



REPUBLIC OF KENYA



KENYA LAW
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Kiteme v Dhuri, Baya & Dhuri (As the Administrators to the Estate of Karisa Dhuri Kombe alias Charo Dhuri Kombe) & 18 others; Janesen & 4 others (Interested Parties); Kungu (Applicant) (Environment & Land Case 17 of 2024) [2024] KEELC 4770 (KLR) (12 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4770 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 17 OF 2024
FM NJOROGE, J
JUNE 12, 2024

BETWEEN

JUSTUS KADENGE KITEME PLAINTIFF

AND

DAMA CHARO DHURI, DAMA TLIOYA BAYA AND KATANA CHARO DHURI (AS THE ADMINISTRATORS TO THE ESTATE OF KARISA DHURI KOMBE ALIAS CHARO DHURI KOMBE) 1ST DEFENDANT
MAYUNGU LIMITED 2ND DEFENDANT
ANTONIO PEZZINO 3RD DEFENDANT
ALBERTINI EMILIANO 4TH DEFENDANT
MAYUNGU PARADISE GARDEN LTD 5TH DEFENDANT
EZIO COTROZI AND GIANA ACUNZO 6TH DEFENDANT
ZAGO GIUSEPPE 7TH DEFENDANT
FERNANDA VIGO 8TH DEFENDANT
IRALDO LIVIO AND ELSA LODESANI 9TH DEFENDANT
BONATO GIOVANNI 10TH DEFENDANT
DAL MASO RENATO AND MARTA SEGATINI 11TH DEFENDANT
ZAGO GIUSEPPE AND MAINATE ESTER 12TH DEFENDANT
ANTONO PEZZINO AND RESSION MULVA 13TH DEFENDANT
MAGNO LUIGI 14TH DEFENDANT
FRANCESCO SANNA 15TH DEFENDANT



ANTONIO PEZZINO AND JAMSEN MARIA 16TH DEFENDANT
THE LAND REGISTRAR, KILIFI 17TH DEFENDANT
THE ATTORNEY GENERAL 18TH DEFENDANT
THE NATIONAL LAND COMMISSION 19TH DEFENDANT

AND

MARIA JANESEN INTERESTED PARTY
ADRIANO PERISE INTERESTED PARTY
ARINADO MADINELLI INTERESTED PARTY
GRAZIANO PELLACHIMI AND SONIA PICCINELL INTERESTED PARTY
CHRISTINA STANGELLINI INTERESTED PARTY

AND

JOSEPH RUHARI KUNGU APPLICANT

RULING

1. This Ruling is in respect of the Chamber Summons Application dated 7th May, 2024 filed by Counsel for the Applicant and is expressed to be brought under Section 1A and 3A of the [Civil Procedure Act](#), Order 1 Rule 10 (2) and 25 of the [Civil Procedure Rules](#) 2010, which seeks the following orders:
 1.Spent
 2. That this Honourable Court be pleased to give leave to the applicant to be enjoined in this suit as a proper party/Defendant;
 3. That this Honourable Court be pleased to allow the Applicant to file his pleadings to defend his interest as far as land parcel known as Chembe/Kibabamshe 313 which among (sic) the resulting subdivisions number 743 (sic) which resulted in subdivision number 863 (sic) and the resultant subdivisions being No's 1554, 1557, 1555, 1556 currently registered in the name of the Applicant;
 4. That costs of this application be provided for.
2. The application is based on the following grounds:
 1. That the Applicant is a proper party to this suit as the Applicant is the registered owner and holder of title of subdivision numbers plots No's Chembe/Kibabamshe 1554, 1557,1555, 1556 resultant from subdivision on Plot Chembe/Kibabamshe/313;
 2. That Chembe/Kibabamshe 313 was subdivided into several subdivisions among which is plot number 743 which was subsequently subdivided into several subdivisions among which was subdivision Number 863; Plot Number 863 was subsequently subdivided and plots number 1554, 1557, 1555, 1556 were the resulted subdivisions and currently registered in the name of the Applicant who duly purchased from the owner of Plot Number 863;



3. That the issues raised in the Plaint would not be fully adjudicated upon without the presence of the Applicant and thus ends of justice would not be met;
 4. That the intended 6th Interested Party's role in proving ownership is so central that he cannot be left out in this suit.
 5. That despite the fact that the plots are numerous and perhaps of different sizes or that they were sold to different persons, they are all deduced from the suit property Chembe/ Kibabamshe/313, and derived in the same Mutation transaction they are based on the same original owner;
 6. That invariably, the determination of the real issues in controversy between the Plaintiff on one hand and the Interested Parties and the Defendants on the other hand, will need all concerned parties to be before the court;
 7. That this course not only prevents duplication of efforts but also allows the court to determine the relief in the entire transaction and all common issues of fact and law which arise among the parties. Accordingly, to enable the court determine the real issues in dispute among all the parties, the Intended 6th Interested Party too must be enjoined in the suit;
 8. That the said information was not in the knowledge of the Applicant and the same was brought to the attention of the Applicant by his neighbors who have been sued here too and supported by documents;
 9. That the Plaintiff or the Defendants will not stand to suffer any prejudice if the orders sought are granted;
 10. That it is only fair in the interest of justice that the present application be allowed.
3. The application is opposed by the plaintiff by way of his sworn affidavit dated 23/5/2024. In that affidavit he reiterates his claim that he is the owner of the suit land and of which he was defrauded by the 1st defendant. He states that any title that resulted from the purported illegal subdivision of plot no 313 is also illegal and consequently the applicant can not claim to be a bona fide purchaser for value without notice.

The Reply

4. A host of alleged illegalities are enumerated in the replying affidavit which this court will not delve in at the moment, for what matters is whether the applicant has demonstrated that he has a stake in the suit land which warrants his joinder into the proceedings. That can not be done by trying the merits of titles held by the applicant at the present moment. All that the court requires to note is that the applicant claims that he has title to land which earlier on formed part of the land claimed by the plaintiff, and that under Section 25 of the *Land Registration Act*, title produced in court is evidence of ownership unless as per Section 26 of the *Act* it is established that it was obtained irregularly, illegally, by way of misrepresentation or by way of a corrupt scheme. Those are matters that will be the subject of the hearing of the main suit once raised.
5. I find nothing in the response filed by the plaintiff that suffices to persuade me to reject the joinder application. I must also state that this court would not have found it amiss had the plaintiff joined the applicant from the inception of the suit as a defendant owing to the uncontroverted matters that have been divulged by the present application; besides, under Order 10 Rule 1(2) *CPR* this court has power to order suo moto that a party be joined, either as plaintiff or as defendant, at any stage in the proceedings if it deems that such joinder is necessary.



6. The application dated 7/5/24 has merit and I grant it in terms of prayer no 2 and 3 thereof subject to what I will state as herein below.
7. The applicant is hereby joined to the plaintiff's suit as the 20th defendant and his filing of a response to the suit will however await its amendment by the plaintiff to include him as a defendant which I hereby order. The amended plaint, which shall take into consideration the disclosures made by the 20th respondent and the matters in the replying affidavit to the present application, shall be filed and served within 14 days from the date of this order and the 20th defendant shall file his response thereto within 15 days from 19/9/2024. I also order that service of all documents previously filed by the plaintiff and by the other parties in this suit shall be by way of electronic mail. However, the 20th defendant shall be expected to respond forthwith to the application dated 6/2/24 and the ruling date on that application shall remain 19/9/2024 as earlier scheduled.

RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 12TH DAY OF JUNE, 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

