



**Mwangi v Kanyungo & 2 others (Environment & Land Case  
E178 of 2023) [2024] KEELC 3743 (KLR) (24 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3743 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E178 OF 2023**

**LN MBUGUA, J  
APRIL 24, 2024**

**BETWEEN**

**ZIPPORAH WAIRIMU MWANGI ..... PLAINTIFF**

**AND**

**JOSEPHAT KANYUNGO ..... DEFENDANT**

**AND**

**THE CHIEF LAND REGISTRAR ..... 1<sup>ST</sup> PROPOSED DEFENDANT**

**THE NAIROBI CITY COUNTY GOVERNMENT .... 2<sup>ND</sup> PROPOSED  
DEFENDANT**

**RULING**

1. The 1<sup>st</sup> Defendant's Notice of Motion dated 14.2.2024 is for determination. He seeks leave to amend his statement of defence and counterclaim dated 2.10.2023 to join the Chief Land Registrar and the Nairobi City County as Defendants as well as leave to file a further list of documents.
2. The application is based on grounds on its face and on the 1<sup>st</sup> Defendant's supporting affidavit sworn on 14.2.2024. He avers that he is the administrator of the Estate of Symon Githae Kanyugo (deceased) who was a registered member of Kayole Spring Valley Resettlement Scheme having purchased the property formerly known as Plot No. 684 Kayole Spring Valley Resettlement scheme and now known as Nairobi /Block 190/2209.
3. He avers that in her pleadings, the Plaintiff contends that she purchased the suit property from one Francis Mutuku who had allegedly in turn purchased that land from Salome Flassie Waitira Mutugi, a widow to Symon Githae Kanyugo (deceased).



4. He contends that at the time of the purported sale and transfer, succession proceedings relating to the estate of the deceased had not commenced, thus the parties in the alleged sale transaction had no capacity to transact.
5. That despite the intended 3<sup>rd</sup> Defendant being aware that the suit property had been illegally transferred to the Plaintiff, it proceeded to execute the transfer instrument for the suit parcel in favour of the Plaintiff.
6. That further, the Plaintiff and the intended 3<sup>rd</sup> Defendant caused the intended 2<sup>nd</sup> Defendant to register the transfer, process and issue the title over the suit property in the name of the Plaintiff which action is an affront to the deceased's estate's constitutional rights to protection of their right to property.
7. The application is unopposed.
8. The applicant filed submissions dated 15.3.2024 which I have duly considered.
9. The provisions of Order 8 Rule 5 (1) of the Civil Procedure gives the court discretion to allow amendment of pleadings. While applying the said provision in Diamond Trust Bank Kenya Limited v John Wakaba Joseph & another [2013] eKLR, the court stated that:

“.....Order 8 Rules 3 and 5 of the Civil Procedure Rules gives the court discretion to allow amendments at any stage of the proceedings in order to bring forth all issues in dispute between the parties for exhaustive and conclusive determination. The significant and guiding principle is to do justice between the parties. This can only be achieved by having all issues in dispute being brought forth for the Court to determine them. The law is clear that amendments will be freely allowed at any stage of proceedings provided no injustice is caused to the opposite party.”
10. The court has considered the application and the law. The 1<sup>st</sup> Defendant has demonstrated that the joinder of the proposed 2<sup>nd</sup> and 3<sup>rd</sup> Defendants is necessary as their participation in these proceedings will enable the court to unravel whether the title to the suit parcel was procedurally issued to the Plaintiff. Further, the court has considered that this case is yet to take off and that so far, the application is unopposed.
11. In the circumstances, the application is allowed with no orders as to costs. The applicant is to file and serve the amended Defence and Counter Claim alongside comprehensive witness statements and documentary evidence upon all parties within 21 days failure to which the orders granted herein shall lapse.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF APRIL, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

Court assistant: Eddel

