



Njora (Being the Administrator of the Estate of Priscilla Muthoni Njora alias Priscillah Muthoni Njora - Deceased) v Chumo & another; Randu (As the Administrator of the Estate of Katana Karisa Murezi alias Katana Karsa - Deceased) (Intended Defendant) (Environment & Land Case 87 of 2021) [2024] KEELC 5573 (KLR) (31 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5573 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 87 OF 2021**

**FM NJOROGE, J
JULY 31, 2024**

BETWEEN

CHRISTOPHER WAWERU E. NJORA (BEING THE ADMINISTRATOR OF THE ESTATE OF PRISCILLA MUTHONI NJORA ALIAS PRISCILLAH MUTHONI NJORA - DECEASED) PLAINTIFF

AND

**MIRIAM JEROP CHUMO 1ST DEFENDANT
LAND REGISTRAR, KILIFI COUNTY 2ND DEFENDANT**

AND

CHENDA KATANA RANDU (AS THE ADMINISTRATOR OF THE ESTATE OF KATANA KARISA MUREZI ALIAS KATANA KARSA - DECEASED) INTENDED DEFENDANT

RULING

1 This is a ruling on two applications. The first one has been filed by the Intended 3rd Defendant, is dated 28/9/2023 and is brought under Section 1A, 1B & 3A and 95 of the *Civil Procedure Act* and Order 1 rule 3 and Order 51 rule 10 of the Civil Procedure Rules; it seeks the following orders: -

1.Spent;
2. That the honourable court be pleased to order that the Applicant herein be joined in the suit as the 3rd Defendant and be granted leave to file defence out of time and the annexed draft defence be deemed as duly filed and served upon payment of the requisite court fees;
3. That an order be issued for a status quo to be maintained;



4. That costs of this application be provided for.
2. The application which is premised on the grounds listed on the face of the motion is supported by an affidavit sworn by the Intended 3rd Defendant on 28/9/2023. His case is that her late husband, Katana Karisa Murezi, was the original owner of the land parcel in dispute herein, Kilifi/Mbarakachembe/221 (the suit property); that she lived on the suit property with the deceased until his demise on 26/10/2014, and she continued to reside thereon until sometime in October 2022 when some alleged strangers walked into the suit property claiming ownership thereof. It was after that incident that she discovered the existence of this suit. She averred that her late husband never transferred the suit property to the Plaintiff or any other person. She exhibited in her supporting affidavit a copy of what she referred to as the “green card” and draft statement of defence.
3. The 1st Defendant filed a replying affidavit on 13/10/2023 stating that the copy of green card produced by the Intended 3rd Defendant is a forgery and she proceeded to annex her own version. She contended that the deceased sold the suit property to Priscillah Muthoni Njora but out of good will, the latter allowed the 3rd Defendant’s children to occupy 2 acres of the suit property. To the 1st Defendant, the application was made in bad faith and time barred.
4. On his part, the Plaintiff filed a replying affidavit on 3/11/2023 stating that the said deceased, Karisa Murezi, sold the suit property to the late Priscilla Njora on 25/8/1976 as per a copy of sale agreement he exhibited. As a result, Priscilla was issued with a title on 1/11/1976 and her family took possession thereof. To him, the intended defendant has no rights whatsoever in respect to the suit property and her application should be struck out.
5. Before this application could be heard and determined, the 1st Defendant moved the court on 22/1/2024 vide a notice of motion application dated 18/1/2024 for orders that: -
 1. This suit be dismissed for want of prosecution;
 2. That costs be borne by the Plaintiff/respondent.
6. The basis of the 1st Defendant’s application was that it has been more than 2 years since the suit was filed and the same has remained unprosecuted. In support of the application is an affidavit which she swore on 19/1/2024.
7. The Plaintiff opposed the application. He filed a replying affidavit sworn by counsel Paul Murimi Kiongo on 6/3/2024 wherein he deposed that at least 1 year has not lapsed since 14/12/2023 when the suit was last in court hence an application for dismissal for want of prosecution filed in January 2024 is unwarranted. He added that the hearing could not also have proceeded due to the intended 3rd Defendant’s application for joinder. He narrated that prior to the current application, the 1st Defendant had filed a similar application dated 2/12/2022 which she withdrew on 27/3/2023 and the matter had been confirmed for hearing on 12/7/2023. On the said date, the hearing did not proceed and it was adjourned to 31/10/2023. Again, the hearing could not take off due to the application dated 28/9/2023. Counsel urged the court to find no merit in the 1st Defendant’s application.
8. Both applications were canvassed by way of written submissions. A perusal of the record reveals that the intended 3rd Defendant filed submissions with regard to both applications despite not being a party herein yet, while the 1st Defendant filed submissions dated 6/5/2024 in relation to her application. I have nonetheless read, understood and considered all arguments advanced by the parties. The issues that arise for determination are firstly, whether the suit should be dismissed for want of prosecution, secondly, whether the Intended 3rd Defendant has made out a case for joinder, and lastly, a determination on costs.



