



**Omar & 2 others v Abdirahman & 3 others; Duale & 14 others (Interested Parties)
(Environment & Land Case E252 of 2022) [2024] KEELC 1376 (KLR) (7 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1376 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E252 OF 2022**

**J OMANGE, J
MARCH 7, 2024**

BETWEEN

ANAB ABDI OMAR 1ST PLAINTIFF

AHMED ABDIRAHMAN ELYASS 2ND PLAINTIFF

AND

ABDULLAHI ABDIRAHMAN APPLICANT

AND

ABDULLAHI ABDIRAHMAN 1ST DEFENDANT

HASSAN IBRAHIM A MUHAMUD 2ND DEFENDANT

ADAN ALIO ABDI 3RD DEFENDANT

ABDULLAHI ADAN JIMALE 4TH DEFENDANT

AND

MOHAMED JAMAA DUALE INTERESTED PARTY

SAADIA ABDI SALAH INTERESTED PARTY

OSMAN ABDI MOHAMED INTERESTED PARTY

ABDULLAHI ABDI ISSACK INTERESTED PARTY

AYANLE ABDI RAGE INTERESTED PARTY

NOOR ABDI SALAH INTERESTED PARTY

ABDI MOHAMUD SANWEYNE INTERESTED PARTY

FARDOWSA SHARIF HASSAN INTERESTED PARTY

NASOR ALI ABDI INTERESTED PARTY



NATHIR MOHAMED HAJI INTERESTED PARTY
NOOR MUHUMED GAIYE INTERESTED PARTY
YUSSUF ALI OSMAN INTERESTED PARTY
MOAHMED ADAN BATELO INTERESTED PARTY
SHAKIR HUSSEIN MUHUMED INTERESTED PARTY
AHAMED ABDUL JAMA INTERESTED PARTY

RULING

1. In the chamber summons application dated the 25th April 2023 the Applicants sought the following orders:
 - a. Spent.
 - b. The names of (1) Mariam Ibrahim Mursal (2) Mohamud Hussein Abdow, (3) Hassan Mohamed Ibrahim, (4) Issack Salad Ibrahim, (5) Ali Noor Hassan, (6) Mariam Sheikh Omar, (7) Meymuna Sheikh Omar, (8) Mohamed Ali Osman, (9) Siyad Mohamed Ali, (10) Ugas Farah Bare, (11) Mohammed Jamma Duale, (12) Nathir Mohamed Haji, (13) Yusuf Ali Osman (14) Ahmed Mohammed Gurey, (15) Mohamud Abdi Hussein, (16) Adan Haji Ali, (17) Nouh Derow Abdullahi, (18) Abdi Hassan Mohamodo, (19) Seinab Maalim Ibrahim, (20) Abdullahi Mohamed Mahat, (21) Abdinasir Adan Somo, (22) Muhidin 3 Page 4 Of 15 Abdullahi Manur, (23) Muktar Hassan Ibrahim, (24) Aftin Adan Abdi, (25) Dahir Ali Mohamed, (26) Abdirahman Adan, (27) Lul Mursal