



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

THIKA LAW COURTS

ELC CASE NO.502 OF 2017

(FORMERLY NAIROBI ELC. NO.1515 OF 2014)

JULIUS GATOTO MAINA.....PLAINTIFF/RESPONDENT

-VERSUS-

JOHNSON GAITHO WANJOHI.....DEFENDANT/APPLICANT

AND

JASCKSON MAINA RIITHIA.....INTENDED 2ND DEFENDANT

THIKA LAND REGISTRAR.....INTENDED 3RD DEFENDANT

ATTORNEY GENERAL.....INTENDED 4TH DEFENDANT

RULING

The matter for determination herein is the *Notice of Motion* application dated **18th November 2017**, brought by the Defendant herein **Johnson Gaitho Wanjohi** and brought under various provisions of law. The Applicant has sought for these orders:-

- a) That this Honourable Court be pleased to enjoin Jackson Maina Riithia, Thika Land Registrar and the Attorney General to be enjoined as 2nd 3rd and 4th Defendants respectively in this suit.***
- b) That upon granting prayer (a) above this Honourable Court be pleased to grant the enjoined parties 14 days leave to unconditional defend or file their responses herein.***
- c) That cost of this application be in the cause.***

This application is premised on the following grounds:-

- 1) That Intended 2nd Defendant Jackson Maina Riithia was the 1st registered owner of Ruiru Kiu Block 2(Githunguri)/4584 and he acquired the title deed.***
- 2) That the 2nd Party later on sold the suit land to the Plaintiff herein.***
- 3) That the Applicant claims that the 2nd party's title was fraudulently acquired.***
- 4) That for the real issues in controversy which is ownership to the suit plot to be adjudicated upon to logical conclusion on merit it's imperative to allow the enjoinder to the suit.***
- 5) That the Applicant has counterclaimed that the title to the suit property be cancelled and transferred to him hence necessitating that the 3rd and 4th Defendants be enjoined in this suit as well.***

It is further supported by the affidavit of **Johnson Gaitho Wanjohi**, the Applicant herein who reiterated most of the contents of the grounds

in support of the application. He averred that the 2nd Intended Defendant sold the suit property to the Plaintiff herein and that the acquisition and registration of the suit property in the name of the Intended 2nd Defendant, **Jackson Maina Riithia** was fraudulent, illegal and therefore the subsequent transfer to the Plaintiff is of no consequence and is *null and void*. That it is imperative to allow the instant application as he has also counter-claimed against the Plaintiff and his agent who is **Jackson Maina Riithia**, the Intended 2nd Defendant. He urged the Court to allow the instant application.

The application is opposed and the Plaintiff/Respondent filed **Grounds of Opposition** dated 27th November 2017 and averred:-

- 1) ***That the Application is misplaced in law and procedure, is an abuse of the Court Process and ought to be struck out with costs.***
- 2) ***That the Defendant in law does not have power to enjoin a Co-defendant and his right is only limited to issuing a Third Party Notice if he has a claim against such party or enjoin an Interested Party.***
- 3) ***That inclusion of a Defendant in an existing suit entails amendment of the Plaint and a Defendant has no power to amend a Plaint or cause the amendment thereto.***

The Court directed the parties to canvass the instant **Notice of Motion** by way of **written submissions** which they duly complied. The **Law Firm of Kanyi Kiruchi & Co. Advocates** for the Defendant/

Applicant filed their submissions on 6th March 2018, and relied on various provisions of law and specifically **Order 1 Rule 10(2)** of the **Civil Procedure Rules** which states:-

“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”.

The Applicant also relied on the case of **J.M.K...Vs....M.W.M & Another (2015) eKLR**, where the Court held that:-

“All amendments should be freely allowed and at any stage of the proceedings provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs”.

The **Law firm of Gachie Mwanza & Co. Advocates** for the Plaintiff/

Respondent filed their written submissions on 27th March 2018 and submitted that the Court should not allow the instant application. The Plaintiff further relied on **Order 1 Rule 15(1) of the Civil Procedure Rules** which deals with a situation where a Defendant claim against any other person not already a party to the suit and who is called a third party and when **‘such third party should be enjoined’**. The Plaintiff also relied on the case of **Kenya Commercial Bank...Vs...Suntra Investment Bank Ltd (2015) eKLR**, where the Court held that:-

“According to the law, a third party is enjoined in a suit at the instance of the Defendant and through the set procedure. And liability between the Defendant and third party after the Court is satisfied that there is a proper question to be tried as liability of the third party and the Defendant and has given directions under Order 1 Rule 22 of the Civil Procedure Rules. Such issues of third parties are issues and triable between the Defendant and the Plaintiff”.

The Court has now carefully considered the instant **Notice of Motion** and the annexures thereto, the pleadings in general and the written submissions herein together with the cited authorities. The Court has also considered the relevant provisions of law and the Court makes the following findings. The issues for determination are:-

- i. ***What is the relevant law on joinder of parties?***
- ii. ***Is the Applicant entitled to the prayer of joinder sought?***
- iii. ***Will there be any prejudice or injustice occasioned to the other party?***

i) What is the relevant law on joinder of parties?

