



**Mohamed v Le Royale Management Company Limited & 9 others (Environment & Land Case E008 of 2022) [2024] KEELC 4634 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4634 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE E008 OF 2022  
NA MATHEKA, J  
JUNE 13, 2024**

**BETWEEN**

**FUAAD MAHMOUD MOHAMED ..... PLAINTIFF**

**AND**

**LE ROYALE MANAGEMENT COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**HUSSEIN SHARIFF ALWY ..... 2<sup>ND</sup> DEFENDANT**

**NABHAN SWALEH SALIM ..... 3<sup>RD</sup> DEFENDANT**

**RAJESH PREMJI VARSANI ..... 4<sup>TH</sup> DEFENDANT**

**VINAL PREWI KERAI ..... 5<sup>TH</sup> DEFENDANT**

**UWE HEINZ STOLL ..... 6<sup>TH</sup> DEFENDANT**

**MARIAM ALWY ABDULRAHMAN ..... 7<sup>TH</sup> DEFENDANT**

**LEAH AKINYI OUMA ..... 8<sup>TH</sup> DEFENDANT**

**PYARALI GULAMHUSSEIN KARIM ..... 9<sup>TH</sup> DEFENDANT**

**NOOR BEGUM PYARALI KARIM ..... 10<sup>TH</sup> DEFENDANT**

**RULING**

1. The application is dated 7<sup>th</sup> December 2023 and is brought under Section IA. 1B & 3A. Order 1 Rule 14. Order 2 Rule 15 and Order 51 of the [Civil Procedure Act](#) seeking the following orders;
  1. At first instance service on the plaintiff is dispensed with to obviate mischief that may ensue due to delay.
  2. The 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> defendants are struck out.



2. It is grounded on the following that the plaintiff instituted this suit vide a Plaint filed on 28<sup>th</sup> January 2022 suing the 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8, 9<sup>th</sup> and 10<sup>th</sup> defendants. The claim by the plaintiff is directed to the 1<sup>st</sup> to 3<sup>rd</sup> defendants who are claimed to have entered into an agreement for a joint venture with the plaintiff. The 4<sup>th</sup> to 10<sup>th</sup> defendants are bona fide purchasers for value without notice of any claim of title to the property by the plaintiff. The 4<sup>th</sup> to 10<sup>th</sup> defendants were not parties or did not participate in the joint venture between the plaintiff and the 1<sup>st</sup> to 3<sup>rd</sup> defendants. That there is no order against the 4<sup>th</sup> to 10<sup>th</sup> defendant that has been preferred against them by the plaintiff and therefore they have been wrongly joined in the suit. The Plaint as filed does not disclose any reasonable cause of action against the 4<sup>th</sup> to 10<sup>th</sup> defendants and it is therefore scandalous, frivolous, vexatious, and otherwise an abuse of the court process and the claimed against the 4<sup>th</sup> to 10<sup>th</sup> defendants is wastage of judicial. The 4<sup>th</sup> to 10<sup>th</sup> defendants sworn in support of this motion and other and further reasons as may be adduced at the hearing hereof.
3. The Plaintiff opposed the 4<sup>th</sup> to 10<sup>th</sup> Defendants' application dated 7<sup>th</sup> December 2023 on the following grounds that the application is incompetent and bad in law as it is supported by inadmissible affidavit evidence. The 4<sup>th</sup> to 10<sup>th</sup> Defendants are interested parties and therefore necessary parties to the suit as their interest in the respective apartments which they claim to have purchased will clearly be affected should the court grant the prayers sought by the plaintiff in his plaint.
4. This court has considered the application and the submissions therein. Order 1 rule 10(2) of the said Rules provides that;

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.”

The effect of misjoinder of non-joinder of parties, is provided for by Order 1 Rule 9 of the Civil Procedure Rules, 2020, which make it patently clear that misjoinder or non-joinder of parties cannot be a ground to defeat a suit. It provides that;

No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.”

5. The importance of parties in proceedings before a court of law cannot be gainsaid. In *Apex International Ltd and Anglo Leasing and Finance International Finance Ltd v Kenya Anti-Corruption Commission* [2012] eKLR, the Court quoted the words of Mukhtar J. of the Supreme Court of Nigeria in *Goodwill and Trust Investment Ltd v Will and Bush Ltd* [2011] LCN/B820 (SC) as follows;

It is trite law that to be competent and have jurisdiction over a matter proper parties must be identified before the action can succeed, the parties must be shown to be proper parties whom rights and obligations arising from the cause of action attach. The question of proper parties is a very important issue which would affect the jurisdiction of the suit in limine. When proper parties are not before the Court, the Court lacks jurisdiction to hear the suit and where the Court purports to excise jurisdiction which it does not have, the proceedings before it, and its judgment will amount to a nullity no matter how well reasoned.”



6. In *William Kiprono Towett & 1597 others v Farmland Aviation Ltd & 2 others* [2016] eKLR the Court of Appeal held that;

Most critically Order 1 Rule 9 of the *Civil Procedure Rules* [2010] makes it abundantly clear that misjoinder or non-joinder of parties cannot be a ground to defeat a suit.”

The legal provisions on parties to a suit are found in Order 1 of the CPR;

9. Misjoinder and non-joinder [Order 1, rule 9.]

No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

10. Substitution and addition of parties [Order 1, rule 10.]

(1) Where a suit has been instituted in the name of the wrong persons as Plaintiff, or where it is doubtful whether it has been instituted in the name of the right Plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as Plaintiff upon such terms as the Court thinks fit.

(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.

(3) No person shall be added as a Plaintiff suing without a next friend or as the next friend of a Plaintiff under any disability without his consent in writing thereto.

(4) Where a Defendant is added or substituted, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new Defendant and, if the Court thinks fit, on the original Defendants.”

7. The 4<sup>th</sup> -10<sup>th</sup> defendants/applicants argue that they are wrongly sued since the claim by the plaintiff is directed to the 1<sup>st</sup> – 3<sup>rd</sup> defendants who are claimed to have entered into an agreement for a joint venture with the plaintiff. The 4<sup>th</sup>-10<sup>th</sup> defendants are bona fide purchasers for value without notice of any claim of title to the property by the plaintiff. That the 4<sup>th</sup> -10<sup>th</sup> defendants were not parties or did not participate in the joint venture between the plaintiff and the 1<sup>st</sup> -3<sup>rd</sup> defendants. I concur with the respondent that since they are purchasers and this is not disputed, they are now interested parties and the decision of this court may affect them. The suit would not fail for mere reason of misjoinder.



I find that it would be premature to remove the 4<sup>th</sup> to 10<sup>th</sup> defendant from the suit without the benefit of the evidence to be adduced. I find that this application is not merited and dismiss it. Costs to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 13TH DAY OF JUNE 2024.**

**N.A. MATHEKA**

**JUDGE**

