



Tulo Holdings Limited v Satinder Singh Kalsi & another; Satinder Singh Kalsi & another v Tulo Holdings Limited & 4 Others (Counter Claim) (Civil Suit 25 of 2012) [2024] KEELC 3393 (KLR) (25 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3393 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
CIVIL SUIT 25 OF 2012
MC OUNDO, J
APRIL 25, 2024

TULO HOLDINGS LIMITED PLAINTIFF
VERSUS
SATINDER SINGH KALSI 1ST DEFENDANT
RAVINDER SINGH KALSI 2ND DEFENDANT
“FAST TRACK” (BY ORIGINAL ACTION) AND

BETWEEN

SATINDER SINGH KALSI 1ST PLAINTIFF
RAVINDER SINGH KALSI 2ND PLAINTIFF
AND
TULO HOLDINGS LIMITED 1ST DEFENDANT
BUTT MOHAMMED RIAZAI 2ND DEFENDANT
COUNTY GOVERNMENT OF KERICHO 3RD DEFENDANT
HON ATTORNEY GENERAL 4TH DEFENDANT
CHIEF REGISTRAR OF TITLES 5TH DEFENDANT

RULING

1. Before me for determination is a Chamber Summons dated 1st October, 2019 brought under the provisions of order 1 rule 10(2) and rule 25 of the *Civil Procedure Rules*, Section 3, and 3A of the *Civil Procedure Act*, and all other enabling provisions of law, where the 3rd Defendant/Applicant sought to be struck out from the instant suit and for costs of the application.



2. The said application was supported by the grounds therein as well as the supporting Affidavit of an even date, sworn by Gideon Mutai, the County Attorney of the 3rd Defendant/Applicant and is premised on the grounds that the 3rd Defendant was not a party to the transaction forming the dispute herein hence the doctrine of the privity of contract. That further, the Plaintiff's particulars of fraud on the part of the Defendants had not implicated the 3rd Defendant/Applicant thus there was no cause of action against the 3rd Defendant/Applicant and since the orders sought were not against the 3rd Defendant/Applicant and neither could they be enforced against it in the event the same were issued, the 3rd Defendant be struck out from the proceedings.
3. In response and in opposition to the 3rd Defendant/Applicant's application, the Plaintiff through his Replying Affidavits dated 11th November, 2019 and 31st October, 2023 both sworn by Satinder Singh Kalsi, the 1st Plaintiff in the counterclaim, deponed that the instant application was frivolous, vexatious, and that the Applicant was crucial party because since the year 1991, the defunct Municipality of Kericho, now County Government of Kericho had demanded and collected land rates from Manjit Singh and Rajinder Singh in respect of the suit property which monies had been paid.
4. That pursuant to their discovery of the fraud that had been perpetrated by the 1st Defendant over the suit property, they had lodged a complaint with the defunct Municipality of Kericho seeking their attention wherein the said defunct Municipality had on 14th June, 2012 attempted to resolve the ownership issue that was currently before the court. That from the foregoing, the Applicant herein was a necessary party to the instant proceedings because their presence and participation would provide clarification regarding the ownership of the property regarding the extent to which they had dealt with the same. He thus prayed that the Application dated 1st October, 2019 be dismissed with costs.
5. The 1st Defendant in the counterclaim vide its Replying Affidavit dated 3rd December, 2019 sworn by Charles K. Maiyo, it's Co-Director, deponed that as the Plaintiff in the main suit, they were not opposed to the application because the 3rd Defendant/Applicant was not charged with the issuance of title documents/certificate of title. That the 3rd Defendant/Applicant having arbitrated over the issue of the ownership of the suit property, where the Defendants in the main suit had not been satisfied with the 3rd Defendant/Applicant's decision, they ought to have appealed against the decision instead of suing the 3rd Defendant/Applicant.
6. That contrary to the Defendants' (in the main suit) allegations that they had been paying rates over the suit property, the said rates were paid by Central Garage Limited which was a distinct entity from the Defendants. Further that the suit property did not belong to the Defendants as the same had been sold to Mohammed Riazaz, the 2nd Defendant in the counterclaim. That indeed, the 3rd Defendant/Applicant herein had only transferred the rate payers from Mohammed Riazaz to the Plaintiff in the main suit in the year 2011.
7. That joining of unnecessary parties to the instant suit was meant to delay the instant matter which had been decided against the said Defendants for failure to attend the hearing. He thus prayed that the court allows the Application as prayed with costs.
8. The 4th and 5th Defendants in the Counterclaim had sought for and had been excused from participating in the instant Application.
9. On 5th May, 2022, direction had been issued that the Chamber Summons be canvassed by way of written submissions wherein only the 3rd Defendant/Applicant and the Plaintiff in the counterclaim complied and filed their submissions to which I shall herein summarize as follows: -



3rd Defendant/Applicant's Submissions.

