



Njoroge & 5 others v Langata KPA Nairobi West Self-Help Group & 5 others (Environment & Land Case E203 of 2023) [2024] KEELC 6643 (KLR) (29 July 2024) (Ruling)

Neutral citation: [2024] KEELC 6643 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E203 OF 2023**

**MD MWANGI, J
JULY 29, 2024**

BETWEEN

**MOSES NJOROGE 1ST PLAINTIFF
ROSE WATHIHA NJOROGE 2ND PLAINTIFF
LUCINA MUTHONI MURIITHI 3RD PLAINTIFF
SHAYKH ABUBAKAR 4TH PLAINTIFF
FARID FARAJ AWADH 5TH PLAINTIFF
MALIHA HASHIM ABDULKADIR 6TH PLAINTIFF**

AND

**LANGATA KPA NAIROBI WEST SELF-HELP GROUP 1ST DEFENDANT
NAIROBI WEST TRADING CO LTD 2ND DEFENDANT
JOHN OCHIENG'OCHOLA 3RD DEFENDANT
LYDIA AKOTH 4TH DEFENDANT
DOUGLAS OWINO 5TH DEFENDANT**

AND

BUNDOTICH RUTTO PROPOSED DEFENDANT

RULING

Background

1. The application for determination is the Defendants' Chamber Summons application dated 12th March, 2024 seeking the following orders:



- a. That the Defendants/Applicants be granted leave to join Bundotich Rutto as a Defendant in this suit.
 - b. That the costs of the application be provided for.
2. The application is premised on the grounds on the face of it and the Supporting Affidavit of Lydia Akoth, the 3rd Defendant herein and the Chairperson of the 1st Defendant Self – Help Group, deposed on the 12th March, 2024. The deponent asserts that the members of the 1st Defendant were at some point squatters on L.R 2091/10635, the suit property having lived on therein for over 23 years following a directive by the then President of the Republic of Kenya, the late Daniel Moi.
 3. The deponent avers that since the suit property did not have ownership documents, and the 1st Plaintiff therefore proposed that they commence the process of procuring title documents. The 1st Plaintiff then introduced the Proposed Defendant to the parties herein as the one who was to assist them in procuring title documents to the suit property. The members of the 1st Defendant contributed and gave the Proposed Defendant a sum close to Kshs. 6,000,000/= for purposes of facilitating the process.
 4. The Applicants aver that at no given point did anyone give or receive funds for purposes of buying or selling the suit property rather that the money was given as a contribution by members who were in possession of certificates. The deponent states that they never purported to sell the land, since they did not have a good title capable of being passed to another party. However, they were not able to procure the title documents due to an injunction which had been issued in Milimani ELC No. 464 of 2011 restraining them from any dealings with the suit property. The suit which had been filed by Woolmatt Limited was later withdrawn.
 5. The deponent asserts that the Proposed Defendant is conversant with the facts herein and received money from the 1st Defendant under the false pretence that he would assist in procuring the title documents for the suit property. It is therefore only fair and just that the Proposed Defendant be joined into the proceedings.

1st Plaintiff's Replying Affidavit

6. The application is opposed by the Plaintiffs through a Replying Affidavit sworn on the 5th April, 2024 by Moses Njoroge, the 1st Plaintiff herein. The Plaintiff contends that the application is an abuse of the court process aimed at delaying the hearing and determination of the suit. He argues that the Proposed Defendant is not known to him neither did he introduce him to the Defendants as alleged. He contends that the said payments were for the purchase of plots and not contributions for title documents as alleged. The Defendants had confirmed to the Plaintiffs that they possessed a good title to the suit property and gave them a copy of the Title Deed for LR 209/10635, an approved proposed sub-division of the parcel of land and a copy of the rent clearance certificate. The Defendants also gave them letters of allotment and certificates of ownership confirming ownership of the suit property. He avers that he was instructed by the officials of the 2nd Defendant to make payments for rates for L.R 209/10635 in the sum of Kshs. 51,850/= as part of the consideration.
7. Subsequently, the 3rd and the 4th Defendants as officials of the 1st Defendant converted the 1st Defendant from a community-based organization to a company, the 2nd Defendant herein, without the Plaintiffs' consent. The 4th Defendant then applied for an allotment letter for L.R No. 209/10636 which is adjoining the suit property. Thereafter, the 2nd Defendant paid for the allotment after a valuation had been conducted. Therefore, the 2nd, 3rd and 4th Defendants have legal possession of L.R No. 209/10636.