It is evident that the law that governs joinder of parties to civil proceedings is **Order 1 Rule 10(2)** of the **Civil Procedure Rules** which empowers the Court at any stage of the proceedings upon application by either of the party or on its own motion (suo moto), to order the name of a person who ought to have been joined or whose presence before the court is necessary to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit be added as a party. In **Sarkar’s Code of Civil Procedure, 11th Edition, Reprint, 2011, Vol.1 P. 887**, it is stated that:-

“The Section should be interpreted liberally and widely and should not be restricted merely to the parties involved in the suit but all persons necessary for a complete adjudication should be made parties”.

It is therefore evident that the parties who should be made parties to a suit are persons who are necessary for a complete and effectual adjudication of disputes before the court.

Further, it is evident that such joinder or amendment should be freely allowed if such amendment or joinder do not result in prejudice or injustice to the other party. See the case of *Central Kenya Ltd...Vs...Trust Bank & 4 Others C.A No.222 of 1998*, where the Court held that:-

“All amendment should be freely allowed at any stage of the proceedings provided that the amendment or joinder as the case may be will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs”.

From the above findings of the Court and the provisions of *Order 1 Rule 10(2)* of the *Civil Procedure Rules*, it is evident that the court has discretion to order for joinder of a party to the suit at any stage of the proceedings so long as that party is necessary for complete and effectual adjudication of the disputes before the court and further so long the said joinder or amendment will not prejudice or cause injustice to the other parties. See the case of *Tang Gas Distributors Ltd....Vs..Said & Others (2014) EA 448*.

ii) Is the Applicant entitled to the prayers of joinder sought herein?

The Applicant is a Defendant in the suit herein wherein the Plaintiff has claimed for an order of permanent injunction against the Defendant to restrain him from entering into, taking possession and or interfering with the Plaintiffs peaceful occupation of the suit property ***Ruiru Kiu Block 2(Githunguri) 4584***. The Plaintiff alleged that he is the equitable owner of the suit property now registered in the name of ***Jackson Maina Riithia***, the Intended 2nd Defendant.

The Defendant had filed a defence and denied the Plaintiff's allegation. He also filed a Counter-claim and alleged that the Plaintiff's registration of the suit property and or his agent ***Jackson Maina Riithia*** over the suit property was fraudulent, illegal and should be cancelled. The Plaintiff also alleged that the suit land is registered in the name of ***Jackson Maina Riithia***. The Defendant has alleged that the said registration was fraudulent and should be canceled.

The Court finds that if it was to find in favour of the Defendant, then the said ***Jackson Maina Riithia*** would be condemned unheard. It is also alleged that the said ***Jackson Maina Riithia*** acquired the said registration fraudulently. It would be important for said ***Jackson Maina Riithia*** to be made a party to this suit as he is a necessary party for complete and effectual adjudication of the suit herein. Further, the ***Land Registrar*** and the ***Attorney General*** are necessary parties as the ***Land Registrar*** is required to explain how the questioned registration was done and further, they would be the final recipients and implementators of the orders that would be issued by the court in the event the court was to find in favour of the Defendant herein. The Court finds that the parties sought to be enjoined herein are necessary parties and this Court would not hesitate to join them as such.

iii) Whether there would be any prejudice or injustice occasioned to the other party?

The Plaintiff/Respondent has alleged that the Defendant cannot choose for him which party is to be a Defendant or not and further the Defendant cannot amend the Plaintiff on behalf of the Plaintiff. However, it is evident that *Order 1 Rule 10(2)* for the *Civil Procedure Rules*, allows the court to order for joinder of any party at any stage of the proceedings so long as the said party is necessary for complete and effectual adjudication of the disputes before the court.

The Court has found the parties herein are necessary parties. The suit has not started and even if it had commenced, a court has power to order joinder of parties at any stage of the proceedings. There is no evidence that joinder of the parties herein will prejudice or cause injustice to any of the parties herein. Infact this joinder will aid the court in the just determination of the suit which the court is behoved by *Sections 1A & 1B* of the *Civil Procedure Act* to uphold.

For the above reasons, the Court finds that there will be no prejudice or injustice that will be occasioned to any party and particularly to the Plaintiff/Respondent by ordering the joinder of the parties names as sought by the Defendant/Applicant.

Having now carefully considered the ***Notice of Motion*** dated ***18th November 2017***, the Court finds it merited and it is allowed entirely in terms of ***prayers No.I & II*** with costs to the Defendant/Applicant herein.

The Plaintiff is therefore directed to amend the Plaintiff accordingly within a period of ***14 days*** from the date hereof and thereafter serve the Defendant/Applicant and the enjoined parties. The Defendants have ***leave of 14 days after service*** to file their defences and after the close of pleadings, matter to be ***set down for Pre-trial Conference*** before the Deputy Registrar of this Court and set the matter down for hearing of the main suit expeditiously.

It is so ordered.

Dated, Signed and Delivered at Thika this 31st day of May 2018.

L. GACHERU

JUDGE

In the presence of

No appearance for Plaintiff/Respondent

Mr. Macharia holding brief for Mr. Kanyi for Defendant/Applicant

Lucy - Court clerk.

L. GACHERU

JUDGE

Court – Ruling read in open court in the presence of the above stated advocate and absence of the advocate for the Plaintiff/Respondent.

L. GACHERU

JUDGE