



**Hi Jung Oh Childrens’ Home v Life Reformation Centre & 4 others (Environment and Land Case E223 of 2024) [2024] KEELC 4298 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4298 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE E223 OF 2024**

**OA ANGOTE, J**

**MAY 23, 2024**

**BETWEEN**

**HI JUNG OH CHILDRENS’ HOME ..... PLAINTIFF**

**AND**

**LIFE REFORMATION CENTRE ..... 1<sup>ST</sup> DEFENDANT**

**THE NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT**

**NAIROBI CITY COUNCIL ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**SOSPETER GATHAHU MUMBI ..... 1<sup>ST</sup> PROPOSED DEFENDANT**

**THE ETHICS & ANTI-CORRUPTION COMMISSION .... 2<sup>ND</sup> PROPOSED DEFENDANT**

**RULING**

1. The Plaintiff/Applicant instituted this Motion on 26<sup>th</sup> February, 2024. The Motion, brought pursuant to the provisions of Article 159 of *the Constitution* of Kenya, 2010, Sections 1A, 1B, 3A & 100 of the *Civil Procedure Act*, Section 13(5) of the *Environment and Land Court Act*, 2011; Order 1 Rule 3, 10(2) and (4), Order 8 Rules 3, 5 and 7, Order 40 Rule 1(a), 8 and Order 51 Rule 1 of the *Civil Procedure Rules, 2010* seeks the following reliefs;
  - i. That this Honourable Court be pleased to issue orders enjoining Sospeter Gathahu Mumbi, Roysambu Ward Area Member of County Assembly (MCA) as the 4<sup>th</sup> Defendant in this matter.
  - ii. That this Honourable Court be pleased to issue orders enjoining The Ethics & Anti-corruption Commission as the 5<sup>th</sup> Defendant in this matter.



- iii. That subsequently, upon issuance of the injunction orders sought above this Honourable Court be pleased to issue orders making the orders of Hon Justice O.A Angote issued on the 27<sup>th</sup> January, 2023 applicable to the proposed 4<sup>th</sup> and 5<sup>th</sup> Defendants herein pending the hearing and determination of this suit.
  - iv. That the Officer in Charge of Kasarani Police Station to ensure orders of the Court are complied with pending the hearing and determination of this suit.
2. The application is based on the grounds on the face of the Motion and supported by the Affidavit of Sang Mi Oh, the Administrator and Manager of the Plaintiff of an even date.
  3. Mr Sang Mi Oh, the Plaintiff's Manager deponed that the Plaintiff is the lawful proprietor of the parcel of land known as Nairobi/Block 110/686 measuring four decimal eight six one (4.861)(hereinafter the suit property) and that the suit property was allocated to the Plaintiff by the Government of Kenya vide a Lease dated 30<sup>th</sup> October, 1995 for a term of 99 years commencing on 1<sup>st</sup> November, 1995.
  4. It was his deposition that despite the foregoing, on 15<sup>th</sup> February, 2024, the proposed 4<sup>th</sup> Defendant accompanied by officers of the proposed 5<sup>th</sup> Defendant and aided by goons, encroached upon the suit property and forcefully gained entry therein and that the process was conducted in the presence of the OCS Kasarani who failed to intervene despite pleas from their Counsel.
  5. According to Mr Sang Mi-Oh, the officials from the proposed 5<sup>th</sup> Defendant indicated that they received complaints from the area suggesting that the property was and is still public land and that the proposed 5<sup>th</sup> Defendant lacks jurisdiction to investigate matters pertaining to land and their entry into the property together with the proposed 4<sup>th</sup> Defendant traumatized the children in the orphanage subjecting them to mental anguish and leading to suspension of learning.
  6. He urged that it is imperative that the proposed Defendants are restrained from interfering with the activities of the orphanage; that he is fearful that the proposed 4<sup>th</sup> and 5<sup>th</sup> Defendants may continue to trespass on the property with goons and that no prejudice will be occasioned against the proposed 4<sup>th</sup> and 5<sup>th</sup> Defendants if the orders of the Court issued on 27<sup>th</sup> January, 2023 applies to them.
  7. Counsels for the 1<sup>st</sup> Defendant as well as the 4<sup>th</sup> and 5<sup>th</sup> Proposed Defendants respectively informed the Court on 8<sup>th</sup> April, 2024 that they were not opposed to the Motion. The 2<sup>nd</sup> Defendant did not file a response to the Motion.
  8. In opposition to the Motion, the 3<sup>rd</sup> Defendant, through its Acting County Attorney, Ms Christine Kireri, swore a Replying Affidavit on 4<sup>th</sup> April, 2024. She deponed that there is no nexus between the proposed 4<sup>th</sup> and 5<sup>th</sup> Defendants alleged actions and the matter at hand; that the issue in dispute is ownership of the property which the 4<sup>th</sup> proposed Defendant has not laid claim to and that similarly, the proposed 5<sup>th</sup> Defendant has not laid claim nor expressed any interest in the suit.
  9. Ms Kireri asserted that the proposed Defendants are not necessary parties to this suit and the issues herein can be effectively adjudicated without their joinder and that bringing the proposed Defendants on board will bring in unnecessary new issues that will delay the settlement of the matter. No submissions were filed by any parties.

