



**Mwita v Mwita & 5 others (Environment & Land Case
162 of 2014) [2024] KEELC 1636 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1636 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 162 OF 2014
NA MATHEKA, J
MARCH 20, 2024**

BETWEEN

MICHAEL MAISHA MWITA PLAINTIFF

AND

THOMAS BWIRE MWITA 1ST DEFENDANT

DORIS GISORE MWITA 2ND DEFENDANT

JOHN BOKE MWITA 3RD DEFENDANT

JANE MATOKORE MWITA 4TH DEFENDANT

MOHAMED AHMED ABDALLA 5TH DEFENDANT

DAULA MOHAMED OMAR 6TH DEFENDANT

RULING

1. The application is dated 25th September 2023 and is brought under Order 1 Rule 10 of the [Civil Procedure Rules](#), Sections 1A, 1B and 3A of the [Civil Procedure Act](#) seeking the following orders;
 1. That the Honourable court be pleased to grant leave to the Plaintiff to join the Land Registrar Mombasa as 7th Defendants in the suit.
 2. That upon joinder of the intended Defendant, the honourable court be pleased to order that the plaint be amended and amended summons be issued to the Defendant as 7th Defendant.
 3. That upon leave being granted as sought in prayer (a) herein, the Land Registrar Mombasa County be at liberty to enter appearance within 15 days of service of the order of this court and file its pleadings within the specified time accordingly and



4. That the court be pleased to direct the Land Registrar Mombasa to provide all documents pertaining to the change of status of the suit land from Hamoud Awadh all the way to the 5th and 6th Defendants and to the current owners, and be provide requisite explanation on the process leading to the same.
 5. That the costs of and incidental to this Application be in the cause.
2. It is based on the ground that the Plaint dated 1st July 2014, and filed on 1st July 2014, did not include the Land Registrar, whom the Orders sought shall be executed against. That the Land Registrar Mombasa is the custodian of all crucial documents pertaining to matters of land registration and his presence would be necessary to ascertain how title was acquired and whether the requisite process was followed. The proposed 7th Defendant/ Respondent being the custodian of matters of land registration and the Plaintiff/ applicant having sought orders for revocation of title and the said Orders if granted will be directed on the 7th Defendant/ Respondent, whose failure to be included would result in Court orders being in-executable. The inclusion/joinder of the 7th proposed defendant hereto will enable an effective and inclusive determination of all matters arising from and relevant to this Suit. There will be no prejudice suffered by the Respondents/ Defendants should the orders sought herein be granted.
 3. That the 5th and 6th Defendants opposed the said Application on the following grounds; that the Application as drawn is misconceived, unmerited, vexatious, bad in law, fatally defective and amounts to gross abuse of the Court Process. That the Application is filed after an inordinate delay and the is guilty of laches and therefore not entitled to the Orders sought. That the 5th and 6th Defendants are greatly prejudiced by the proposed amendment of the Plaint which will only lead to delay in the hearing of the suit. That the Application is filed to solely delay the hearing of the suit and no grounds or reasons have been advanced as to why the proposed 7th Defendant should be made party to this suit. That the proposed 7th Defendant has no role to play in a dispute that emanates from inheritance and succession of property and as such no benefit will be derived from the inclusion of the proposed party. That the plaintiff has failed to set down and/or prosecute the suit within the time lines set down by the court and as such the application as drawn cannot be granted.
 4. There was no re joinder from the 1st, 2nd, 3rd and 4th defendant. Counsel for the plaintiff in their submissions dated 20th November 2023 stated that joinder of parties is the discretion of a court after evaluation of the importance of the intended party to a suit. They also submitted that an application for joinder can be made at any stage as provided in Order 1 Rule 10 (2) of the *Civil Procedure Rules* and also relied on a court of appeal case *JMK vs MWM & Another (2015)* eKLR. They stated that there are principles the court considers in joinder of parties and relied on Eldoret HCCC 136 of 2000 Joseph Njau Kingori vs Robert Maina Chege & 3 others (2002) eKLR. Counsel briefly elaborated how joinder of the Land Registrar would satisfy the above principles as follows:
 - a. The input of the land registrar is necessary to provide documents and explain how title passed from the previous owner who sold title to the late Francis Kichere Mwita to the current owners.
 - b. Should the court order any cancellation of title, it would be binding upon the Land Registrar.
 5. Furthermore, Counsel submitted that the amendment is not prejudicial to the defendants and should be freely allowed as was held in *Central Kenya Ltd vs Trust Bank & 4 others Civil Appeal No. 222 of 1998 (2000)* eKLR. Finally, counsel stated that the application was brought without delay.
 6. Counsel for the 5th & 6th Defendant submit that the application is inordinately delayed as it has been over 10 years since filing of the suit. They also submitted that the application is defective as it did not invoke the court's power under Order 8 of the Civil Procedure Rules. In addition, counsel submitted



