



REPUBLIC OF KENYA



Ngure v Nahoco Housing Cooperative Society & another (Environment & Land Case E155 of 2022) [2024] KEELC 1283 (KLR) (7 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1283 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E155 OF 2022**

OA ANGOTE, J

MARCH 7, 2024

BETWEEN

CHRISTOPHER MWEYA NGURE PLAINTIFF

AND

NAHOCO HOUSING COOPERATIVE SOCIETY DEFENDANT

AND

MERCY KINOTI PROPOSED DEFENDANT

RULING

1. Before this Court for determination is the Plaintiff's Notice of Motion dated 24th April 2023 and brought under Article 50 and 159 of the *Constitution*, Sections 1A, 1B, 3A and 63 of the *Civil Procedure Act*, Order 1 Rule 3, Order 1 Rule 10(2), Order 8 Rule 3, Order 40 Rule 1 and Order 51 Rules 1 and 3 of the *Civil Procedure Rules*. The Plaintiff is seeking for orders that:
 - a. Spent.
 - b. The Court be pleased to grant the Plaintiff leave to amend his plaint dated 6th April 2022.
 - c. The annexed amended plaint be deemed as duly filed upon payment of the requisite fees.
 - d. Upon granting of order (b) above, a temporary order of injunction do issue restraining the Defendants by themselves or their agents from entering, trespassing, occupying, possessing, selling, leasing, transferring, alienating or in any other way dealing with the property namely Plot 44 (hereinafter 'the suit property') pending the hearing of the main suit.
 - e. Costs of the application be provided for.
2. The application is based on several grounds and supported by an affidavit sworn by the Plaintiff who deponed that he initiated the instant suit by way of a Plaint which did not raise all the pertinent issues



and that the Court allows the amendment of the Plaintiff to allow the inclusion of facts that are critical to the case as well as to join the proposed 2nd Defendant (hereinafter the 2nd Defendant).

3. It Plaintiff deponed that this will enable the Court to conclusively determine the issues raised in the suit; that he is the owner of the suit property having paid the 1st Defendant the requisite transfer fees and that the 1st Defendant has failed to process the title deed for the suit property and has further neglected to issue him with the relevant transfer documents.
4. Additionally, the Plaintiff deponed that the 1st Defendant intends to illegally transfer the suit property to the 2nd Defendant who has trespassed thereon. In conclusion he asked the Court to intervene and stop the trespass by the 2nd Defendant which could cause him substantial loss.
5. The 2nd Defendant filed grounds of opposition dated 11th July 2023 in which he averred that she has been wrongly joined in the suit; that the Plaintiff has failed to meet the threshold for the grant of an injunction; and that the application is intended to waste judicial time, has no foundation in law and is an abuse of the court process and ought to be struck out with costs.
6. The Plaintiff filed a further affidavit on 13th October 2023 in response to the 2nd Defendant's grounds of opposition. He deponed that the 2nd Defendant was the daughter of Martha Kinoti and that it was the 2nd Defendant who had trespassed on the suit property by digging trenches thereon.
7. The 2nd Defendant filed a replying affidavit dated 10th November 2023. She deponed that she is the daughter of Martha Kinoti who is the rightful owner of the suit property having paid for it from deductions from her salary when she was an employee of Nairobi City Council.
8. The 2nd Defendant deponed that Martha Kinoti was issued with a share certificate No. 71 by the 1st Defendant and that the Plaintiff did not have locus standi to institute the suit as he was neither a member of the 1st Defendant nor the owner of the suit property which he alleged was purchased by his father John Ngure Karonga.
9. Additionally, the 2nd Defendant deponed that she has been wrongly joined in the suit as she only transported construction materials to the suit property and dug trenches thereon under the instructions of the owner, Martha Kinoti and that the dispute is between John Ngure Karonga, Martha Kinoti and the 1st Defendant. The parties filed submissions which I have considered.
10. The Plaintiff has argued that he should be allowed to amend the Plaintiff to join the 2nd Defendant in the suit. The 2nd Defendant has opposed this position stating that she is not the owner of the suit property, neither is she claiming the land, and as such, should not be a party in the suit.
11. Order 1 Rule 3 of the *Civil Procedure Rules* 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.”
12. In the case of *Civicon Limited v Kivuwatt Limited & 2 Others* [2015] eKLR the Court stated as follows:

“ 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.”

13. In the case of *Gladys Nduku Ntbuki v Letshego Kenya Limited; Mueni Charles Maingi (Intended Plaintiff)* [2022] eKLR, the court came up with the applicable test for joinder of parties. The court held as follows:

“The relevant tests for determination whether or not to join a party in proceedings were restated by Nambuye, J (as she then was) in the case of *Kingori v. Chege & 3 Others* [2002] 2 KLR 243 where the learned Judge stated that the guiding principles when an intending party is to be joined are 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.”

14. The Plaintiff has argued that the 2nd Defendant should be joined in the suit because she trespassed on the suit property by carrying out some construction activities. According to the 2nd Defendant, the owner of the land on whose instructions she was carrying out activities on the suit property is Martha Kinoti and is the one to be sued.
15. The 2nd Defendant has questioned the Plaintiff’s locus standi in this suit arguing that since he is not the registered owner of the suit property and that he has no locus standi.
16. A perusal of the amended Plaintiff filed together with the application reveals that the Plaintiff is seeking to be declared the owner of the suit property and to have the transfer to the 2nd Defendant declared a nullity/cancelled.
17. To succeed in joining the 2nd Defendant, the Plaintiff must therefore show that the 2nd Defendant who goes by the name of Mercy Kinoti is inextricably linked to the ownership of the suit property.
18. A perusal of the documents on record reveals that one Martha Kinoti was issued with a share certificate (dated 5th February 2000) for the suit property by the 1st Defendant. Additionally, the 2nd Defendant has stated that her activity on the suit property was under the instruction of the said Martha Kinoti.
19. It is my considered view that in a dispute regarding land ownership, the proper and necessary party would be the one with an ownership document (for the property in contention) in their name. In this case that would be Martha Kinoti and not the 2nd Defendant.
20. There is no evidence before this court to show that the proposed 2nd Defendant has an interest in the suit property. In view of the foregoing I find that the Plaintiff has not satisfactorily proved that the Plaintiff should be amended to join the 2nd Defendant.



21. The Plaintiff has also sought for an order of injunction. There is a previous application dated 10th June 2022 where the Plaintiff sought for a temporary injunction against the 1st Defendant. The matter was heard by way of written submissions by this Court and a ruling delivered on 16th March 2023. The Court declined to issue the Plaintiff with an injunction restraining the 1st Defendant from dealing in the suit property.
22. The Court found that the Plaintiff had not demonstrated a clear and unmistakable right that had been infringed upon by the 1st Defendant.
23. In view of the foregoing, I am of the view that the quest for an order of injunction in the current application is res judicata having been adjudicated over by the court, and a ruling delivered. The Plaintiff is therefore not entitled to the injunctive relief sought.
24. The application dated 24th April, 2023 is dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 7TH DAY OF MARCH, 2024.

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Gicheru for Plaintiff/Applicant

Mr. Walela holding brief for Makau for Intended 2nd Defendant

Court Assistant - Tracy

