



**Youth Limited v Kihiko & another; Kenya Railways Corporation
(Intended Defendant) (Environment and Land Case Civil Suit
160 of 2019) [2024] KEELC 1413 (KLR) (14 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1413 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 160 OF 2019
OA ANGOTE, J
MARCH 14, 2024**

BETWEEN

YOUTH LIMITED PLAINTIFF

AND

DANIEL NJOROGE KIHICO 1ST DEFENDANT

HENG YU INTERNATIONAL LIMITED 2ND DEFENDANT

AND

KENYA RAILWAYS CORPORATION INTENDED DEFENDANT

RULING

Introduction

1. The Intended Defendant Kenya Railways corporation, has filed a Chamber Summons dated 14th December 2023 in which it seeks the following orders:
 - a. That Kenya Railways Corporation be enjoined in the instant suit as an Intended Defendant.
 - b. That costs of this application be provided for.
2. The application is supported by the affidavit of Phillip Mainga in which he deposed that the Applicant has a stake in these proceedings and its interest will be directly affected by the Court's ultimate decision and that the Applicant is the lessor of the suit property, L.R No. 209/6445 being all that parcel of land situated in Nairobi containing by measurement 1.8689Ha or thereabouts.
3. Mr. Mainga deponed that the Applicant being the Lessor, ought to have been joined as a party to this suit to shed more light on the alleged dispute between the existing parties; that the Applicant has discovered anomalies in the lease document relied upon by the Plaintiff and wishes to sustain a cause of



- action against the Plaintiff and that the Plaintiff's deliberate non-joinder of the Applicant as the true proprietor of the suit property seems to be a calculated act of mischief and an abuse of court process.
4. It was deposed that the Plaintiff and the Applicant are parties in different proceedings in respect of the suit property, being Milimani ELC No. E392 of 2022 Youth Limited v Kenya Railways Limited and that any order issued by this court may affect its propriety in the Suit Property.
 5. Mr. Mainga urged that the Applicant is a necessary party to these proceedings and will assist the court in reaching an informed and wholesome decision and that as the matter has not taken off for hearing, the enjoinder of the Applicant shall not prejudice the parties in any way.
 6. The Plaintiff opposed the application through a Replying Affidavit sworn by Dr. Samuel Kamau Macharia, the Plaintiff's Director, who deposed that the Plaintiff has not pleaded any cause of action against the Applicant neither does it seek any relief against them.
 7. The Plaintiff's Director deposed that the matter purely relates to a dispute between the Plaintiff and the Defendants; that the suit does not affect any contractual relationship that may subsist between the Defendants and the Applicant and that the Applicant has failed to demonstrate by evidence or facts how the suit will affect its rights, and its intent is to be busy a body in matters that do not concern it.

Submissions

8. Counsel for the Intended Defendant/Applicant submitted that these proceedings are still alive and have neither been heard nor finalized; that the Applicant has a clear and identifiable interest in the suit and that the Applicant is the proprietor of the suit property. According to counsel, it would be unjust and prejudicial for the suit to proceed without the Applicant being allowed to be joined to put its case forward.
9. Counsel relied on the case of *Francis Kariuki Muruatetu & Another v Republic & 5 Others* [2016] eKLR and *Pravin Bowry v John Ward and Another* [2015] eKLR where the Court of Appeal considered the principles to be considered in an application for joinder of parties to a suit.
10. The Intended Defendant/Applicant's Counsel also referred the court to the Ugandan cases of *Deported Asians Custodian Board v Jaffer Brothers Ltd* [1999] 1 E.A. 55 (SCU) and *Civicon Limited v Kivuwatt imited and 2 Others* [2015] eKLR.
11. Counsel for the Plaintiff/Respondent submitted that the Plaintiff has not asserted any claim, right or cause of action against the Applicant. Counsel admitted that ELC Suit No. 392 of 2022 and the arbitration therein relate to a dispute touching on the lease for the suit property, Land Reference No. 209/6445.
12. Counsel's submission was that the Intended Defendant/Applicant seeks to be joined in the suit as a busy body and not for violation of its rights and that the allegations raised by the Applicant ought to be raised in ELC No. 392 of 2022 and the ongoing arbitration, which touch on the validity of the lease.
13. It was Counsel's submission that the Applicant is inviting this court to open parallel proceedings which are subject to ELC No. 392 of 2022 and the Arbitration. Counsel finally submitted that the Plaintiff has no cause of action against the Applicant and could not have sued it or joined it in this suit.

