



**Ngaruiya v Muli & 7 others (Environment & Land Case
E003 of 2021) [2024] KEELC 4297 (KLR) (28 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4297 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E003 OF 2021**

CA OCHIENG, J

MAY 28, 2024

BETWEEN

MUNGAI NGARUIYA PLAINTIFF

AND

BONIFACE MUINDI MULI 1ST DEFENDANT

CHIEF LAND REGISTRAR 2ND DEFENDANT

DIRECTOR OF SURVEY 3RD DEFENDANT

COUNTY GOVERNMENT OF MACHAKOS 4TH DEFENDANT

THE ATTORNEY GENERAL 5TH DEFENDANT

DIRECTOR OF CRIMINAL INVESTIGATIONS 6TH DEFENDANT

AND

TOWFIQ KENYA LIMITED 1ST PROPOSED DEFENDANT

WEETABIX EAST AFRICA LTD 2ND PROPOSED DEFENDANT

RULING

1. What is before Court for determination is the Proposed 8th Defendant's Notice of Motion Application dated the 22nd September, 2023 where it seeks the following Orders:-
 2. That this Honourable Court be pleased to grant leave for the proposed 7th Defendant and 8th Defendant/Applicant, Towfiq Kenya Limited and Weetabix East Africa Limited, to be joined in these proceedings as the 7th and 8th Defendants respectively.
 3. That upon joinder, leave be granted to the 7th and 8th Defendants to file their Defence.



4. That this Honourable Court be pleased to grant leave to the Firm of Simba & Simba Advocates to come on record for the Applicant.
 5. That costs of this Application be provided for.
2. The Application is premised on the grounds on the face of it and supported by the Affidavit of Dominic Mbugua Kimani. The Deponent provides the background of this dispute herein and contends that vide a board resolution dated the 15th October, 2020, the 7th Defendant had resolved to charge its property known as LR No. 12715/13857 (original number 12715/134/4) to the Applicant to secure a debt. He claims the Applicant conducted a search on 16th December, 2020 which confirmed that the property was registered in the name of the proposed 7th Defendant, on 18th June, 2020. Further, vide a Charge dated the 21st December, 2020, the proposed 7th Defendant proceeded to charge the property known as LR No. 12715/13857 (original number 12715/134/4), to the Applicant for an amount of Kshs. 60,000,000.00 which was duly registered on 21st December, 2020. He states that the proposed 7th Defendant continued to default in debt repayment culminating in the termination of the Distributorship Agreement. Further, at the point of termination, the outstanding amount was Kshs. 41,047,582.92. He explains that the proposed 7th Defendant was issued with statutory notices but the property could not be sold through a public auction because they became aware of the orders of interlocutory injunction issued on the 21st August, 2021 over the suit property being LR No. 12715/134/4. He reiterates that the proposed 7th Defendant including the Applicant now seek to be joined in these proceedings to protect their interests over the property known as LR No. 12715/13857 original number 12715/134/4. Further, they will suffer irreparable harm if orders of joinder are not granted.
3. The Plaintiff opposed the instant Application by filing a Replying Affidavit sworn by Mungai Ngaruiya where he contends that the proposed 7th Defendant has not been served. He insists that the instant Application is defective and does not meet the threshold of admissible evidence. Further, he highlighted the defects in the annexed Distributorship Agreement. He reiterates that the ownership of the suit property herein can be determined, without unnecessary addition of the parties. He contends that he had never subdivided his property and in the circumstances, the claims against the subdivisions must fail. Further, that the determination on whether he is the legitimate owner of the suit land can be made without addition of other parties. He avers that the Applicant has relied on a fake title. He states that the suit has progressed significantly as pleadings are at an advanced stage where parties already received directions to file trial bundles and his advocates had complied.

