



**Holloway Properties Limited v Mwangi & 4 others (Environment & Land
Case E178 of 2023) [2024] KEELC 5588 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5588 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E178 OF 2023**

**LN MBUGUA, J
JULY 25, 2024**

BETWEEN

HOLLOWAY PROPERTIES LIMITED PLAINTIFF

AND

DAVE MWANGI 1ST DEFENDANT

MOSES OJUKA 2ND DEFENDANT

SAMMY KARANJA 3RD DEFENDANT

AND

CHIEF LAND REGISTRAR 1ST INTENDED DEFENDANT

**DIRECTORATE OF CRIMINAL INVESTIGATIONS 2ND INTENDED
DEFENDANT**

RULING

1. The Plaintiff's chamber summons dated 23.2.2024 is for determination. It seeks orders for joinder of the Chief Land Registrar and the Directorate of Criminal Investigations, (herein referred to as DCI) as the 4th and 5th Defendants respectively and for the plaint to be amended accordingly.
2. The prayer for joinder of the Chief Land Registrar was not opposed by the parties herein, hence the said party is enjoined as the 4th Defendant.
3. The application is anchored on grounds on its face and on the supporting affidavit sworn on 23.2.2024 by plaintiff's director, Hasmita Patel. He avers that prior to filing the instant suit, the Plaintiff was the registered owner of LR No. 20261 (IR No. 90758) and was in occupation of the same till 6.11.2023 and on 17.11.2023 when a gang at the direction of the 1st - 3rd Defendants accosted contactors and guards on the suit parcel and attempted to evict the Plaintiff.



4. He avers that the invasion was reported to the police and to the DCI and that the DCI's Land Fraud Unit has been undertaking investigations into the multiplicity of titles over the suit property and is in possession of the 2 parallel titles presented by the Plaintiff and the Defendants.
5. He avers that since the Directorate of Criminal Investigations is mandated to undertake criminal investigations, their participation is necessary as it shall be accorded an opportunity to present investigative findings and enable the court to determine the matter judiciously.
6. The issue of joinder of the intended 5th Defendant is opposed by the Defendants vide the 1st Defendant's replying affidavit sworn on 8.4.2024. He avers that parties to the suit willfully submitted the competing titles to the DCI for forensic document investigation but the Defendants are in the dark as they have not been supplied with the opinion of the document examiner.
7. He further avers that the DCI'S role is to investigate criminal matters reported to them thus, they should not be enjoined in a matter that is not of a criminal nature.
8. It is further argued that this being a land matter, it is the Ministry of Lands officials who should assist the court in arriving at a just decision as they are the custodians of the documents in issue.
9. The Hon. Attorney General is not opposed to the Plaintiff's application.
10. In its submissions dated 21.6.2024, the Plaintiff argues that it has met the criteria for joinder of a party as stated in the case of *Kingori v Chege & 3 Others* [2002] 2 KLR 243.
11. It is argued that the DCI are neither by law nor conduct confined to participate only in criminal proceedings and that criminal and civil proceedings can run concurrently. To this end, reliance is placed upon the cases of *Maina & 4 others v Director of Public Prosecutions & 4 others* (Constitutional Petition E160 of 2021 (Consolidated) [2022] KEHC-15 (KLR), *Amir Lodges Limited & Another v Mobammed Omar Shariif & Another* [2022] eKLR, *Civicon Limited v Kivu Watt Limited and 2 Others* [2015] eKLR, *Martin Kirima Baithambu v Jeremiah Miriti* [2017] eKLR as well as *Zepbir Holdings Ltd v Mimosa Plantations Ltd, Jeremiah Maztagaro and Ezekiel Misango Mutisya* [2014] eKLR.
12. I have considered all the arguments raised herein. Plaintiff seeks to enjoin the DCI as the 5th Defendant on the basis that its joinder will enable the court to arrive at a complete and final decision by shedding light on their investigative findings on the validity of 2 titles presented by the 2 contesting parties herein.
13. This court has discretion to allow the joinder of a party as a defendant as provided under Order I rule 10 (2) of the *Civil Procedure rules*. Thus the court will determine whether the DCI is a proper party to warrant enjoining it as a Defendant.
14. In *Zepbir Holdings Ltd v Mimosa Plantations Ltd, Jeremiah Maztagaro and Ezekiel Misango Mutisya* (2014) eKLR, the Court stated that:

“A proper party is one who is impleaded in the suit and qualifies the threshold of a plaintiff or defendant under Order 1 rule 1 and 2 respectively, or as a third party or as an Interested Party and whose presence is necessary or relevant for the determination of the real matter in dispute or to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit.”
15. Apparently, the DCI is in custody of the 2 competing titles herein for purposes of conducting forensic investigations. They however have no stake in the matter and they are not the custodians of title deeds. It is the finding of this court that the evidence of the DCI more so the forensic evidence would be in the realm of expert evidence. That being the case, it is more appropriate for such evidence to be tendered by



a person called as a witness by any of the parties or by the court. That way, the court would determine the admissibility of the said evidence in tandem with the provisions of Section 144 of the *Evidence Act*.

16. In the end, the application dated 23.2.2024 is dismissed in so far as the prayer to join the DCI is concerned. Each party is to bear their own costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JULY, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Muriuki holding brief for M/s Thiongo for Respondents (Defendants)

Andongo holding brief for Shikanda for Plaintiff Applicants

Court assistant: Eddel

