



Koech & another v Bundi & another (Environmental and Land Originating Summons E001 of 2024) [2025] KEELC 958 (KLR) (21 February 2025) (Ruling)

Neutral citation: [2025] KEELC 958 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KABARNET
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2024
L WAITHAKA, J
FEBRUARY 21, 2025**

BETWEEN

SIMION KIPRUTO KOECH 1ST PLAINTIFF

KOTOGON KIPROP BENSON 2ND PLAINTIFF

AND

BARUTHI BUNDI DEFENDANT

AND

BRENDA TONIOK JEMATAIN PROPOSED DEFENDANT

RULING

1. By a notice of motion application dated 13th September 2024, the applicants seek to enjoin the proposed 2nd defendant/respondent in these proceedings.
2. The application is premised on the grounds on the face of the application and the supporting affidavit of Simion Kipruto Koech sworn on 13th September 2024, in which the grounds are reiterated. He deposes that the respondent/defendant is the original and registered owner of the suit property; that the suit property was sold to the proposed 2nd defendant in 2023 notwithstanding the fact that the respondent's title was long extinguished by dint of adverse possession and limitation of actions; that it has become necessary to join the proposed 2nd defendant in this suit after the defendant introduced a sale agreement through his list of documents dated 9th July 2024 stating that he had sold the suit property to the proposed 2nd defendant. He states that the proposed 2nd defendant is a proper and necessary party in this suit to enable the court determine matters in controversy and settle all questions raised in the suit. It is his contention that the defendant/respondent will suffer no prejudice if the orders sought are granted.
3. The application is not opposed.



4. I have considered the application, the grounds and the affidavit sworn in support and I find the sole issue for determination to be is whether the applicant has made up a case for being granted the orders sought.
5. Order 1 Rule 10 (2) of the Civil Procedure Rules, grants courts discretion to join parties to a suit. It provides:

“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. The purpose of the above rule was discussed in the case of Civicon Limited v Kivuwatt Limited & 2 others [2015] edKLR as follows:

“Again the power given under the Rules is discretionary which discretion must of necessity 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. In the same vein, a party seeking joinder who fails to establish any right over or interest in the subject matter cannot be enjoined.”
7. In the case of Technomatic Limited T/A Promopack Company v Kenya Wine Agencies Limited & another [2014] Eklr, the court set down the following as guiding principles to be considered by courts when an intending party is to be joined.

“he must be a necessary party, he must be a proper party, in the case of a defendant there must be a relief flowing from that defendant to the plaintiff, the ultimate order or decree cannot be enforced without his presence in the matter, his presence is necessary to enable the Court to effectively and completely to adjudicate upon and settle all questions involved in the suit.”
8. Based on the legal provisions and principles set out in the cited decisions, I am of the considered view that the proposed 2nd defendant is a proper and necessary party in this suit. The defendant states that he sold the suit property to her vide a sale agreement dated 14th December 2023. Any order or decree issued by this court in regard to the suit property cannot be enforced without the proposed 2nd defendant’s presence in the matter. Her presence is therefore necessary to enable the Court to effectively and completely adjudicate upon and settle all questions involved in the suit.
9. Consequently, I allow prayer 1 in the application dated September 13, 2024 and direct parties to comply with Orders 7 ,8 and 11of the Civil Procedure Rules within 30 days of delivery of this ruling.
10. No orders are made on costs the application was not defended.
11. Orders accordingly.

DATED, SIGNED AND DELIVERED AT KABARNET THIS 21ST DAY OF FEBRUARY, 2025.

L. N. WAITHAKA



JUDGE

Ruling delivered virtually in the presence of;-

Ms. Kibet holding brief for Mr. Kibii for the plaintiff/ applicant

Mr. Njoroge for the Defendant/Respondent

Court Asst.: Ian

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