



**REPUBLIC OF KENYA**

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

**ELC NO. 328 OF 2017**

**WAITHIRA MWANGI (substituted for MWANGI PHILIP**

**KIGUTA (deceased).....PLAINTIFF/RESPONDENT**

**VS**

**WANJIRU MWANGI.....DEFENDANT /RESPONDENT**

**GACHARAGE TEA FACTORY.....APPLICANT /INTERESTED PARTY**

**RULING**

1. The application that is before the Court is a Notice of Motion filed on the 8/5/218 by the Applicant seeking the following orders;
  - a. That the Honourable Court be pleased to add the Applicant as an interested party with liberty to participate in the proceedings.
  - b. Costs of this application to be provided.
2. The application is premised on the following grounds; That the registered owner of the suit land donated 0.1acres to the Applicant for the construction of Nyona Tea Buying Centre; the Applicant constructed the said tea buying centre and commissioned it in 1988 with the authority of the registered owner; the registered owner never excised the 0.1 acres donated or caused the same to be transferred to the Applicant; the Applicant has a vested interest in LOC 18/GACHOCHO/839
3. The Applicant seeks the following reliefs;
  - a. An order that the Applicant is entitled to 0.1 acres out L.R NO LOC 18/GACHOCHO/839 by virtue of having been in open and uninterrupted occupation of the said portion for a period in excess of 12 years.
  - b. A title deed do issue in favour of the application for 0.1 acres out of L.R NO LOC 18/GACHOCHO/839.
4. The application is further supported by the affidavit of one Nancy Wanjiku Githaiga who deposed that she is the factory manager of the Applicant Company. That in 1998 Nyona Tea Buying centre was constructed on 0.1 acres in out L.R NO LOC 18/GACHOCHO/839 with the authority of the registered owner. She attached a letter from one Isaac Kamau Mwangi dated 9/1/2003. She has also attached a copy of the title in the name of the said Isaac Kamau Mwangi. That the said tea buying centre was commissioned in 1998 and is been operating todote. That the operations of the tea buying centre has been open and has not met any objections. That the Applicant has a direct interest in the property and thereby the issues in controversy can only be effectually and completely necessary to adjudicate by allowing the application.
5. The application is opposed by both the Plaintiff and the Defendant alike. The Plaintiff's grounds are; that the application is a repetition of a similar application that was withdrawn; that the suit land is registered in the name of Mwangi Philip Kiguta and not Isaac Kamau Mwangi; that the Applicant has not shown the relationship between the interested party and the deceased husband; the Applicant has not annexed to its application the nature of the claim of the interested party.
6. The Defendant opposed the application on the grounds that the application is resjudicata as the same was dismissed on the 29/3/2018; that the application is frivolous vexatious and an abuse of the due process of the Court as the registered proprietor of the land is not the said Isaac Kamau Mwangi.
7. Parties filed written submissions which arguments I have considered.
8. Joinder of parties is governed by Order 1 Rule 10 (2) of the Civil Procedure Rules which provide 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 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.”

9. The common test to apply in determining an application for joinder of parties is that a common question of fact or law would arise between the existing and intended parties. Ordinarily joinder of parties would be declined where the cause of action proposed or being sought is completely incompatible to or totally different from the existing cause of action or the relief.

10. I am guided by the decision of Gikonyo J in the case of **Lucy Nungari Ngigi & 128 Others vs. National Bank of Kenya Limited & Anor. Civil case No. 517 of 2014 (2015) eKLR** which stated as follows:-

“Joinder of parties is governed by Order 1 of the Civil Procedure Rules. In law, joinder should be permitted of all parties in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally; or in the alternative, where such persons brought separate suits, any common question of law or fact would arise. See also Order 7 Rule 9 of the Civil Procedure Rules. The Court may even on its own motion add a party to the suit if such party is necessary for the determination of the real matter in dispute or whose presence is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all questions involved in the suit. Therefore, joinder of parties is permitted by law and it can be done at any stage of the proceedings. But, joinder of parties may be refused where such joinder: will lead into practical problems of handling the existing cause of action together with the one of the party being joined; is unnecessary; or will just occasion unnecessary delay or costs on the parties in the suit. In other words, joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible to or totally different from existing cause of action or the relief. The determining factor in joinder of parties is that a common question of fact or law would arise between the existing and the intended parties”.

11. 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”.

12. The Applicant had made a similar application which was dismissed for not disclosing a claim. I do not agree with opponents of the application that the matter is resjudicata. The application was not heard and determined. It was dismissed.

13. The Applicants have disclosed their claim which is that of adverse possession. That the Applicant was gifted the 0.1 acre by Issac Kamau Mwangi in 1998 for which they took possession and have operated the same to date. The Court finds that the Applicant has disclosed its claim in the suit land. The suit land is being claimed by both the Plaintiff and the Defendant and the Applicant’s claim is based on prescriptive rights. Its claim therefore is not far-fetched as suggested by the Defendant. There is a clear commonality of facts between the parties in the suit. I see no prejudice that will be suffered by the existing parties with the joinder of the interested party. In order to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit, the interested party is enjoined as a party.

14. In the interest of justice I grant the application. The interested party is directed to file and serve their pleadings within 14 days from the date of this ruling. Corresponding leave to the Plaintiff and the Defendant to file and serve any responses is similarly granted. Thereafter parties to comply with Order 11 and set the suit for hearing.

15. Costs of the application shall be met by the Applicants.

**DATED, DELIVERED AND SIGNED AT MURANG’A THIS 1<sup>ST</sup> DAY OF NOVEMBER 2018.**

**J.G. KEMEI**

**JUDGE.**

**Delivered in open Court in the presence of:**

Juma HB for Wandai for the Plaintiff/Respondent

Kirubi for the Defendant/Respondent

Mwangi HB for Lucy Mwai for the Applicant/Interested party

Irene and Njeri, Court Assistants