



Machuke & 2 others (Suing as the legal representative of the Estate of Silas Njeru Njiru - Deceased) v Mukera & another (Environment & Land Case 220 of 2014) [2024] KEELC 4474 (KLR) (23 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4474 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT & LAND CASE 220 OF 2014**

**A KANIARU, J
MAY 23, 2024**

BETWEEN

**PETER NJUE MACHUKE 1ST PLAINTIFF
DAVID MUTU MACHUKE 2ND PLAINTIFF
PATRICK NJIRU GITONGA 3RD PLAINTIFF
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF SILAS NJERU
NJIRU - DECEASED**

AND

**LEORNARD NJERU MUKERA 1ST DEFENDANT
ALFRED MUNYI MUGO 2ND DEFENDANT**

RULING

1. Before me for determination is a notice of motion dated 28.02.2023 filed under a certificate of urgency. The motion has been filed by Patrick Njiru Gitonga, a proposed 3rd plaintiff and the legal representative of the estate of Silas Njeru Njiru. Silas Njeru was initially the 1st plaintiff in this suit but is now deceased. The application has been brought under Order 51 rule 1, Order 1 rule 10, Order 8 rule 3 of the [civil procedure rules](#), sections 1A, 1B, 3A of the [civil procedure act](#) and all other enabling laws. The applicant is seeking the following orders:
 - i. Spent.
 - ii. That this honourable court be pleased to join Patrick Njiru Gitonga as the 3rd plaintiff in this matter.



- iii. That the honourable court pursuant to the joinder of Patrick Njiru Gitonga, be pleased to grant him leave to file his pleadings out of time.
 - iv. That the honourable court be pleased to make any other order fit in the circumstances of this case.
 - v. That costs be provided for.
2. The applicant supported the motion on the following grounds set out in the face of it and further on his supporting affidavit dated 28.02.2023. He deposed that Silas Njeru Njiru was his biological father and that he passed away on 11.08.2020. That upon his demise, the other plaintiffs made two applications to amend the plaint and had the name of the deceased struck out. That the said applications were made in a rushed manner while the surviving plaintiff's did not prompt the family of the deceased to take out letters of administration to represent the interests of the deceased plaintiff. That as a family of the deceased plaintiff, they came to learn of the amendments too late in the day and now they seek to remedy the situation.
 3. He went on further to say that they instituted a succession cause and he was issued with a grant of letters of administration ad litem on 25.01.2023. He now wishes to be joined as a party to the proceedings herein. He implores that the estate of the deceased plaintiff stands to suffer irreparably if the order of joinder is not granted. That the application has been brought without unreasonable delay and the same will not prejudice the other parties if it is allowed. He attached a copy of the limited grant and urged that the application be allowed.
 4. The application was responded to by the 2nd plaintiff on his behalf and on behalf of the 1st plaintiff via a replying affidavit dated 07.03.2023. He deposed that he is a brother to the deceased plaintiff and that the applicant erroneously took out the limited grant as he is not the son of his late brother. That the deceased had a brief love affair with the applicant's mother although the applicant had been born of a different father who is not the deceased. That the deceased never took in, adopted or lived with the applicant or his siblings at any time as they always lived with their father. That he also never lived with the applicant's mother even during the course of their brief relationship as each of them was living on their own. That the applicant does not have a relationship with the deceased and is therefore a total stranger and has no right to his brother's estate. He annexed copies of the party's identity cards. He urged that the application has no merit and ought to be dismissed with costs.
 5. The applicant on 04.10.2023 filed a further affidavit in response to the 1st plaintiff's replying affidavit. He denied the 1st plaintiff's allegations that he was not the biological son of the deceased. He annexed copies of photographs which he said were of him and the deceased, affidavits from his mother and siblings of the deceased confirming his relationship with him. He has also a burial permit for the deceased issued to him.
 6. The application was disposed of by way of written submissions. The applicant's submissions were filed on 14.02.2024 whereas the 1st and 2nd plaintiff's submissions were filed 26.02.2024.
 7. The applicant submitted that it is this court's discretion under Order 1 Rule 10(2) of the [civil procedure rules](#) to order the joinder of any party to a suit at any stage of the proceedings as long as the presence of that party before the court is necessary to enable the court to effectively and completely adjudicate upon all issues in dispute. That the said order requires the court to evaluate the importance of such a party to the suit and their relevance to the just determination of the suit. The case of *Tang Gas Distributors Ltd v Said & Others* (2014) EA 448 as cited in *JMK v MWM & another* (2015) Eklr was cited to support this submission. The cases of *Joseph Njau Kingori v Robert Maina Chege & 3 others* (2002) as well as



Julius Meme v Republic & Anor (2004) Eklr Misc Criminal Appl no. 495 of 2003 were cited where the courts gave the aspects that ought to be considered before joining a party to a suit.

