



Oyier v Ondiek (Sued as the Legal representative of Sime Oyua and Okach Sime - Deceased); Onyona (Interested Party) (Environmental and Land Originating Summons 30 of 2021) [2024] KEELC 1495 (KLR) (18 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1495 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 30 OF 2021
GMA ONGONDO, J
MARCH 18, 2024
IN THE MATTER OF THE LIMITATION OF ACTIONS ACT

BETWEEN

JARED AKETCH OYIER APPLICANT

AND

MARGARET ABUNA ONDIEK (SUED AS THE LEGAL REPRESENTATIVE OF SIME OYUA AND OKACH SIME - DECEASED) RESPONDENT

AND

BEATRICE WANGUI ONYONA INTERESTED PARTY

RULING

1. By a notice of motion application dated 17th October 2023 under, inter alia, Article 159 (2) (d) of *the Constitution* of Kenya 2010 and Order 1 Rule 10 (2) and Rule 25 of the *Civil Procedure Rules 2010*, the applicant, Jared Oketch Oyier through M.J Migele and Company Advocates, is seeking the following orders;
 - a. That the court be pleased to issue an order that Cris Ogembo Onyona be added as a co-defendant (intended co-defendant herein) in this suit.
 - b. That upon prayer 1 above being granted, the Applicant be granted leave to amend the Originating Summons dated 6th September 2021, as per the attached draft amended Originating Summons marked as JAO5.
 - c. That the draft amended Originating Summons marked as JAO1 be deemed to be properly filed upon payment of the requisite fees.



- d. That the costs of this application be provided for.
2. The application is premised upon the applicant's supporting affidavit of thirteen paragraphs sworn on even date and copies of documents marked as "JAO 1" to "JAO 5" which include; a green card, a certificate of official search and a title deed related to the suit land, Title No. Kanyada/Kotieno/Katuma A/600 and a portion thereof namely LR No. Kanyada/Kotieno/Katuma A /2856 alongside grounds, inter alia;
- a. That the fact that the suit parcel of land changed ownership from Margret Abuna Ondiek to the intended co-defendant became known to the Applicant on 2nd May 2023, when the Advocates for the Applicant were served with interested party's replying affidavit filed on 27th April 2023, where the title deed to the suit parcel was attached.
- b. That the fact that the said intended co-defendant is now the registered owner of the suit parcel of land makes him a necessary party in this suit since the orders that may be issued in this suit may have adverse effect on him.
3. Briefly, the applicant laments that at the time of filing the instant dispute, the respondent was the registered proprietor of the suit land. That on 15th October 2021, the portion of the suit land was registered in the name of the intended co-defendant hence necessary to add him as party in this suit in the interest of justice.
4. The respondent through L K Obwanda and Company Advocates, opposed the application by way of a replying affidavit sworn on 17th July 2023. She averred, inter alia, that the suit land has been subdivided and transferred. That the application is meant to delay the suit. That the same be dismissed with costs to the respondent.
5. The interested party through G. S Okoth and Company Advocates filed a replying affidavit sworn on 22nd November 2023. She deposed that by the time the suit was filed, the respondent had given consent to transfer the suit land which has been subdivided and new numbers given accordingly. That the suit land was subdivided as revealed in, inter alia, the green card attached to the affidavit.
6. Hearing of the application was by way of written submissions pursuant to the court's orders made on 6th December 2023.
7. In the applicant's submissions dated 10th February 2024, reference is made to the application, the interested party's replying affidavit and delineated two issues for determination namely whether the applicant is deserving prayers 1 and 2 in the application. In discussing the twinned issue in the positive, counsel submitted, inter alia, that the applicant is the new registered proprietor of the suit land thus, a necessary party in this suit.
8. Further, counsel submitted that the applicant is not bringing a new cause of action and cited Order 8 Rule 3 of the Civil Procedure Rules, 2010 in support of the submissions. Counsel implored the court to allow the application and relied upon JMK-vs-MWM and another (2015) KLR and Central Kenya Ltd-vs-Trust Bank Ltd and others (2010) eKLR, to buttress the submissions.
9. By the submissions dated 21st February 2024, L K Obwanda and Company Advocates for the respondent and the interested party referred to the application as well as the replying affidavit of the respondent and stated that the suit land is already subdivided and that the applicant is conscious of the same. That the application is brought in bad faith and meant to delay the suit, among other things.
10. I have carefully considered the entire application, the replying affidavits and the rival submissions. Therefore, is the applicant entitled to the orders sought in the application?



11. The applicant is seeking to add the intended co-defendant to this suit. He asserted that the intended co-defendant is the registered proprietor of the portion of the suit land with effect from 15th October 2021 hence, a necessary party herein.
12. Order 1 Rule 10(2) and 25 of the Civil Procedure Rules, 2020. (The Rules) provides for substitution and addition of parties to a suit. Rule 25 of the Order stipulates the procedure thereof as captured in this application.
13. Order 8 Rules 3 and 4 of the Rules regulates amendment of pleadings. The same include leave to amend Originating Summons as sought in the application.
14. In Concise *Oxford English Dictionary 12th Edition*, the term “joinder” means:

“ The act of bringing parties together”.
15. It must be noted that the main concern of the court is to do justice to the parties; see *Patel versus Highway Carriers (1986) LLR 258 (CAK)*.
16. Apparently, the intended co-defendant is the registered proprietor of the portion of the suit land. This is discerned in a copy of title deed and draft amended originating summons (JA03 and JA05) attached to the applicant’s affidavit in support of the application.
17. The respondent and interested party admit that the suit land has been subdivided and new numbers issued accordingly. To some extent, the said admission reinforces the application.
18. In the premises, the application is merited. So, the applicant is entitled to add the intended co-defendant to this suit and amend his pleadings to meet the ends of justice.
19. Accordingly, the instant application is allowed in terms of orders 1,2 and 3 sought herein as stated in paragraph 1(a) (b) and (c) hereinabove.
20. Costs of the application be in the cause.

DELIVERED, DATED AND SIGNED AT HOMABAY THIS 18th DAY OF MARCH 2024.

G.M.A ONG’ONDO

JUDGE

Present.

Mr. M. Migele for the applicant.

L.K Obwanda instructed by Madoro for the respondent.

T. Luanga, Court Assistant.