Analysis and Determination

4. Upon consideration of the Notice of Motion Application dated the 22nd September, 2023 including the respective Affidavits, annexures, as well as rivalling submissions, the only issue for determination is whether the proposed Defendants' should be allowed to be joined in these proceedings.
5. On joinder of a Defendant to a suit, Order 1 Rule 10(2) of the *Civil Procedure Rules* stipulates inter alia:-
 - “(2) The court may at any stage of the proceedings, either upon or without the application of either party, 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 defendant, 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.”

6. In the case of *Zephir Holdings Ltd v Mimosa Plantations Ltd, Jeremiah Matagaro & Ezekiel Misango Mutisya [2014]* eKLR, it was held that:-

“A proper party is one who is impleaded in the suit and qualifies the thresholds of a plaintiff or defendant under Order 1 rule 1 and 2 respectively, or as a third party or as an interested party and whose presence is necessary or relevant for the determination of the real matter in dispute or to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. And the court has a wide discretion to even order suo moto for a party to be impleaded whose presence may be necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. Accordingly, a suit cannot be defeated for mis-joinder or non-joinder of parties.”

7. In the current scenario, I note the Plaintiff filed this suit claiming ownership of LR No. 12715/134 which were since subdivided into LR No. 12715/13855 (Original No. 12715/134/2) LR No. 12715/13856 (Original No. 12715/134/3) and LR No. 12715/13857 (Original No. 12715/134/4). Further, the Court is expected to make a determination on ownership of the parcels of land as well as rectification of titles. The proposed Defendants have explained that there is a Charge dated the 21st December, 2020, where the proposed 7th Defendant charged the property known as LR No. 12715/13857 (original number 12715/134/4), to the proposed 8th Defendant for an amount of Kshs. 60,000,000.00 which was duly registered on 21st December, 2020. Further, that the proposed 7th Defendant was issued with statutory notices but the property could not be sold through a public auction because they became aware of the orders of interlocutory injunction issued on the 21st August, 2021 over LR No. 12715/134/4.
8. The Plaintiff's main contention is that the application is defective and highlighted defects in the annexed Distributorship Agreement. He insists that he never subdivided his land and determination of ownership of the suit property herein can be determined without unnecessary addition by the parties. Further, that any claims against the subdivisions must fail and the Applicant has relied on a fake title. He argues that the suit has progressed significantly as pleadings are at an advanced stage and parties already received directions to file trial bundles.
9. In the case of *Departed Asians Property Custodian Board v Jaffer Brothers Ltd [1999] 1 EA 55* it was held that:-

“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 involve 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 involve 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.”

10. Based on the facts as presented and relying on the legal provisions I have quoted, while associating myself with the cited decisions, it is my considered view that since the main issue in dispute is ownership of LR No. 12715/134 which has since been subdivided, into LR No. 12715/13855 (Original No. 12715/134/2) LR No. 12715/13856 (Original No. 12715/134/3) and LR No. 12715/13857 (Original No. 12715/134/4) respectively. Noting that, there is a Charge dated the 21st December, 2020, where the proposed 7th Defendant charged the property known as LR No. 12715/13857 (original number 12715/134/4), to the proposed 8th Defendant for an amount of Kshs. 60,000,000.00, I find that the proposed 7th and 8th Defendants are actually necessary parties to this dispute. I opine that, since the Plaintiff denies subdivision of his mother title and the Charge is on one of the resultant subdivisions, which the Plaintiff seeks to be cancelled, their involvement in these proceedings is necessary to enable the court effectually and completely adjudicate upon as well as settle all questions involved in the suit. To my mind, I find that the Plaintiff has not demonstrated what prejudice he stands to suffer if the proposed Defendants were joined in these proceedings as Defendants.
11. It is against the foregoing that I find the Notice of Motion Application dated the 22nd September, 2023 merited and will allow it.
12. Costs will be in the cause.
13. I direct the 7th and 8th Defendants to file and serve their respective Defences within fourteen (14) days from the date hereof.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 28TH DAY OF MAY, 2024

CHRISTINE OCHIENG

JUDGE

In the presence of:

Mutava for the Defendant

Wanja for Plaintiff

Ms. Muga for Proposed 8th Defendant/Applicant

Court Assistant – Simon

