proxy (the Applicants in that application Daniel Mururia Githu & Irungu Jessee Kaberia claimed to be business partners of the current Applicant) but the application was dismissed for being unmeritorious.

5. In a further affidavit dated 22/1/2018, the Applicant reiterates that the interest he wishes to protect is the investment he has made as a tenant on the suit premises amounting to Kshs. 5 Million. He denied being a business partner of Daniel Mururia Githu & Irungu Jessee Kaberia. That based on the tenancy agreement he believes he should be enjoined into the suit.

6. On the 22/1/18 when the matter came up for hearing, parties proceeded to argue the application orally. The Plaintiffs and the 2<sup>nd</sup> Defendant did not oppose the application.

7. Ms. Etole Learned Counsel for the Applicant informed the Court that the Intended party entered into a tenancy agreement with the Plaintiffs for a term of 10 years with effect from 1/10/2009 – 30/9/2019. The intended party was permitted to build temporary structures at the rear of the property which he has done, an investment of about 5 million where the intended party currently carries on business. That on 26/6/17 the Intended party was served with a proclamation notice by the 1<sup>st</sup> Defendant claiming to have acquired ownership and directing that he should pay him rent. That he has been paying rent to the Plaintiffs. That he has filed a dispute with Business Premises Rent Tribunal in Nairobi seeking reliefs. That the Applicant is seeking joinder on the basis of the tenancy agreement.

8. The Learned Counsel for the 1<sup>st</sup> Defendant Mr. Waiganjo Gichuki opposed the application and relied on the application as well as replying affidavit of the 1<sup>st</sup> Defendant. The Applicant through his counsel on record stated that the crux of the dispute between the parties as seen in the pleadings is ownership dispute between the Plaintiffs and the 1<sup>st</sup> Defendant whereupon the Plaintiffs are seeking Orders to revoke the sale of the suit premises to the 1<sup>st</sup> Defendant on grounds that it was irregularly sold without their consent. That the interest of the tenant is distinct. That the tenant would be seeking for protection against eviction or arbitrary rent increase which the Applicant has disclosed is being handled by a competent judicial tribunal – the Business Premises Rent Tribunal in Nairobi. That the Applicants rights accruing as against the tenancy are not affected at all by the ownership dispute in Court. He termed the application as one that is driven by idle curiosity and should be dismissed.

## **Determination**

9. 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".

10. Courts have taken a liberal application to joinder of parties. In the case of **Kingori vs. Chege (2002) 2 KLR 243, Warsame J** had this to say;

“In my view in deciding an application for joinder, the Court must exercise a liberal approach so as not to shut out a genuine litigant who is effectively interested or is bound by the outcome of the suit, however the Court must guard against the frivolous or vexatious litigant whose sole motivation is to complicate and confuse issues that are before Court for determination”.

In the instant case my evaluation is that the rights and interests of the parties in the plaint is that the title to the suit property was allegedly transferred illegally by the 2<sup>nd</sup> Defendant to the 1<sup>st</sup> Defendant without the consent of the Plaintiffs and should be revoked. The interests of the Applicant are anchored on the tenancy agreement signed between the Plaintiffs and Applicant for a period of 10 years, ending on 30/9/19. I find that the rights in dispute between the parties before this Court and those of the Applicant are not similar. I concur with the counsel for the 1<sup>st</sup> Defendant that whichever way the suit is decided between the parties as pleaded, the interests of the Applicant will not be affected. There is a letter on record (though disputed by a section of the Plaintiffs) directing the Applicant to pay rent to the new owner. I reserve the matter of ownership to the trial Court where it is best canvassed. The Applicant has disclosed that the dispute of rent default is being determined at Business Premises Rent Tribunal. There is adequacy of options to alleviate any prejudice that the applicant would face.

11. Under Order 1 Rule 10(2) a person may be enjoined to a case in two instances when he ought to have been joined as a Plaintiff or Defendant and is not i.e. necessary party and were without his presence the question in the suit cannot be completely decided. In my considered view the case of the Applicant amounts to an introduction of a new cause of action. It is not a necessary party to this suit.

12. Finally, the Applicant’s application is not merited and is dismissed with costs to the 1<sup>st</sup> Defendant.

**DELIVERED, DATED AND SIGNED AT MURANG’A THIS 23<sup>RD</sup> DAY OF FEBRUARY, 2018**

**J.G. KEMEI**

**JUDGE**