### **Analysis and Determination**

10. Having considered the Motion, Affidavit in support and Affidavit in opposition, the issues that arise for determination are;



- i. Whether the prayer for joinder of the proposed 4<sup>th</sup> and 5<sup>th</sup> Defendants is merited and if so;
  - ii. Whether the Court Orders of 27<sup>th</sup> January, 2023 should apply to them.
11. The Plaintiff seeks the joinder of the proposed parties as Defendants. Under Order 1 Rule 3 of the *Civil Procedure Rules*, a person may be joined in a suit as a Defendant against whom any right to relief arising out of an act or transaction is alleged to exist. The said provision provides as follows:

“All persons may be joined as Defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.”
12. Speaking to the Court’s jurisdiction to allow joinder, Order 1 Rule 10(2) of the *Civil Procedure Rules* provides thus:

“(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.”
13. The Court of Appeal in *Civicon Limited vs Kivuwatt Limited and 2 Others* [2015] eKLR discussed the import of Order 1 Rule 10 hereinabove thus:

“Again the power given under the Rules is discretionary which discretion must be exercised judicially. The objective of these Rules 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 enjoined.”
14. In *Pravin Bowry vs John Ward & Another* [2015] eKLR, the Court of Appeal while considering the principles to be considered in an application for joinder of parties to a suit referred to the Ugandan case of *Deported Asians Custodian Board vs 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.”

15. Guided by the foregoing authorities, the question herein is whether the proposed Defendants are necessary parties to this suit, whether a relief flows from them to the Plaintiff and/or whether their presence is necessary to settle all the questions in this suit.
16. By way of brief background, the Plaintiff instituted this suit against the Defendants seeking, *inter-alia*, for a declaration that it is the legitimate owner of the suit property, permanent injunctive orders restraining interference with the property and costs of the suit.
17. It is the Plaintiff's case that it was leased the parcel of land known as Nairobi/Block 110/686 (the suit property) by the Government of Kenya; that one of the conditions of the Lease was that the property was to be used for a children's' orphanage and a primary school; and that it duly complied with the terms thereof.
18. The Plaintiff states in the Plaint that it was a further term of the Lease that the suit property can only be surrendered for a public purpose and that the 1<sup>st</sup> Defendant has purportedly been issued with authority by the 2<sup>nd</sup> Defendant to curve off part of the suit property for its occupation as Church, and is intent on trespassing on the strength of the authority aforesaid.
19. According to the Plaintiff, on 15<sup>th</sup> February, 2024, the proposed parties forcefully gained entry into the property on the basis of alleged complaints from local area members asserting that the property was and is still public property. Evidence of pictures and videos in this respect have been provided.
20. The 3<sup>rd</sup> Defendant in opposition to the Motion contends that the issue in question is ownership and neither the proposed Defendants claim ownership of the property and that subsequently, they are not necessary parties to this suit which can be effectively determined in their absence.
21. The Plaintiff's uncontroverted evidence shows that the proposed Defendants have interfered with the land claiming that the same constitutes public property. In so doing, the proposed Defendants are challenging the Plaintiff's title. Indeed, this is even more evident in the fact that the proposed Defendants are not claiming disinterest in the property and have no objection to being joined in this suit.
22. Contrary to the 3<sup>rd</sup> Defendant's contention, the Court believes that the joinder of the proposed Defendants will enable effective adjudication of all questions relating to the suit property thus advancing expeditious resolution of the case.
23. Additionally, it has not been demonstrated that the joinder will prejudice any party. As expressed by the Court of Appeal in *IMK vs MWM & Another* [2015] eKLR, citing with approval the case of *Central Kenya Ltd. vs Trust Bank & 4 Others*, CA No. 222 of 1998;  