Mohamed, (28) Adan Ibrahim Mursal, (29) Mahadha Kassim Sheikh, (30) Mohamud Abdirahman Ibrahim, (31) Mohamed Adan Batelo, (32) Ibrahim Abdullahi Hussein, (33) Sadia Abdullahi Isaaq, (34) Abdifatah Bishar Dube, (35) Ibraahim Maalim Abdullahi, (36) Abdinoor Alio Abdi, (37) Alinoor Gabon Mohamed, (38) Abubakar Adan Mahad, (39) Muktar Molu Kike, (40) Abdirashid Hussein Suraw, (41) Abdilatif Muktar Hassan, (42) Ahmed Mohamed Mahat, (43) Ibrahim Mugotar Hassan, (44) Anisa Yussuf Ibrahim, (45) Mohammed Adan Hussein, (46) Mohamed Abdi Ali, (47) Mohamed Adan Isaaq, (48) Mustafa Aligey Hassan, (49) Asha Ibrahim Mursal, (50) Bashir Rashid Salat, (51) Sadik Abdi Sheikh, (52) Ali Sofe Mohamed, (53) Nasro Ali Abdi, (54) Ali Moallin Ahmed (ali Mire), (55) Mohamed Noor Muktar, (56) Abdirahman Mohamed Abdi, (57) Daqan Ali Omar, (58) Ruth Joyce Nyawira Kaguta, (59) Noor Muhumed Gaiye, (60) Hakima Mohamud Yussuf, (61) Shakir Hussein Muhumed, (62) Hawo Isak Amin, (63) Aweys Abdullahi Abdow, (64) Mohamednoor Bishar Dube, (65) Amina Mohamed Abdullahi, (66) Hassan Daud Ahmed, (67) Amina Mohamed Wario, (68) Fatuma Adan Ibrahim, (69) Peter Githuku Ndirangu, (70) Mohamed Maalim Adow, (71) Mohamed Abdi Adan, (72) Mohamed Adan Mohamed, (73) Abdirahman Mohamed Abdullahi, (74) Hamsa Haji Omar, (75) Nooradiin Mohamed Sheikh Hersi, (76) Zahra Ali Maalin, (77) Ali Abdi Noor Isaaq (ali Diqa), (78) Dubat Dahir Hussein, (79) Osman Abdi Mohamed, (80) Ibrahim Yunis Hassan, (81) Amina Abdullahi Mohamed, (82) Saadia Abdi Salah, (83) Hussein Issack Mohamed, (84) Adow Mohamed Liban, (85) Abdi Noor Osman, (86) Abbas Osman Ali, (87) Saadia Abdirahaman Dugow, (88) Ibrahim Abdi Gaballe, (89) Ali Daud Ahmed, (90) Noor Abdi Salah, (91) Alghazali Maalim Hassan, (92) Fatuma Halakhe Guyu, (93) Mohamed Abdi Adan, (94) Mohamed Abdul Jamma, (95) Issack Mohamed Ibrahim, (96) Hussein Salah Dahir, (97) Abdinasir Ali Ibrahim, (98) Abdulahi Haret Elmile, (99) Abdullahi Abdi Issack, (100) Amina



