



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MURANG'A**

**E.L.C NO. 242 OF 2017**

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

**CATHERINE NJERI KAMBO & 10 OTHERS.....2<sup>ND</sup> PLAINTIFF/RESPONDENT**

**As Delegates of KENYA AFRICAN NATIONAL**

**UNION (KANU) KIHARU BRANCH**

**VS**

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

**KENYA AFRICAN NATIONAL UNION**

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

**DANIEL MURURIA GITHU.....APPLICANTS**

**IRUNGU JESSEE KABENA**

**RULING**

1. The applicants Messrs Daniel Mururia Githu and Irungu Jessee Kabena have filed an application dated 25/4/17 under Order 51 rule 1 of the Civil Procedure Rules. The application is grounded on the fact that the property belongs to Kenya African Union (KANU) and the same was sold off by unauthorized persons without the mandate of the organization and that the sale was ultra vires.

2. The application is premised on the Supporting Affidavit ostensibly deposed by both applicants and dated 25/4/2017. They have deposed that as members of KANU as well of the public they are keen to protect the party's property which has allegedly been sold by an unauthorized persons. That the Secretary General is not clothe with such powers. That the power to dispose property is vested in the KANU National Governing Council which authority must be sought in writing and the transfer of the suit property to third parties amount to illegal acts of a few officials. That they are aggrieved and contend that the sale should be reversed.

3. The 2<sup>nd</sup> Respondent which is KANU head office filed grounds of opposition dated 13/5/17 terming the application grossly, blatantly misconceived, frivolous, vexatious and an abuse of Court process. That the applicants are neither KANU delegates or members of KANU. They dismissed the cards of the applicants

as not genuine since they do not appear on the members register maintained by KANU. That they have no known locus to institute and sustain this suit and the application should be dismissed with costs.

4. Further the 2<sup>nd</sup> Respondent submitted that KANU is a registered party with a corporate status hence has power to sue and be sued as a juristic body. They relied on the cases of **Law Society of Kenya Vs Commissioner of Lands & Others (2000) eKLR** to show that for a party to have locus in a matter he must show that his own interest has been prejudiced or is about to be prejudiced. That the applicants have not adduced any evidence to prove such interest and should not be joined in the case. That they have also not shown any injury suffered or likely to be suffered over and above any injury, loss or prejudice suffered by the rest of the public.

5. The 1<sup>st</sup> Defendant (alleged purchaser of the suit property) opposed the application and filed grounds of opposition dated 25/4/17 stating that the application has no merit as it offends the Advocates Act. That the applicants have not indicated whether they want to be enjoined as Plaintiffs or as Defendants or merely as interested parties. That they have not demonstrated sufficient interest in the matter to sustain the application to be enjoined in the suit. That the applicants have not presented any documents before this Court to challenge the power vested in the KANU officials to sell property nor demonstrated the tangible value that they will add to the suit if allowed to join.

6. In their further affidavit dated 26/5/17 the applicants appear to be buttressing their grounds for additional interest i.e averred that they are business partners of one Simon Kairu a tenant occupying the suit premises at Makuyu Market, the subject matter of this case and wish to be enjoined as plaintiffs. They argue that as tenants they will be affected by change of ownership of the suit property as they would not know where to remit the rent payable. They have annexed membership card numbers 2108 and 2121.

7. Parties have filed written submission which I have carefully reviewed. The one question before the Court is whether the applicants can be joined as parties to this suit.

8. The applicants have asked for joinder on three grounds. That they are both members of KANU and the public and are out to protect public interest in the manner that the property of the party was disposed of. The third limb is not clear but I seem to understand them to say that they are also tenants being business partners of one Simon Kairu who may be a tenant in the suit premises. No document has been presented to support this averment. They have attached the copies of membership cards Nos. 2108 and 2121. The same have been questioned as suspect by the 1<sup>st</sup> Defendant counsel on the ground that their genuineness appear in doubt. The 2<sup>nd</sup> Respondent has dismissed the cards because they are nonexistent in their members register.

9. 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 if such persons brought separate suits, any common question of law or fact would arise. 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. In that case the determining factor would be that a common question of fact or law would arise between the existing and the intended parties. An application for joinder may also be disallowed if the issues raised by applicants are already canvassed by the pleadings as filed by the existing parties.

10. In the Court of Appeal case of **Central Kenya Ltd vs. Trust Bank & 4 others, CA No. 222 of 1998** (unreported) the court stated 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”. In **Mulla Code of Civil Procedure Volume II, 15<sup>th</sup> edition**, the authors have quoted at page 1015 the decision of Patna High

Court on the meaning of “Settle all questions involved in the suit” set out above. It was held to mean “all questions relating to the subject matter of the suit arising not only between the parties to the suit but also third parties whose presence is necessary or proper for an effective and final adjudication”.

11. From my overview of the pleadings on record the issues of the suit property and attendant controversies are already being dealt with by the Plaintiffs who are members of Kiharu KANU branch. The 2<sup>nd</sup> Defendant representing the head office of KANU is already a party to this suit. As regards the issue of tenancy of the suit premises, as well as the partnership with Simon Kairu, I note that this is a new matter that has not been canvassed in the pleadings. The said Simon Kairu is not a party to the suit. The issue of tenancy relationship as well as rent payment, I believe is governed by a landlord-tenant agreement between the parties. This suit is between the Plaintiffs as delegate/members of KANU Kiharu on the one hand and the purchaser of the property on the other hand as well as the seller – KANU Head office on the second hand.

12. The two applicants herein have alleged to be members of the KANU and have produced membership cards of 2012 attached to their further affidavit. They have indicated that the application is brought in public interest. It will therefore be difficult to ascertain how their interests stand to be violated if the application is declined. In their submissions they have alluded to the alleged improper sale of the property therefore which is already canvassed by the pleadings as already filed.

13. In the end I find that the applicant’s application is unmerited and is hereby dismissed.

**DELIVERED, DATED AND SIGNED AT MURANG’A THIS 28<sup>TH</sup> DAY OF SEPTEMBER 2017.**

**J. G. KEMEI**

**JUDGE**