10. In support of their application, the 3rd Defendant/Applicant framed two issues for determination to wit; -
 - i. Whether the 3rd Defendant/Applicant is a necessary party in the instant suit.
 - ii. Whether any cause of action is disclosed against the 3rd Defendant/Applicant.
11. On the first issue for determination as to whether the 3rd Defendant/Applicant was a necessary party, reliance was placed on the provisions of Order 1 Rule 10(2) of the *Civil Procedure Rules* to submit that the Plaintiff's claim had arisen out of a land sale agreement to which the 3rd Defendant/Applicant had not been privy to and neither had the said 3rd Defendant/Applicant been involved in any way in the transfer process of the suit land.
12. As to whether any cause of action had been disclosed against the 3rd Defendant/Applicant, reliance was placed in the decided case of *DT Dobie & Co. (K) Ltd v Muchina*, [1982] KLR to submit in the negative. That the alleged transaction had been between the Plaintiff and the 1st and 2nd Defendants and therefore the 3rd Defendant could not answer to the Plaintiffs' claim. The instant suit against the 3rd Defendant thus amounted to an abuse of the court process. Further, that the Respondents would not suffer any loss in the event that the orders sought herein were granted.
13. Reliance was also placed on the decided case of *Crescent Construction Co. Ltd v Delphis Bank Limited* [2007] eKLR to submit that there was no condition precedent for settlement and/or ownership of the land, which had laid basis for the Applicant to be incorporated in the suit. That it was in the best interest of justice that the court exercises its discretion in favour of the Applicant and grant the orders as prayed thus striking the 3rd Defendant from the suit.

Plaintiffs' Submissions.

14. In opposition to the 3rd Defendant/Applicant's Chamber Summons dated 1st October, 2019, the Plaintiffs in the counterclaim, vide their submission dated 15th November, 2023 framed one issue for determination to wit; whether the Applicant's name should be struck out of the proceedings.
15. They placed their reliance on the provisions of Order 1 Rule 9 and 10 of the *Civil Procedure Rules* as well as on the decided case of *Gladys Nduku Ntbuki v Letshego Kenya Limited; Mueni Charles Maingi (Interested Party)* [2022] eKLR to submit that the inclusion of the Applicant in the instant suit had not been by mistake but because its participation would assist the court to effectively determine the issues presented before it. That although the issue in the instant suit was based on ownership, yet the defunct Kericho Municipality (Applicant herein) for a very long time had demanded payment and also collected rates from the proprietors of the suit property who had been Basant Singh and later Manjit Singh and Rajinder Singh.
16. That further, when the fraud perpetrated by the 1st Defendant had been discovered, the issue had been raised with the defunct Municipality of Kericho (Applicant) wherein it had invited the disputants and had attempted to resolve the issue. That it was thus important that the Applicant participates in the instant matter so as to assist the court to determine the ownership question before it. Further reliance was placed on a combination of decisions in the case of *Gladys Ndukus case (supra)* where the court had quoted with authority, the case of *Departed Asians Property Custodians Board v Jaffer Brothers Ltd* [1999] 1 EA 55 and *Civicon Limited v Kivuwatt Limited & 2 Others* [2015] eKLR.



17. In conclusion, the Plaintiffs (in the counterclaim) submitted that the Applicant was by all means a necessary party to the instant proceedings whose inclusion had not been inadvertent since its involvement would assist the court make an accurate determination on the ownership of the suit property. That the issues that had been raised by the Applicant were unmerited, thus the instant application should be dismissed with costs.

Determination.