Analysis and Determination

14. The sole issue for consideration by this court is whether the Intended Defendant ought to be joined in this suit.



15. The intended Defendant, Kenya Railways Corporation, has argued that it ought to be joined in this suit as it is the proprietor of the suit property herein. The Plaintiff admits that the Intended Defendant is indeed the owner of the suit property, but contends that this suit purely relates to a dispute between it and the Defendants.
16. Under Order 1 Rule 3 of the [Civil Procedure Rules](#), a person may be joined in a suit as a Defendant against whom any right to relief arising out of an act or transaction is alleged to exist. The said provision provides as follows:
- “All persons may be joined as Defendants against 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 separate suits were brought against such persons any common question of law or fact would arise.”
17. Order 1 Rule 10(2) of the [Civil Procedure Rules](#) provides that a court may, either on application made by a party or without, allow joinder of a party whose presence it considers to be necessary in a suit. The full text of the Rule provides as follows:
- “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.”
18. The power of a court to order joinder is one based on its discretion. The discretion must however be exercised judiciously and in accordance with the parameters set out in Order 1 Rule 10(2) of the [Civil Procedure Rules](#). This position was ably elucidated in [Civicon Limited v. Kivuwatt Limited and 2 Others](#) [2015] eKLR as follows:
- “Again the power given under the Rules is discretionary which discretion must be exercised judicially. The objective of these Rules is 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 any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”
19. This court in [Joseph Njau Kingori v Robert Maina Chege & 3 Others](#) [2002] eKLR distilled the guiding principles in considering whether to allow joinder of an intending party as follows:
- “1. He must be a necessary party.



2. He must be a proper party.
 3. In the case of the defendant there must be a relief flowing 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.”
20. Courts have held that a party is necessary to a suit where it is shown that the legal reliefs sought would directly affect the person sought to be joined, to avoid a multiplicity of suits or where it is shown that the Defendant cannot effectually set a defence unless that person is joined in it. This position was set out in the Ugandan case of *Departed Asians Property Custodian Board v Jaffer Brothers Ltd* [1999] 1 EA 55 quoted with approval by the Court of Appeal in *Civicon Limited v Kivuwatt Limited & 2 others* [2015] eKLR as follows:
- “A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involve in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involve in the cause or matter...For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the Court in that suit. Alternatively, a person qualifies, (on an application of a Defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.”
21. The Court of Appeal also quoted its earlier decision in *Meme v Republic* (2004) KLR637 wherein it held that joinder will be permissible:
- i. Where the presence of the party will result in the complete settlement of all the question involved in the proceedings;
 - ii. Where the joinder will provide protection for the rights of a party who would otherwise be adversely affected in law: and
 - iii. Where the joinder will prevent a likely course of proliferated litigation.
22. On the basis of the above legal provisions and authorities, this court must now consider whether the proposed Defendant, the Kenya Railways Corporation, ought to be joined in this suit. As has been set out in detail, the question herein is whether the Kenya Railways Corporation is a necessary party to this suit, whether a relief flows from the proposed Defendant to the Plaintiff or whether its presence is necessary to settle all questions involved in this suit.



23. It is a fact acknowledged by all parties in this matter that the Intended Defendant is the legal owner of the suit property, and that it leased the suit property to the Plaintiff. This is apparent from the Certificate of Title attached to the Intended Defendant's application.
24. The Plaintiff's suit is seeking for a permanent injunction and eviction orders to remove the Defendants from the suit property. This alone is enough to join the intended Defendant to this suit, as they have a discernable interest in the suit property.
25. Kenya Railways Corporation has further asserted that it has discovered huge anomalies in the Lease document relied upon by the Plaintiff and wishes to sustain a cause of action against the Plaintiff in respect to that Lease, and that once joined, it will shed more light on the alleged dispute between the existing parties.
26. This court is satisfied that the Intended Defendant is a necessary party to this suit. Its presence will result in the complete settlement of all the questions involved in the proceedings.
27. For those reasons, the Intended Defendant's application dated 14th December 2023 is allowed in the following terms:
 - a. Kenya Railways Corporation is hereby joined in the instant suit as the 3rd Defendant.
 - b. Kenya Railways Corporation to file its Defence and Counterclaim within 15 days of the delivery of this Ruling.
 - c. The Plaintiff and the 1st and 2nd Defendants to file their responses to the Defence and Counterclaim within 14 days of service of the 3rd Defendant's Defence and Counterclaim.
 - d. Each party will bear its/his own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 14TH DAY OF MARCH, 2024.

O. A. ANGOTE

JUDGE

In the presence of;

Ms Achieng for the Plaintiff

Ms Tusime for the Intended Defendant

Mrs Ochieng for 1st Defendant