8. It was submitted that the applicant seeks to be joined as the 3rd plaintiff to the suit for the reason that he is the representative of the estate of the deceased who had a beneficial interest in the suit property and therefore he has a stake that is identifiable and proximate in relation to the proceedings herein. That his joinder will aid in the determination of the real issues in dispute. That further, it will be in the interest of saving the courts time to join the applicant in this suit as filing a separate suit against the defendants would raise the same issues of law and facts for determination since the cause of action is the disputed suit land herein, being land parcel Mbeti/Gachoka/1555. That the applicant is legally competent to be joined in this suit and should be granted leave to amend the plaint and file necessary documents as a representative of the estate of the deceased.
9. It was submitted further, that the law on amendments of pleadings is settled under Order 8 of the *civil procedure rules*. That the applicant has established a good case and the application was made in good faith. That the amendments do not introduce a new cause of action that will alter the substance of this case. That there is no injustice or prejudice that will be occasioned to the respondents should the application be allowed. The case of *Joseph Ochieng & 2 others trading as Aquiline Agencies v First National Bank of Chicago* (1995) Eklr as cited in *Lakhamshi Khimji Shah & Anor v Ajay Shantilal Shah & 2 others* (2010) Eklr was cited in support of the said submissions.
10. The 1st & 2nd plaintiffs on the other hand in their submissions reiterated that the applicant is not the son of the deceased plaintiff. That the applicant has not proved his relationship, biological or otherwise, with the deceased through proper evidence. They submitted further that the applicant is not a necessary party to the suit and that he does not have an identifiable interest in the suit. That further, the case can proceed in the current state with the surviving plaintiff's especially since the court has already noted that the 1st plaintiff is deceased and his name has been removed from the proceedings. The cases of *Joseph Njau Kingori v Robert Maina Chege & 3 others* (2002) Eklr, *Lucy Nungari Ngigi & 128 others v National Bank of Kenya Ltd & Anor* (2015) Eklr, *Attorney Geeral v Kenya Bureau of Standards & Anor* (2018) Eklr, *Daniel Kibet Mutai & 9 others v Attorney General* (2019) Eklr were cited in support of the said submissions.
11. I have considered the notice of motion application, the party's responses as well as their submissions. I find that there are two issues for determination.
 - a. Whether the applicant is entitled to be joined in the suit as a 3rd plaintiff.
 - b. Whether the applicant is entitled to leave to file his pleadings out of time.
12. The applicant has asked to be joined in the suit as a 3rd plaintiff. He says that he is the legal representative of the estate of the initial 1st plaintiff who died while the suit was still active in court. He made available to court a limited grant issued to him for purposes of prosecuting this suit. The 2nd plaintiff is challenging the said grant on the grounds that the applicant is a stranger to the deceased because he is not his biological son and therefore the grant ought not to have been issued to him. However, that is a matter of succession that ought to have been raised in the succession court as this court does not have the jurisdiction to go into the same. The grant was acquired through a court process and I'm satisfied that the court was satisfied that the applicant was competent to be issued with the grant.
13. The guiding law for applications for joinder of parties is Order 1 rule 10 (2) of the *civil procedure rules* which provides as follows;



- (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.
14. The power of the court to order for joinder of a party to a suit is discretionary. A party may be joined in a suit if their presence before the court is necessary in order to enable the court to completely and effectively settle all the questions involved in the suit. The deceased was initially a plaintiff in this suit and he died before the suit was concluded. I believe that it would be necessary to join the applicant as his legal representative in the suit so that he may be able to ventilate the deceased's issues on behalf of the deceased estate. The applicant is therefore a necessary party in this suit not only to assist the court to effectually and completely adjudicate on the issues in dispute but also because the orders that this court may issue are likely to affect the interest of the deceased's estate.
15. Having found that the applicant should be joined in the suit as a 3rd plaintiff, I think that it would also be in the interest of justice and fairness to allow him to file his pleadings out of time. The suit has not gone any far as it has not even been set down for pretrial. Therefore, I see no prejudice that will be caused to the other parties in the suit as they will be able to respond to them. In my view, it would also be in the interest of saving the courts time and expediting the suit herein to make an order for the amendment of the pleadings already on record to include the 3rd plaintiff as a party to the suit though the same was not sought by the applicant. By doing this I invoke the provisions of section 1A and 3A of the *Civil Procedure Act*.
16. The upshot of the foregoing is that I find that the applicants notice of motion dated 28.02.2023 has merit and the same is allowed as prayed.
17. Costs to be in the cause.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 23RD DAY OF MAY, 2024.

In the presence of Andrew Kamunda for Daniel Kamunda for 3rd proposed Plaintiff/ Applicant, Githinji Ithiga for Okwaro for 1st and 2nd plaintiffs.

Court Assistant - Leadys

A. KANIARU

JUDGE – ELC, EMBU

