



**Neena Prior v Consolidated Water Limited (Environment and Planning
Civil Case E001 of 2023) [2024] KEELC 5748 (KLR) (30 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5748 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND PLANNING CIVIL CASE E001 OF 2023**

JG KEMEI, J

JULY 30, 2024

BETWEEN

NEENA PRIOR PLAINTIFF

AND

CONSOLIDATED WATER LIMITED DEFENDANT

RULING

1. Vide a Chamber Summons dated 25/9/2023, the Defendant seeks to enjoin John Wheeler; Paul & Lesley Young; Harshad Rewashankar Joshi; Esther Kamau and Rose Wanjiku as 2nd, 3rd, 4th, 5th and 6th Defendants respectively. The Defendant also prays for costs of the Application.
2. The Application is based on grounds that the intended Defendants are the owners of land parcels LR 158/34-41 and shareholders of the Defendant Company. That they are also the beneficial owners of the water system on the Plaintiff's land LR 158/71 and the intended Defendants' land portions enjoy right of way on the Plaintiff's land and their presence is crucial in effectively and efficiently adjudicating the issues herein.
3. In the Supporting Affidavit sworn on even date by John Wheeler the Defendant's Director, he urged the Court to allow the Application as prayed and annexed ownership documents of the intended Defendants as annexure JW1.
4. Opposing the Application, Neena Prior, the Plaintiff herein, swore her Replying Affidavit on 6/11/2023 and deposed that the Defendant has not demonstrated that the intended Defendants own properties adjacent to her land and therefore they have no rights over her property. That her case is against the Defendant as a trespasser and not against any of the listed parties sought to be enjoined herein. That the said parties are the Defendant's customers as can be gleaned from the Memorandum and Articles of Association marked 'NP1'. That no cause of action arises in this suit as against the said parties and therefore, the Application should be dismissed with costs.



5. On 22/2/2024 directions were taken and parties agreed to prosecute the Application by way of written submissions.
6. The Defendant through the firm of Kiarie Joshua & Co Advocates filed submissions dated 21/3/2024. Citing Order 1 Rule 10 (2) of the *Civil Procedure Rules*, the Defendant submitted that the gist of this suit is a water system on the Plaintiff's land which is owned by the Defendant. That the Plaintiff's land is a resultant subdivision of LR 158/13 wherein the intended Defendants' own portions of the land arising from the said subdivision. Further that the intended Defendants are shareholders of the Defendant Company and as beneficiaries of the water system, they stand to be affected by orders made by this court to that respect. That their presence in the suit will enable the Court to effectually and completely adjudicate upon and settle all the questions in the suit. In support of that position reliance was placed on the case of *Lucy Nungari Ngigi & 28 Others Vs. National Bank of Kenya Ltd & Anor.* [2015] eKLR.
7. On behalf of the Plaintiff, the firm of Arwa & Change Advocates LLP filed submissions dated 19/4/2024. Two issues were drawn for determination to wit whether the proposed Defendants are necessary and proper parties to the suit and whether their joinder will result in the complete settlement of the suit issues.
8. The Plaintiff similarly relied on the provisions of Order 1 Rule 10 (2) of the *Civil Procedure Rules* on the Court's power to order joinder of parties in a suit. In answering the first issue, the Plaintiff submitted that pursuant to Order 1 rule 9 of the Civil Procedure Rules a suit may not fail, merely on account of joinder or misjoinder of parties and urged the court to exercise discretion to deal with the dispute herein. That the proposed Defendants are neither necessary nor proper parties to the suit as they lack sufficient interest herein.
9. Citing the case of *Lucy Nungari Ngiogi & 28 Others Vs. National Bank of Kenya Ltd and Another* [2015] eKLR the Plaintiff was emphatic that joinder of a party can be refused where such joinder will lead into practical problems of handling the existing cause of action; in case where such joinder is unnecessary and lastly where such joinder will occasion unnecessary delays or costs on the parties of the case.
10. Regarding the second issue, the Plaintiff reiterated that the orders she seeks do not in any way legally affect the proposed Defendants since her claim is against the Defendant. That the Defendant is a distinct legal person and should not be allowed to enjoin its customers to a suit where the Defendant is solely accused of wrong doing.
11. The sole issue for determination is whether the Application is merited.
12. The Black's Law Dictionary, 9th Edition at page 1232 defines an interested party as a party who has a recognizable stake (and therefore standing) in the matter.
13. Order 1 Rule 10(2) of the *Civil Procedure Rules* (CPR) 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."



14. In seeking to enjoin other co-Defendants, the Defendant annexed JW1 as a bundle of documents to show that the intended Defendants are owners of the land parcel LR 158/34-41. The first certificate is dated 23/5/2015 in the name of Paul and/or Lesley Young, followed by an illegible transfer of share or stock and a certificate of title, a share certificate dated 9/6/1976 for plot holder LR 88/36, a share certificate dated 23/5/2015 in the name of Eliud Kangethe Karanja, memorandum and articles of association of Consolidated water Ltd and certificate of Incorporation, certificate of title for Robin Munyua, certificates of shares for John Wheeler and Mrs. F.T Makoriwa both dated 23/5/2015. Other than Paul Wheeler and Paul Young, no documents in the Application shows ownership of the suit land as averred by the Defendants.
15. It is trite that a case belongs to the Plaintiff. The Defendant's Application seeks enjoinder of co-Defendants. Parties are at liberty to choose the necessary parties in a suit where they claim certain reliefs arising from a transaction or a wrong committed. A party cannot force a Plaintiff to sue persons that they do not have a claim against because if the case is dismissed then the party must bear the burden of paying costs. That is the reason why before a party files a suit in court, he/she must be sure of the party to have a duel with. You do not start battles on all fronts hoping to settle on one person. You must be sure of the Defendant you want to sue.
16. The Plaintiff herein opposes the Application and is categorical that her case is purely and properly filed against the Defendant.
17. I rely on the persuasive authority by Judge Munyao in the case of *Carol Construction Engineers Ltd Vs. Naomi Chepkorir Langat* [2019] eKLR where in dismissing the Defendants Application to enjoin other persons as co-Defendants stated that:

“It will be wrong for this court to impose upon the Plaintiff some persons as Defendants when in fact the Plaintiff has no issue with such persons.”
18. The upshot of the forgoing is that the Application is bereft of merit. It is for dismissal with costs to the Plaintiff.
19. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 30TH DAY OF JULY 2024
VIA MICROSOFT TEAMS.**

J G KEMEI

JUDGE

Delivered online in the presence of;

Ms. Anyango HB Ms. Arwa for Plaintiff

Ms. Musyoka for Defendant

Court Assistants – Phyllis/Oliver