that the plaintiff failed to give reasons why he did not bring in the Land Registrar earlier. Counsel also faulted the plaintiff for not attaching a draft of the amended plaintiff and relied on the case of *Cleophas Omondi vs Dismas Wamaya (2018)* eKLR where the court held that the draft amended plaintiff is crucial as not all kinds of amendments can be allowed.

7. This court has considered the application and the submissions therein. When it comes to joinder of parties, the relevant provision of the *Civil Procedure Rules* is Order 1 Rule 10 (2) of the *Civil Procedure Rules* which states as follows;

“(2) 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.”

8. Counsel for the 5th & 6th defendant opposed the addition of the Land Registrar because the delay is inordinate. They claim that ten years has passed since the suit was filed and that the application is intended to delay the determination of the suit even further. The court agrees with the sentiments of counsel for the 5th and 6th respondent that it has been many years since the suit was filed but I disagree that the intention of the joinder is to delay and I rely on *Central Kenya Ltd vs Trust Bank Ltd & 5 others* (2000) eKLR where the court of appeal held;

“that a party is allowed to make such amendments as may be necessary for determining the real question in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, that no new or inconsistent cause of action is introduced, that no vested interest or accrued legal right is affected and that the amendment can be allowed without injustice to the other side.. I find that it is important for the Land Registrar to be joined to the suit to explain and show documents for the history of transactions on the suit property.”

9. According to the record, an application for temporary injunction pending hearing of the suit and dated 1st July 2014 was determined by Omollo J on 9th September 2016 and the next session was on 13th October 2017 and the court confirmed that the pleadings have been closed. Counsel was adamant that the application is bad in law as under Order 8 of the rules was not cited however Order 51 rule 10 (1) of the rules provides that the omission of not citing order 8 is not sufficient reason to dismiss the instant application. It is trite to note that the plaintiff sought leave as required under Order 8 of the rules and thus he followed the law.

10. The plaintiff has not specified what the amendment entails. The court cannot assume that the said amendment is only for addition of the Land Registrar. This failure to attach a draft amended plaintiff has been discussed in several case laws such as the case of *Busia Sugar Industry Limited vs Agriculture and Food Authority & 2 others* (Petition 3 of 2017) (2024) KEHC 1099 (KLR) (12 February 2024) where W. Musyoka J. held as follows;

“On the first limb, the proposed amendment being nondescript, it is argued that a proposed or draft amended petition was not attached to the application, making it impossible to determine the purport, nature and extent of the proposed changes. It is submitted that that omission would be fatal, for denying the other side a chance to adequately respond to the proposed changes, and to challenge the proposed changes.”



11. See also *Garley Enterprises Ltd vs Agricultural Finance Corporation & another (2018)* eKLR Nzioka, J. The court is therefore unable to allow blanket amendments and will only allow the specific amendment for the joinder. Consequently, I find that the plaintiff's application is merited and I grant the following orders;

1. That leave is granted to the Plaintiff to join the Land Registrar Mombasa as 7th Defendants in the suit.
2. That upon joinder of the intended Defendant, the plaint be amended as such and amended summons be issued to the Defendant as 7th Defendant.
3. That the costs of this application to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 20TH DAY OF MARCH 2024.

N.A. MATHEKA

JUDGE

