



Kibor & another v Bakale & 28 others; Estate of Erick Kaino Cheserek represented by the administrators of the Estate namely Fredrick C Kaino David Chesere Jackson Cheserek (Applicant) (Land Case 18 of 2023) [2024] KEELC 188 (KLR) (23 January 2024) (Ruling)

Neutral citation: [2024] KEELC 188 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
LAND CASE 18 OF 2023
L WAITHAKA, J
JANUARY 23, 2024**

BETWEEN

JOSHUA TALAI KIBOR 1ST PLAINTIFF

MARY JEPKURUI TALAM 2ND PLAINTIFF

AND

THOMAS BAKALE & 28 OTHERS DEFENDANT

AND

ESTATE OF ERICK KAINO CHESEREK REPRESENTED BY THE ADMINISTRATORS OF THE ESTATE NAMELY FREDRICK C KAINO DAVID CHESERE JACKSON CHESEREK APPLICANT

RULING

1. By chamber summons application dated 29th May 2023, the estate of Erick Kaino Cheserek, represented by its administrators namely Fredrick C. Kaino, David Cheserek and Jackson Cheserek seeks to be joined to this suit as the 30th defendant.
2. The application is premised on the ground that the suit property originally belonged to the late Eric Kaino Cheserek; that the late Erick Kaino Cheserek had charged the suit property with Barclays Bank International Ltd to secure a loan advanced by the bank and that the suit property was sold to the late Kibor Arap Talai by Barclays Bank International Ltd in exercise of its statutory power of sale.
3. It is the applicants’ case that despite the land having been transferred to the late Kibor Arap Talai and a title deed issued to him on 13th August 1981, the late Eric Kaino Cheserek and his family members remained in occupation of the suit land and are in occupation to date.



4. Terming the estate of the late Erick Kaino Cheserek a necessary party to the suit, the applicants urge the court to allow the application.
5. The application is supported by the affidavit of Fredrick K. Kaino, sworn on 29th May 2023, in which the grounds on the face of the application are reiterated. Annexed to the application are:-
 - i. Grant of letters of administration intestate issued on 22nd October 2014 in respect of the estate of Erick Kaino Cheserek, marked FCK-2;
 - ii. Copy of title deed for title No. Lelan/Kabiego/112, Marked FCK-2;
 - iii. Photocopy of charge marked FCK-3;
 - iv. Copy of letters dated 9th January 1985 and 27th May 2009 marked FCK- 4 and 5 respectively.
6. The application is opposed by the plaintiffs on the grounds that it is lacking in merit; that it is the plaintiffs who have been in use and occupation of the suit property; that the applicants have not demonstrated sufficient cause for being granted the orders sought and that the application is repugnant to good practice as through it, the applicants seek to obstruct the cause of justice. It is further contended that the application is an afterthought; the prayers sought are ambiguous, uncertain, vague, oppressive and scandalous; that the application is full of hypocrisy and falsehood and that the applicants' intended action is incompatible with the plaintiffs' pleaded case.
7. Pursuant to orders issued on 19th September 2023, the application was disposed of by way of written submissions.

Analysis and determination

8. From the application and the submissions filed in respect thereof, the sole issue for the court's determination is whether the applicant has made up a case for being granted the orders sought.
9. The principles that guide the court when deciding whether or not to allow an application for joinder were restated by Nambuye J, (as she then was) in the case of *Kingori v Chege & 3 others* (2002) 2 KLR thus:-
 1. The applicant must be a necessary party;
 2. The applicant must be a proper party,
 3. In the case of the defendant there must be a relief from that defendant to the plaintiff,
 4. The ultimate order or decree cannot be enforced without his presence in the matter,
 5. His presence is necessary to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit.
10. The discretionary power given to court to add or join parties to a suit is meant to bring on record all the persons who are parties to the dispute relating to the subject matter so that the dispute may be determined in their presence at the time without protraction, inconvenience and to avoid multiplicity of proceedings. Any party reasonably affected by the pending litigation is a necessary and proper party and should be added/joined. In that regard see the case of *Civicon Limited v Kivuwatt Limited and 2 others* (2015) eKLR.



11. In *Martin Kirima Baitbambu v Jeremiah Miriti* (2017)eKLR it was stated:-

“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 effectively and completely...”

12. As pointed out herein above the applicant’s desire to be joined in the suit is premised on their allegation/ contention that they are the ones in use and occupation of the suit land and that the estate of Erick Kaino Cheserek, which they represent, is entitled to the suit land on account of the late Erick Kaino Cheserek having acquired proprietary rights over the suit land by adverse possession. That claim, allegation or contention by the applicants that the suit land is occupied by beneficiaries of the estate of Erick Kaino Cheserek, deceased, is denied by the plaintiffs/respondents who inter alia claim that they are the ones in possession of the suit land.

13. It is the considered view of this court that oral evidence is required before this court can determine the contested question of whether or not the applicants are in possession of the suit land and subject to the outcome of the question of possession, whether or not the plaintiffs’ title had been extinguished by the alleged adverse possession of the suit land by Erick Kaino Cheserek, deceased.

14. In the absence of any evidence capable of helping this court to determine the contested question of who between the plaintiffs and the applicants is in possession of the suit land and being of the view that proceeding with the case in the absence of the applicants may not only be prejudicial to the applicants should it turn out that they are indeed in possession of the suit land but also bring difficulties in execution of such orders as may ultimately be issued in favour of the plaintiffs, I am inclined to allow the estate of the late Erick Kaino Cheserek to join the suit as the 30th defendant.

15. Consequently, I allow the applicants to join the suit and direct them together with the plaintiffs and other defendants to fully comply with Orders 7, 8 and 11 within 45 days from the date of delivery of this ruling.

16. The costs of the application shall be in the cause.

17. Orders accordingly.

DATED, SIGNED AND DELIVERED AT ITEN THIS 23RD DAY OF JANUARY, 2024

L. N. WAITHAKA

JUDGE

Ruling read virtually in the presence of:-

Ms. Nchoe Jaoka for the Plaintiffs

Ms. Masai holding brief for Mr. Kiarie for the applicants

Court Asst.: Christine