8. The Plaintiffs therefore oppose the joinder of the Proposed Defendant who is a stranger to their transaction with the Defendants and that the Plaintiffs do not have any claim against him. The application should therefore be dismissed with costs.

Court's Direction

9. The court directed that the application be disposed of by way of written submissions. The Defendants/Applicants complied and the court has had the opportunity to peruse the same together with the cited authorities. However, at the time of writing this Ruling, the Plaintiffs were yet to file theirs.

Issues for Determination

10. Having read and considered all the application filed herein, the written submissions and the cited authorities, the issues for determination are:
- a. Whether the Proposed Defendant is a necessary party who should be joined into these proceedings.
 - b. Who should bear the costs of the application

Analysis and Determination

A. Whether the Proposed Defendant is a necessary party who should be joined into these proceedings

11. Order 1 rule 10 of the *Civil Procedure 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.”

12. The court may even in its own motion add a party to the suit if such party is necessary for the determination of the issues 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.
13. However, joinder of parties may be refused where it will lead into practical problems of handling the existing cause of action together with the one of the parties being joined; is unnecessary; or will just occasion unnecessary delay or costs on the parties in the suit. In other words, joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible with or totally different from the existing cause of action. 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.
14. The relevant tests for determination whether or not to join a party in proceedings were restated by Nambuye, J (as she then was) in the case of *Kingori -vs- Chege & 3 Others* [2002] 2 KLR 243, where the learned Judge stated that the guiding principles when an intending party is to be joined are as follows:
- a. He must be a necessary party.
 - b. He must be a proper party.
 - c. In the case of the defendant there must be a relief flowing from that defendant to the Plaintiff.



- d. The ultimate order or decree cannot be enforced without his presence in the matter.
 - e. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.
15. In *Departed Asians Property Custodian Board v Jaffer Brothers Ltd* [1999] 1 EA 55 it was held as follows:
- “A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter...For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the Court in that suit. Alternatively, a person qualifies, (on an application of a Defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.”
16. In *Civicon Limited vs. Kivuwatt Limited and 2 Others* [2015] eKLR, the court observed as follows:
- “Again the power given under the Rules is discretionary which discretion must 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...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”
17. In the instant case, the Defendants have exhibited acknowledgement notes from the proposed Defendant confirming receipt of monies from them. They assert that the money was for facilitation of a title. I note from the acknowledgement notes that the money was for purposes of a Deed Plan, conveyancing and Land Rent.
18. As elaborated in the *Departed Asians Property Custodian Board v Jaffer Brothers Ltd* (supra), a Defendant may apply to join a co-defendant the same way a Plaintiff may apply to join a Defendant in a suit. From the averments by the Applicants and the submissions filed, I find it fair and just that the proposed Defendant is joined in the proceeding, as the 6th Defendant to explain the basis upon which he received the money from the Defendants. The Defendants will be at liberty to lodge a claim against the



co-defendant in accordance with the law. The Plaintiffs too are at liberty to amend their plaint and join the 6th Defendant. Accordingly, the application by the Defendants is allowed; the intended Defendant, Bundotich Rutto, is hereby joined as the 6th Defendant in this case. The costs of the application shall be in the cause.

It is so ordered

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF JULY 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Chasia h/b for Mr. Ochieng Opiyo for the Defendants/Applicants

N/A by the Plaintiffs/Respondents

Court Assistant: Yvette.

