



Waweru v Githuki & 3 others; Thuo (Interested Party) (Suing as the Personal Representative of the Estate of the Late Francis Kimani Thuo) (Environmental and Land Originating Summons 71 of 2019) [2024] KEELC 5803 (KLR) (22 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5803 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 71 OF 2019**

**BM EBOSO, J
JULY 22, 2024**

BETWEEN

BARTHOLOMEW MUHIA WAWERU PLAINTIFF

AND

WANJIKU GITHUKI 1ST DEFENDANT

GAMP ENGINEERING COMPANY LIMITED 2ND DEFENDANT

KENNEDY NJUGUNA MWANGI 3RD DEFENDANT

KELVIN MUIRURI 4TH DEFENDANT

AND

GEORGE GACUA KIMANI INTERESTED PARTY

**SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF THE
LATE FRANCIS KIMANI THUO**

RULING

- Two applications fall for determination in this ruling. The first application is the notice of motion dated 13/5/2022, brought by George Gacua Kimani. The second application is the notice of motion dated 5/1/2024, brought by Simon Mwangi Nderitu. Both applications seek joinder of the respective applicants as interest parties in this suit. The common question to be answered in the two applications is whether the applications meet the threshold for joinder to a civil case.



2. The relevant legal framework on joinder is contained in Order 1 rule 10(2) of the Civil Procedure Rules which provides as follows:

“(2) 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.”

3. The prevailing jurisprudential principle on joinder was outlined by the Court of Appeal in *Pravin Bowry v John Ward and Another* [2015] eKLR. The Court adopted the principle articulated in the Ugandan case of *Deported Asians Custodian Board v Jaffer Brothers Ltd* [1999] 1 E.A. 55 (SCU) where the Ugandan Court stated 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 because the party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all 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 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.”

4. The Court of Appeal in the above case also referred to the decision in *Civicon Limited v Kivuwatt Limited and 2 Others* [2015] eKLR on the interpretation of Order 1 of the Rules. 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.”

5. In *Kingori vs. Chege & 3 Others* [2002] 2 KLR 243 the Court stated that the guiding principles when an intending party is to be joined are as follows:
 1. He must be a necessary party.
 2. He must be a proper party.
 3. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.
 4. The ultimate order or decree cannot be enforced without his presence in the matter.
 5. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.
6. Having outlined the relevant legal framework and jurisprudence, I will now briefly examine and analyze the two applications with a view to determining whether they satisfy the criteria for joinder.
7. As observed, the applicant in the application dated 13/5/2022 is George Gacua Kimani. His case is that he is the legal representative of the estate of the late Francis Kimani Thuo [the deceased] pursuant to a limited grant issued to him on 11/5/2022. The applicant contends that the deceased is the lawful and bonafide owner of two plots forming part of land parcel number Ruiru/Kiu Block 2 (Githunguri) /3035 [the suit property]. The deceased purchased the two plots from M/s Daman Estate Developers whose directors were Daniel Kimani Muita and Bartholomew Muhia Waweru.
8. The applicant adds that he has been in actual and physical possession of the two plots since 2007 and he has constructed on the land a two bedroomed bungalow in which he resides with his family. He further contends that M/s Gamp Engineering Co. Ltd and Kennedy Njuguna Mwangi filed Ruiru SPMC E & L Case No 16 of 2019 in which they named him as one of the four defendants. It is his case that the said suit was subsequently transferred to Thika Environment and Land Court and registered as Thika ELC Case No 32B of 2024. He contends that, as the administrator of the estate of the deceased, he has a stake in these proceedings, adding that any decision made by this court in the matter on the question of ownership of the suit land will directly affect him and the estate.
9. Mr Karina who appeared for the plaintiffs in Thika ELC Case No 32B of 2024 and for the 2nd and 3rd Defendants in Thika ELC Case No 71 of 2019 submitted at the hearing of the two applications that he had not filed responses to the applications. He nonetheless opposed the two applications on the ground that the two applicants derive their respective ownership interests from M/s Daman Estate Developers in which Mr Bartholomew Muhia Waweru was a director. Counsel contended that Bartholomew Muhia Waweru will sufficiently take care of the interests of the applicants. Counsel urged the court to reject the application.
10. I have considered the application dated 13/5/2022. It is noted that while granting the order transferring Ruiru SPMC E & L Case No 16 of 2019 to this court, Gacheru J consolidated the said suit with Thika ELC Case No 71 of 2019. Although the consolidation order should ideally have been made after transfer and registration of the transferred file in the Thika ELC Registry, it is nonetheless effective. George Kimani is the 3rd defendant in the transferred cause, which is now Thika ELC Case No 32B of 2024.
11. Ideally, the two suits having been consolidated, there may not have been need for the joinder order that is sought were it not for one aspect of the application. The aspect relates to the capacity in which George Kimani seeks joinder. He seeks joinder in the capacity of personal representative of the Estate



of the late Francis Kimani Thuo. In Thika ELC Case No. 32B of 2024 [formerly Ruiru SPMC E & L Case No. 16 of 2019], George Kimani was sued in his personal capacity. For this reason, he cannot be said to be a party to this suit in his representation capacity as the administrator of the estate of the late Francis Kimani Thuo.

12. Mr Kimani has alleged that the deceased purchased the two plots which form part of the suit land. He has also alleged that the estate of the deceased has developed the two plots and is in possession of the plots. It is his case that the estate is entitled to be a party to proceedings affecting the land. Taking into account the criteria outlined above, the court agrees that given the above circumstances, the estate qualifies for an order of joinder.
13. Simon Mwangi Nderitu is the applicant in the notice of motion dated 5/1/2024. His case is that he owns plot No 10, measuring 40 feet x 80 feet which forms part of the suit land. He similarly contends that he purchased the plot from M/s Daman Estate Developers.
14. The court takes the view that as purchaser of a portion of the suit land, Simon Mwangi Nderitu is, similarly, entitled to be a party to the proceedings because any ultimate order made in the case will affect him.
15. For the above reasons, the court is satisfied that the two applications satisfy the criteria for joinder. The applications are allowed in the following terms:
 - a. George Gacua Kimani is joined as the 5th Defendant in Thika ELC Case No 71 of 2019 in his capacity as the administrator of the estate of the late Francis Kimani Thuo.
 - b. Simon Mwangi Nderitu is joined in Thika ELC Case No 71 of 2019 as the 6th Defendant.
 - c. The existing pleadings shall be amended and served and the joined parties shall thereafter file and serve their pleadings.
 - d. Costs of the two applications shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 22ND DAY OF JULY 2024.

B M EBOSO

JUDGE

In the Presence of: -

Mr Mwai for the 2nd and 3rd Defendants

Ms Chacha for the 1st Interested Party

Court Assistant: Hinga

