



**Estuarine Estates Ltd v Koiyaki (Environment & Land Case
E430 of 2022) [2024] KEELC 442 (KLR) (31 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 442 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E430 OF 2022**

**EK WABWOTO, J
JANUARY 31, 2024**

BETWEEN

ESTUARINE ESTATES LTD PLAINTIFF

AND

EDWARD LERINA OLE KOIYAKI DEFENDANT

RULING

1. This ruling is in respect to the plaintiff's application dated 29th September 2023 and the Defendant's application dated 18th September 2023. The Plaintiff seeks leave to amend its plaint dated 21st December 2022 while the Defendant sought inter alia the joinder of Stephen Chege, Land Registrar, Nairobi, Chief Land Registrar and the Nairobi County Government as 2nd to 4th Defendants or as Third parties to these proceedings.
2. Both applications were considered simultaneously and canvassed by way of written submissions pursuant to the directions issued by this court. The Plaintiff filed its written submissions dated 25th October 2023 while the Defendant filed its written submissions dated 30th October 2023.
3. In its submissions dated 25th October 2023, the Plaintiff while opposing the Defendant's application relied on its ground of opposition dated 6th October 2023 and argued that Stephen Chege is a public officer executing his duties as a land registrar and pursuant to Section 14 (d) of the Land Registration Act, he cannot be held personally liable for his duties as a public officer. It was also argued that prayer 5 of the defendant's application which seeks to direct the proposed 2nd to 4th defendants to update their registers and respective records is one which cannot be granted at an interlocutory stage and reliance was placed to the cases of James Ndung'u Kero vs Chief Land Registrar, Director of Survey & Attorney General (Environment & Land Case E046 of 2021) [2022] and Oksana Investment Suppliers Limited vs Alice Wanjiru Wamwea [2019] eKLR. The court was urged to decline the joinder of Stephen Chege and dismiss prayer 5 of the Defendant's application.



4. The Defendant in his submissions dated 30th October 2023 argued that joinder of the proposed parties will enable this court to conclusively and effectively determine the issues raised herein in respect to Nairobi Block 8/222 Formerly Registered As LR No. 214/253.
5. It was also submitted that the intended parties are in a good position to explain to this court the circumstances under which the defendant's title was allegedly nullified and subsequently registered in the names of the plaintiff. In respect to Stephen Chege it was submitted that once joined to these proceedings he will be able to defend himself in his personal capacity owing to his personal corruption practices and misdeed that are unlawful, unfair and an abuse office. It was argued that the Attorney General has no locus to represent him.
6. The Defendant's application was supported by the affidavit sworn by Edward Lerina Ole Koiyaki stating that; he was the legal and rightful owner of the suit property having annexed the certificate of title, letter of allotment and registry index map, the intended 3rd parties illegally revoked the certificate of title and fraudulently registered it in the names of the plaintiff/respondent and that the plaintiff and intended parties would suffer no prejudice if the application was allowed.
7. The 1st and 2nd intended third parties filed grounds of opposition dated 27th October 2023 submitting that the application was contrary to provision of Section 4(1),4(3) and 12 of the [Government Proceedings Act](#). It was also submitted the dispute being on ownership of the suit property would require submission of documentary evidence and therefore an order for registration could not be granted in an interim application.
8. I have considered the applications, rival submissions filed and the following issues arise for determination herein;
 - i. Whether this court should join the proposed parties to these proceedings.
 - ii. Whether the plaintiff should be granted leave to amend its plaint.
9. Order 1 Rule 10, (2) of the [Civil Procedure Rules](#), outlines that:

“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 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 mine]
10. The principles for joinder are well outlined in in [Meme v Republic](#) (2004)1 124, eKLR which are:
 - a. Joinder of a person because his presence will result in the complete settlement of all questions involved in the proceedings;
 - b. Joinder to provide a protection of a party who would otherwise be adversely affected in law;
 - c. Joinder to prevent a likely course of proliferated litigation.
11. My interpretation of Section 4 of the [Government Proceedings Act](#) is that public officers in carrying out their duty are fully fledged agents representing the Government and such as are delinked from their individual persona. In the instant case, the court is in agreement with the objections made that Mr. Stephen Chege cannot be joined to these proceedings in his personal capacity. On the other hand, by virtue of the respective statutory duties and powers of the 2nd and 3rd intended parties, I find that the



resultant decision of the Court will have an effect upon the given offices. Considering the issues raised herein in respect to the suit property it is only prudent that they be joined as defendants and not as third parties.

12. With regards to prayer 5 of the defendant's application, the issue of registry records is undoubtedly rooted in ownership of the suit property which should await the trial herein.
13. In respect to the amendment of the plaint, Order 8 Rule 3 of the [Civil Procedure Rules](#) provides for amendment of pleadings with leave of court as follows: -
 - (1) Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings."
14. Further, Order 8, rule 5 gives the Court the general power to allow amendment of pleadings;
 - (1) For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and, on such terms, as to costs or otherwise as are just".
15. The Court of Appeal reiterated the principles governing amendment of pleadings in [Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited](#) [2013] eKLR as follows: -

"...The powers of the court to allow amendment is to determine the true, substantive merits of the case; amendments should be timeously applied for; power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); that as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action; that the plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaint the defendant would be deprived of his right to rely on *Limitation Acts*."
16. The general rule is that amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side and there is no injustice if the other party can be compensated by costs. In the instant case, no objection was made to the plaintiff's request for the amendment of its plaint and further considering that this suit is yet to be set down for hearing, this court shall proceed to allow the amendment of the plaint.
17. Consequently, the applications dated 18th September 2023 and 29th September 2023 are disposed in the following terms;
 - i. The Chief Land Registrar and the Nairobi City County are hereby joined to this suit as the 2nd and 3rd Defendants respectively.
 - ii. The 1st Defendant is hereby granted leave to amend his pleadings within 7 days of delivery of this ruling.
 - iii. Upon service of the 1st Defendant's pleadings, the Plaintiff is hereby granted 14 days to file its amended plaint.



- iv. The 2nd and 3rd Defendants shall have 21 days to file and serve their pleadings upon service by the Plaintiff and the 1st Defendant.
- v. Each party to bear own costs of the applications.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 31ST JANUARY 2024

E.K. WABWOTO

JUDGE

In the presence of:

Mr. R ichu h/b for Mr. Anzala for the Plaintiff.

Ms. Nyang for the Defendant.

Court Assistant – Caroline Nafuna.

