



**Mucheru (Formerly known as Gideon Magu Ngugi) v Esbon & another; John (Applicant)
(Environment & Land Case E121 of 2023) [2024] KEELC 1817 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1817 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E121 OF 2023**

**EK WABWOTO, J
MARCH 20, 2024**

BETWEEN

**KEERU NGUGI MUCHERU (FORMERLY KNOWN AS GIDEON MAGU
NGUGI) PLAINTIFF**

AND

**PETER CHEGE ESBON 1ST DEFENDANT
NAIROBI CITY COUNTY 2ND DEFENDANT**

AND

CHARLES MAINA CHUI JOHN APPLICANT

RULING

1. This ruling is in respect to the application dated 6th November 2023, in which the Applicant sought for the following orders;
 - a. ...Spent.
 - b. That the Honourable Court be pleased to join the Applicant as a defendant in order to properly defend his interest in this matter.
 - c. That pending the hearing and determination of this application and the whole suit, this Honorable Court be pleased to grant an order of injunction restraining the Plaintiff, her agents, and/or employee from invading, trespassing, alienating, and/or converting all that parcel of land known as Plot No. 209/7260/119 or 209/7260/11 referred as Nairobi/Block 50/823.



- d. That pending the hearing and determination of this Application, this Honorable Court be pleased to stay and set aside all consequential orders issued on 29th March 2023 by Hon Wabwoto J.
 - e. That the Applicant contends that he is a necessary party, who has a stake in the proceedings due to the facts that he is lawful and registered owner of all that parcel of land known as Plot No. 209/7260/119 located at Eastleigh Section III whereby he is the victim of fraudulent transaction orchestrated by the Plaintiff.
 - f. That the Honorable Court has the requisite powers at any stage of the proceedings to order any party to be joined as a Plaintiff or Defendant on such terms as may appear to be just and fair in order to enable the court to effectually adjudicate and settle all issues and question involved in the suit.
 - g. That this Honorable Court be pleased to make such other or further orders to meet the ends of justice.
 - h. That costs of this application be borne by the Respondent.
2. The application was supported by the affidavit sworn by Charles Maina Chui John stating that:
 - i. The Applicant is the lawful and registered proprietor of that parcel of land known as Plot No. 209/7260/119.
 - ii. The Applicant therefore seek to be enjoined as a Defendant in this matter in order to properly defend mu legal interests.
 - iii. The Applicant has always dealt with the suit property as the legal proprietor.
 - iv. The Applicant has been in continuous possession of the suit property since its purchase in 2002 and has an identifiable stake in the suit property.
 3. On 22nd November 2023, the Court directed that the application be canvassed by way of written submissions. The Plaintiff and Applicant were granted corresponding leave of seven (7) days to file their respective submissions and responses.
 4. In opposition to the application, the Plaintiff filed a Replying Affidavit dated 10th January 2024 and written submissions dated 19th February 2024. Relying on the case of *Peter Maina Kingori v City Council of Nairobi* (Nairobi High Court Civil Case No 1026 of 2005)eKLR, it was argued that a person cannot seek to be joined as a defendant in a suit in which the plaintiff has no claim against him. It was further argued that great prejudice would be suffered by the Plaintiff who would be forced to calibrate and amend pleadings to suit the Applicant's interests.
 5. In their written submissions, it was posited that the Applicant is not a party to the suit but an intending party outside the ambit stipulated in Order 1 rule 10(2) of the Civil Procedure Rules, 2010. Additionally, it was submitted that no reasonable grounds had been given to stay and set aside the orders of the Court issued on 29th March 2023, Relying on the case involving *Hezron Kamau Gichuru vs Kianjoya Enterprises Limited and Another* (ELC Case No 61 of 2021) eKLR, it was argued that the balance of convenience tilted towards the Plaintiff and not the Applicant.
 6. On the other hand, the Applicant filed submissions dated 4th December 2023 and an affidavit dated 23rd January 2024. Relying on the case of *Kingori vs. Chege & 3 others* [2002] 2 KLR 243, it was argued that only two conditions needed to be met. First, there needed to be a right to relief against the applicant and



secondly that the applicant's presence being necessary to enable the Court effectively resolve all issues arising in the matter. In its affidavit, it was reiterated that the Applicant was the legal owner which has been confirmed by the 2nd Defendant. Moreover, it was submitted that there had been a fraudulent scheme involving the Plaintiff and other parties which prompted the Applicant to defend himself and protect his interests.