Bare Mohamed, (101) Abdirashid Hussein Adam, (102) Abdi Mohamud Sanweyne, (103) Abdikhani Abdi Mohamed, (104) Yusuf Ahmed Maah, (105) Abdiwahab Robow Ali, (106) Mohamed Nuunow Mohamed, (107) Mukhtar Sheikh Mohamed, (108) Zahra Mahadalle, (109) Kula Halkane Hache, (110) Abdi Somo Garabey, (111) Hamdi Mohamed 4 Page 5 Of 15 Qalooshe (112) Anthony Kiragube joined in the suit as 5th to 116th Defendants respectively.

- c. Upon joinder of the intended Defendants, the honourable court be pleased to order that the plaint be amended and amended summons be issued to the Defendants as 5th to 116th Defendants respectively.
 - d. In the alternative the 2nd to 4th Defendants be granted leave to amend their defense and counter-claim and join the intended Defendants.
 - e. The court directs that fresh summons to enter appearance be issued against the intended Defendants.
 - f. That costs of the application.
2. The application was supported by an affidavit sworn by Abdullahi Abdirahman, the 2nd Defendant herein, who deponed that the issues raised in the plaint would not be effectively and completely adjudicated upon and settled without the presence of the proposed 5th to 116th Defendants hence the need to have them enjoined. He further deponed that the Defendants cannot effectively set up a defence they desire to set up unless the proposed Defendants are joined in the suit hence the application. The same sentiments were echoed in the Applicants submissions in which they relied on the case of *Busienei v Transnational Bank (K) Ltd* [2002] KLR 784 (Tunya. J on 8th November [2002]).
 3. The Defendant/ Applicants submitted that the court should allow the prayer for amendment of the plaint under Order 8 Rule 3 (5) which provides that amendments may be allowed under sub rule (2) notwithstanding that its effect will be to add or substitute a new party or cause of action.
 4. The Plaintiff opposed the application vide grounds of opposition dated 14th March 2023. The grounds of objection are that the Defendants have failed to demonstrate the stakes that the intended proposed Defendants have in the suit and how non-joinder will affect the rights of the Defendants to defend the Plaintiffs case.
 5. In their submissions, the Plaintiff reiterated that order 1 rule 9 of the civil procedure rules provides that no suit shall be defeated by reason of the misjoinder or non-joinder of any parties and the court may in every suit deal with the matter in controversy so far as regards the parties before it. Further, that the Defendants had failed to demonstrate how the non-joinder of the proposed defenders would prejudice them. They referred the court to Petition No 16 of 2015 *Francis Karioki Muratetu v Republic & 4 others* (2016) eKLR in which the court expressed itself on grounds to be satisfied before courts can allow for an application of joinder.
 6. The interested parties who had sought to be enjoined as interested parties vide application dated 13th February, 2023 opposed the application vide grounds of opposition dated 28th September 2023 on grounds that the Plaintiffs claim is against the Defendants on specific parcels of land sold to them by the Plaintiff and not on all purchasers who bought other parcels from the plaintiff and as such the Plaintiffs do not have any cause of action as against the intended proposed Defendants.
 7. The Interested Parties submitted there is no dispute as between them and the Plaintiffs and relied on the case of *Carol Construction Engineers Ltd v Naomi Cheporir Langat* (2019) eKLR in which the court stated it would be untenable to enjoin parties whom the plaintiff had no claim against on application



by the defendant. Further, they asked the court not to allow the prayer for amendment of the plaint as it was not an application by the Plaintiffs being that it was their case and not the Defendants'

8. The issue for determination is whether the applicant has established sufficient grounds to warrant the joinder of the additional 115 Defendants. The Applicants' case is that the joinder of the 115 persons is necessary to enable them mount a defence which would enable the court adjudicate on the issues.
9. The relevant test for joinder of a party in proceedings was stated by Nambuye, J in the case of *Kingori v Chege & 3 others* [2002] 2 KLR 243 wherein the learned Judge stated that the guiding principles when an application for joinder are;
 - i. He must be a necessary party.
 - ii. He must be a proper party.
 - iii. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.
 - iv. The ultimate order or decree cannot be enforced without his presence in the matter.
 - v. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.

In *Departed Asians Property Custodian Board v Jaffer Brothers Ltd* [1999] 1 EA 55 it was held 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 involved 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 involved 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.” (emphasis mine)

10. This is an application by the 2nd Defendant in which he seeks to bring on board the 115 persons he had earlier referred to in his pleadings. It is his contention that the defence cannot be successfully mounted without the joinder of the Defendants who he contends have a stake in the suit.
11. I have considered the plaint and the defence and I note that the orders the Plaintiff seeks will affect the entire suit property of which the 115 intended Defendants claim to have a stake. The Defence filed by the 2nd, 3rd and 4th Defendant are explicit that they represent the interests of 115 other persons who are not before the court. It follows therefore that the 115 will benefit from any orders that the 2nd, 3rd and 4th Defendant will obtain. It is also open for the Defendants to decide if it will be necessary to call them as witnesses or have evidence tendered on their behalf. If there is an impediment legal or otherwise that would affect their interests that would necessitate their involvement as Defendants, the 2nd Defendant does not clearly state it. It is also noteworthy that none of the 115 proposed Defendants have filed an affidavit to confirm that they would wish to be enjoined to defend the suit.



12. This court is enjoined by section 1A of the *Civil Procedure Act* to facilitate just, expeditious, proportionate and affordable resolution of disputes. The addition of 115 persons who are already well represented in a suit would not only complicate and delay the suit but would ultimately escalate the costs incurred by all the parties. For these reasons, I find that the application has no merit and is dismissed. Costs shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 7TH DAY OF MARCH 2024.

JUDY OMANGE

JUDGE

In the presence of:

Mr. Sausi for the Plaintiffs

Mr. Mutegi for Mr. Omar for 1st Defendant

Mr. Asigo for Mr. Abdi Aziz for Interested Parties

Steve - Court Assistant