“ all amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs.”
24. In the circumstances, the Court finds that the Plaintiff has made out a case for the inclusion of the proposed Defendants.
25. Having found the prayer for joinder to be merited, the next question is whether the Court Orders of 27<sup>th</sup> January, 2023 should apply to the proposed Defendants as sought.



26. The Orders of 27<sup>th</sup> January, 2023, were precipitated by the Motion of 26<sup>th</sup> January, 2023 in which the Plaintiff sought to have the 3<sup>rd</sup> Defendant restrained from interfering with the suit property and that the Motion was instigated by the 3<sup>rd</sup> Defendant's interference in the property despite the Plaintiff having filed a Motion on 23<sup>rd</sup> January, 2023 seeking injunctive orders against them.
27. Upon hearing the Motion *ex-parte*, the Court had directed that the matter proceeds for inter-partes hearing on 8<sup>th</sup> February, 2023 and granted injunctive orders restraining interference with the suit property by the 3<sup>rd</sup> Defendant pending inter-partes hearing on the aforesaid date.
28. On 16<sup>th</sup> January, 2023, the Court [M.D Mwangi J] confirmed the orders of 27<sup>th</sup> January, 2023 pending the hearing and determination of the suit. Essentially, injunctive orders are prevailing restraining the 3<sup>rd</sup> Defendant from interfering with the suit property pending the hearing and determination of the suit.
29. As aforesaid, it has been demonstrated that there has been interference with the suit property by the proposed Defendants. Further still, and more important, the proposed Defendants have indicated that they are not opposed to the orders sought in the Motion, which include the orders to have them restrained from interfering with the property pending determination of the suit.
30. In the circumstances, the Court finds no reason to decline the orders sought. For those reasons, the Court finds the Motion to be merited and proceeds to issue the following orders;
  - i. Leave be and is hereby granted to the Plaintiff to join Sospeter Gathahu Mumbi, Roysambu Ward Area Member of County Assembly (MCA) and The Ethics and Anti-Corruption Commission as the 4<sup>th</sup> and 5<sup>th</sup> Defendants respectively.
  - ii. Temporary Injunctive orders do hereby issue restraining the 4<sup>th</sup> and 5<sup>th</sup> Defendants by themselves, their officer, agents, or any one acting on their behalf from asking possession of, entering, encroaching, trespassing, working on, constructing, using acquiring or in any manner interfering with the Plaintiffs' lawful occupation and use of part of or the whole parcel of land known as Nairobi/Block 110/686 measuring four decimal eight six one (4.861) pending hearing and determination of the suit.
  - iii. The Officer in Charge Kasarani Police Station is hereby directed to ensure compliance with order (ii) above.
  - iv. The Plaintiff to file and serve the Amended Plaint incorporating the 4<sup>th</sup> and 5<sup>th</sup> Defendants within 14 days of the date hereof.
  - v. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 23<sup>RD</sup> DAY OF MAY, 2024.**

**O. A. ANGOTE**

**JUDGE**

In the presence of;

Ms Kiunga for Theuri for 3<sup>rd</sup> Defendant

Mr. Omondi for Ms Kahindi for 4<sup>th</sup> Defendant

Ms Wairimu holding brief for Ochola for 5<sup>th</sup> Proposed Defendant

Mr. Mutai for Mr. Lusiola for Plaintiff



Mr Osembe for Mr. Ongegu for 1<sup>st</sup> Defendant

Ms Wanini for 2<sup>nd</sup> Defendant

Ms Ngoizi holding brief for Mogaka for 2<sup>nd</sup> Defendant

Court Assistant: Tracy