7. Having considered the application, rival submissions and supporting documents filed, the issues for determination are:

- a. Whether the Applicant should be joined as a Defendant?
- b. Whether the Applicant has met the threshold for injunctive orders?
- c. Whether the Applicant has met the conditions for stay and setting aside of orders issued on 29th March 2023?

8. With regards to joinder, 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]

9. 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.

10. The Plaintiff in his Plaint dated 14 March 2023 seeks prayers that are hinged on his ownership and possession of the suit property. Without a doubt, the submissions of both parties does bring out an underlying issue of ownership of the suit property. My perusal of this Court's ruling delivered on 12th October 2023, highlights that the Applicant's application mirrors the Court's guidance in paragraph 39:

“...In the instant case, the issues raised by Interested party can be well ventilated if he would have sought be joined either as a primary party in the matter or separately if he would have filed his own suit...”

11. In the foregoing, I am convinced that the Applicant should have his day in court not only to respond to the Plaintiff's case but also to mitigate multiplicity of suits and present crucial information that will assist the Court arrive at a conclusively effective end to the suit.

12. With regards to the granting of injunctive order and granting of the stay and or setting aside of Court's earlier orders, the Court has considered the issues complementarily. A perusal of the Court record confirms that the injunctive orders issued on 29th March 2023 with regards to the application dated 14th March 2023, were granted *ex parte*. No evidence of service was provided, however the 1st



Respondent opposed the application vide a replying affidavit dated 6th April 2023 and the Applicant entered appearance vide a Notice of Appointment dated 30th May 2023. I have further considered the Applicant's averments in the supporting affidavit dated 30th May 2023:

“...That I have never been served with any documents in relation to this suit and that this came as a surprise sine I have been continuously in control of the land since 2002...”

13. It is evident that the Applicant has fought gallantly to be included in this suit as is evidenced not only by this instant application but also the application dated 30th May 2023 which was dismissed vide a ruling delivered by this Court on 12th October 2023.
14. In light of the foregoing, this Court must rally to uphold its sacred constitutional mandate by fairly balancing the interest of the parties and uphold justice through a fair hearing of all. Consequently, I find that the application dated 6th November 2023 is merited and the same is hereby dispensed with under the following terms:
 - i. Charles Maina Chui John is hereby joined as the 3rd Defendant in this suit.
 - ii. The orders issued by this Court vide a ruling delivered on 29th March 2023 are hereby set aside.
 - iii. That pending the hearing and determination of this suit an order of status quo is hereby issued restricting all parties from selling, invading, trespassing, alienating, and/or converting all that parcel of land known as Plot No. 209/7260/119 or 209/7260/11 referred as Nairobi/Block 50/823 located at Eastleigh Section III.
 - iv. The 3rd Defendant is hereby granted fourteen (14) days to file and serve his pleadings and responses.
 - v. Upon service, the Plaintiff, 1st and 2nd Defendants are hereby granted leave of fourteen (14) days to amend, file and serve their pleadings if deemed necessary.
 - vi. Costs will abide determination of the main suit.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20TH MARCH 2024

E.K. WABWOTO

JUDGE

In the presence of:

Mr. Mwangi Kang'u for the Plaintiff/Respondent.

N/A for the 1st Defendant and 2nd Defendant.

Mr. Gisore for the Applicant.

Court Assistant – Caroline Nafuna.

<i>ELC CASE NO E121 OF 2023 RULING</i>	0
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