18. I have considered the application herein the argument for and against the Applicant/3rd Defendant's application seeking to be struck out from the suit herein. I have further considered the law, submissions, and the authorities cited therein.
19. With regard to joinder of parties, Order 1 Rule 9 of the *Civil Procedure Rules* states that no suit shall be defeated for misjoinder or non-joinder of parties and requires that the court deals with the matter in controversy so far as regards the rights and interests of the parties actually before it. On the other hand, Order 1 Rule 10(2) of the *Civil Procedure Rules* also provides that:-
- “The court may at any stage of the proceedings, either upon or without the application of either part, 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 Defendants, 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.”
20. It can be deduced from the above holding that a party whose presence in a suit cannot help the court determine the subject matter of the suit is an unnecessary party and should be struck out of the proceedings.
21. In *Pravin Bowry v John Ward & another* [2015] eKLR the Court of Appeal commenting on who is a necessary party referred to the Ugandan case in *Deported Asians Custodian Board v Jaffer Brothers Ltd* [1999] 1 EA 55 (SCU) where the court stated 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 because the party's presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all 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 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.”
22. It is therefore clear that the court may on its own motion or on application of any party to the proceedings order the striking out a party whose presence in a suit will not enable the court to effectually and completely adjudicate upon and settle all questions involved in the matter should be



- struck out. In the exercise of that discretion, the court must as a matter of course, act according to reason and fairness and not according to its whims and caprice.
23. The issue that arises for determination is whether the 3rd Defendant is a necessary party to this suit and if so, whether any cause of action is disclosed against it.
24. The provision of Order 2 Rule 15(1) (a) of the *Civil Procedure Rules* states that at any stage of the proceedings the court may order to be struck out or amend any pleading on the ground that it discloses no reasonable cause of action or defence in law. The said provision of the law provides:
- “ 1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—
- a) it discloses no reasonable cause of action or defence in law; or
 - b) it is scandalous, frivolous or vexatious; or
 - c) it may prejudice, embarrass or delay the fair trial of the action; or
 - d) it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.”
25. The suit is in relation to the Plaintiff’s Plaint in which it seeks that judgment be entered against the Defendants jointly and severally for:
- a. A declaration that she is the duly registered proprietor and owner of all that parcel of land known as Kericho Municipality Bloc 5/402 situated within Keicho town.
 - b. A permanent injunction restraining the Defendants, jointly and severally their servants, agents employees and any other person or persons acting on the instruction from trespassing, entering, occupying or in any manner dealing with all that parcel of land known as Kericho Municipality Bloc 5/402 situated within Keicho town to the Plaintiff’s detriment.
 - c. Costs of the suit
 - d. Any other or further relief which the honorable court may deem fit and just to grant.
26. The 3rd Defendant/Applicants’ application in seeking to be struck from the Suit is founded on the argument that it was not a party to the transaction forming the dispute herein thus the doctrine of the privity of contract would apply. That further, the Plaintiff’s particulars of fraud on the part of the Defendants had not implicated the Applicant thus there was no cause of action against it. That further, the orders sought were not against the 3rd Defendant/Applicant and neither could they be enforced against it in the event the same were issued and therefore, they were wrongly joined to the suit.
27. The general objective of Order 1 Rule 10(2) of the *Civil Procedure Rule* 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 joined.
28. In the case of *Werrot and Company Ltd & Others v Andrew Douglas Gregory & Others* [1998] eKLR it was held that

“ For determining the question of who is a necessary party there are two tests;



- (i) there must be a right to some relief against such a party in respect of the matter involved in the proceeding in question and
- (ii) it should not be possible to pass an effective decree in the absence of such a party."

29. The Plaintiff on the other hand upon giving a brief history of the matter in question, which the court has appreciated, is of the opinion that although the issue in the instant suit was based on ownership, yet the defunct Kericho Municipality now the Applicant herein for a very long time had demanded payment and also collected rates from the proprietors of the suit property who had been Basant Singh and later Manjit Singh and Rajinder Singh. That further, when the fraud perpetrated by the 1st Defendant had been discovered, the issue had been raised with the defunct Municipality of Kericho now Applicant, wherein it had invited the disputants and had attempted to resolve the issue. It was thus the Plaintiff's conviction that the Applicant participates in the instant matter so as to assist the court to determine the ownership question before it.

30. In my opinion, and upon acting very cautiously and carefully and after considering all facts of the case without embarking upon the merits of the suit, I find that indeed given the history of the matter herein in question and although the Applicant was not privy to the contract herein between the parties, yet its participation in the collection of rates and an attempt to mediate between the parties makes its presence before the court necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit even though the order the Plaintiff seeks might not affect it.

31. To this effect I dismiss the application dated the 1st October, 2019 with no orders as to costs.

DATED AND DELIVERED VIA TEAMS MICROSOFT AT NAIVASHA THIS 25TH DAY OF APRIL 2024.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