Analysis and Determination

9. Order 17 Rule (2) of the Civil Procedure Rules pursuant to which the application for dismissal has been brought provides: -
- 2.(1) in any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.
 - (2) if cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit.
 - (3) Any party to the suit may apply for its dismissal as provided in sub-rule 1.
 - (4) The court may dismiss the suit for non-compliance with any directions given under this order. (emphasis mine.)
10. Looking at the proceedings herein, the plaint was filed on 2/11/2021 alongside a notice of motion for interim orders. A ruling on that motion was delivered on 11/5/2022. The 1st Defendant filed her defence on 30/5/2022. On 28/6/2022 the court directed that the suit be mentioned on 22/8/2022 for pretrial directions. On the said mention date, none of the parties was present. The matter came up on 2/12/2022 after the 1st Defendant filed an application for dismissal for want of prosecution. Thereafter, the matter was mentioned several times for the said application, until on 27/3/2023 when the 1st Defendant opted to abandon the application. On the same date, the court scheduled the hearing for 12/7/2023. On that particular date, the court adjourned the hearing to 31/10/2023 due to unavailability of time. Notably, before the subsequent hearing date, the Intended 3rd Defendant filed the application dated 28/9/2023, which is pending determination. In the circumstances, I am not satisfied that no application has been filed or step taken by either party for a minimum of a one year period to warrant dismissal of this suit for want of prosecution. The outcome is that the application dated 18/1/2024 is unmerited and is hereby dismissed.
11. Regarding the second issue, it is the case that joinder of parties is governed by Order 1 of the Civil Procedure Rules. Rule 3 thereof 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. The court in *Lucy Nungari Ngigi & 128 others v National Bank of Kenya Limited & another* [2015] eKLR explained as follows: -
- “In law, joinder should be permitted of all parties in 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 such persons brought separate suits, any common question of law of fact would arise. See also Order 7 Rule 9 of the Civil Procedure Rule. The court may even in its own motion add a party to the suit if such party is necessary for the determination of the real matter in dispute or whose presence is necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit. Therefore, joinder of parties is permitted by law and it can be done at any stage of the proceedings. But, joinder of parties may be refused where such



joinder: will lead into practical problems of handling the existing cause of action together with the one of the party being joined; is unnecessary; or will just occasion unnecessary delay or costs on the parties in the suit. In other word, joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible to or totally different from existing cause of action or the relief. The determining factor in joinder of parties is that a common question of fact or law would arise between the existing and the intended parties. This is the test I shall apply in this case.”

13. In the present case, it is not disputed that at one point in time, the suit property was owned by the deceased as per the land register. The Plaintiff’s case against the 1st Defendant is that the latter fraudulently obtained a title to the suit property since the same was at all material times owned by Priscilla Muthoni having purchased it from the deceased Katana Karisa. The Intended 3rd Defendant’s allegation is that the deceased never transferred the suit property to the Plaintiff. While the Plaintiff and 1st Defendant contested the claim that the 1st Defendant’s children were only permitted to occupy a portion of the suit property, and bearing in mind that this is a case relating same suit property and common issues I am of the view that the Intended 3rd Defendant should be granted an opportunity in these proceedings to ventilate her claim. I find that the Intended 3rd Defendant’s presence is necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved over the suit property. Any contrary holding may lead to multiplication of litigation and delay in the final settlement of the real dispute.
14. In the final analysis I make the following orders:
 1. The application dated 18/1/2024 is unmerited and is hereby dismissed;
 2. The application dated 28/9/2023 is hereby allowed;
 3. The Plaintiff is granted leave to amend the Plaint within 7 days to include the applicant in the application dated 28/9/2023 as the 3rd defendant, taking into consideration the matters raised by the 3rd defendant in her application as well as the matters raised in the replying affidavits;
 4. All the defendants shall as the case may be file and serve their respective defence or amended defence within 15 days of being served with the amended plaint;
 5. The plaintiff shall file and serve a trial bundle duly indexed and paginated within 30 days of the period provided in the rules filing reply to amended plaint and the defendants shall file their trial bundles duly indexed and paginated within 30 days of the period granted to the plaintiff to file his;
 6. This suit shall be brought up for a mention on 30th October 2024 for issuance of a hearing date;
 7. The costs of both applications shall be in the cause.

RULING DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 31ST DAY OF JULY 2024.

MWANGI NJOROGE

JUDGE, ELC MALINDI

