



**Nyamaru & another (Suing as the Representative of the Estate of the Late  
Gitau Kilonda alias Gitau Kironda) v Gathecha & 8 others (Environment &  
Land Case 187 of 2018) [2024] KEELC 3383 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3383 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 187 OF 2018**

**LN MBUGUA, J  
APRIL 18, 2024**

**BETWEEN**

**HANNAH NYAMARU ..... 1<sup>ST</sup> PLAINTIFF  
SAMUEL MUNJOGU NDUNG’U ..... 2<sup>ND</sup> PLAINTIFF  
SUING AS THE REPRESENTATIVE OF THE ESTATE OF THE LATE GITAU  
KILONDA ALIAS GITAU KIRONDA**

**AND**

**STEPHEN GATHECHA ..... 1<sup>ST</sup> DEFENDANT  
REGISTAR OF LANDS, NAROBİ ..... 2<sup>ND</sup> DEFENDANT  
JULIUS MAINA KARIMI ..... 3<sup>RD</sup> DEFENDANT  
JULIUS MBUGUA NGIIRI ..... 4<sup>TH</sup> DEFENDANT  
JULIA WANJIKU GICHEHA ..... 5<sup>TH</sup> DEFENDANT  
NGUGAGAKIO INVESTMENTS LIMITED ..... 6<sup>TH</sup> DEFENDANT  
SIMON KAMAU ITHAGU ..... 7<sup>TH</sup> DEFENDANT  
BENSON KIRUBI MWANGI ..... 8<sup>TH</sup> DEFENDANT  
GEORGE NJOGU NGA’NGA ..... 9<sup>TH</sup> DEFENDANT**

**RULING**

1. The 1<sup>st</sup> Defendant’s Notice of Motion dated 21.11.2023 is for determination. He seeks orders that the suit be struck out for reasons that; it is statutorily time barred, it does not disclose a reasonable cause of action, it is bad in law for non-joinder of parties and that it



offends the *Companies Act* as it is an affront to the doctrine of separate legal entity. The application is based on grounds on its face and on the 1<sup>st</sup> defendant's supporting affidavit sworn on 21.11. 2023. He avers that he was a chairman and director of Githurai Ting'ang'a Company Limited, a public land buying company incorporated in 1967.

2. That on 14.3.2007, Hannah Nyamaru, one of the representatives of the estate of the late Gitau Kilonda attended an Annual General Meeting of the said company on behalf of the late Gitau Kilonda, who was a shareholder of the said company where she voted that the company be dissolved. She also declared that the company had issued her with all her plots and dividends and she had no claim. Subsequently, the company was dissolved and his directorship and chairmanship ceased.
3. That in 2018, the Plaintiffs filed this suit claiming that Githurai Ting'ang'a company Limited did not issue plots which purportedly belonged to Gitau Kilonda who died in 1988 and in light of the said pleadings, the Plaintiffs ought to have petitioned the court to restore the dissolved company and they also ought to have sought leave before suing him in his capacity as chairman/director.
4. He avers that the 3<sup>rd</sup> - 8<sup>th</sup> Defendants have put up 5 storey residential apartment blocks on the claimed plots and have peacefully occupied them for more than 12 years.
5. The application is opposed by the Plaintiffs vide the Replying Affidavit sworn on 13.12.2023 by Prof Kiama Wangai, advocate in conduct of the mater on behalf of the Plaintiffs. He avers that this suit was filed on 19.4.2018 of which Githurai Tinganga Company Limited was sued as the 2<sup>nd</sup> Defendant. That on 11.2.2021, the 1<sup>st</sup> Defendant filed a Preliminary Objection on grounds that the said company was dissolved on 29.3.2009 following which the plaint was amended on 14.10.2021 to remove the said 2<sup>nd</sup> Defendant from the suit and to enjoin the 3<sup>rd</sup> - 9<sup>th</sup> Defendants.
6. He avers that the suit is not statute barred as it is grounded on fraud and it does not offend the *Companies Act* as Githurai Tinganga Company Limited is no longer a party to the suit and all parties sued are necessary parties.
7. The 2<sup>nd</sup> -9<sup>th</sup> Defendants did not file any responses.
8. I have considered all the issues raised herein including the rival submissions. The 1<sup>st</sup> Defendant seeks to have the suit struck out on several grounds. One of them is that there is non-joinder of parties. However, under Order 1 Rule 9 of the *Civil Procedure Rules*, a suit cannot be defeated due to misjoinder or non-joinder of parties. See *William Kiprono Towett & 1597 Others v Farmland Aviation Ltd & 2 Others* [2016] eKLR.
9. Another ground is that the suit offends the Salomon Principle which dictates that a director of a company can only be sued after such company's cooperate veil is lifted. However, it has not been pleaded that the 1<sup>st</sup> defendant is the chairman of the company, which apparently was dissolved. What is pleaded in the amended plaint at paragraph 23 is that;

“The 3<sup>rd</sup> to 9<sup>th</sup> Defendants herein acquired the leases and subdivision scheme approval fraudulently in cahoots with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants”.

That ground too fails.

10. Yet another ground is that the Plaintiff's claim is statute barred as the cause of action arose in 1988. That however, is not a fact which can be ascertained from the plaint. What has been pleaded is that the plaintiff has since learnt of the fraudulent subdivisions and registration of the suit land. Further, the 1<sup>st</sup> defendant has not raised the issue of limitation in his pleadings (defence) filed way back on 11.2.2021.



11. The 1<sup>st</sup> Defendant argues that these are matters contained in the Plaintiffs' witness statements. I opine that the 1<sup>st</sup> Defendant is jumping the gun. It would be improper for this court to dismiss this suit and condemn the Plaintiffs unheard on the basis of statements that have not been tested in evidence. Indeed what I discern and as rightly submitted by the plaintiff is that the 1<sup>st</sup> defendant is prosecuting the case in the platform of an application. The 1<sup>st</sup> Defendant shall have an opportunity to present his case and test the veracity of the said statements, thus he should be patient with the process.
12. The right to be heard is sacrosanct as embodied in Article 50 (1) of the Constitution which stipulates that;  
  
“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body”.
13. In the case of Kenya Trypanosomiasis Research Institute v Anthony Kabimba Gusinjilu [2019] eKLR, it was stated that;  
  
“The right to be heard is a cardinal rule established under the principles of natural justice generally expressed as *audi alteram partem*. This Latin phrase literally translates 'hear the parties in turn' and has been appropriately paraphrased as 'do not condemn anyone unheard'. This means that a party, no matter how seemingly frivolous or inconsequential, must be given a fair hearing...”
14. In the end, I find that the application is not merited, the same is dismissed with costs to the plaintiff. Parties should focus on the main suit instead of dwelling on interlocutory matters.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18<sup>TH</sup> DAY OF APRIL, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

Wangai for Plaintiff

M/s Munyua for 1<sup>st</sup> Defendant

Court assistant: Eddel

