



**Maina & 2 others v Ndichu & another; County Government of Kiambu (Applicant)
(Environment & Land Case 69 of 2020) [2024] KEELC 5823 (KLR) (22 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5823 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 69 OF 2020**

BM EBOSO, J

JULY 22, 2024

BETWEEN

FAITH WANJIRU MAINA 1ST PLAINTIFF

PHILIP MIONKI M'MWERERIA 2ND PLAINTIFF

STANLEY KIPTANUI ROP 3RD PLAINTIFF

AND

JEREMIAH MUIRURI NDICHU 1ST DEFENDANT

PETER MAINA MUNDIA 2ND DEFENDANT

AND

THE COUNTY GOVERNMENT OF KIAMBU APPLICANT

RULING

1. This suit was heard in February 2022. Judgment was subsequently rendered in the suit in September 2022. The court subsequently extracted and issued a decree in favour of the plaintiffs in the following verbatim terms:
 - a. That a declaration be and is hereby issued that Land parcel number Thika Municipality Block 9/1109 belongs to the plaintiffs.
 - b. That a permanent injunction be and is hereby issued restraining the defendants, their servants, agents, employees and/or any other persons claiming to act under their authority from entering, using, depositing sand or other materials, conducting business or in any other way interfering with the plaintiffs' parcel number Thika Municipality Block 9/1109.
 - c. That an order of eviction be and is hereby issued against the defendants from parcel number Thika Municipality Block 9/1109.



- d. That costs of this suit be and are hereby awarded to the plaintiffs.
2. Subsequent to that, the defendants brought an application seeking an order of stay of execution pending the hearing and determination of an intended appeal in the Court of Appeal. The application was disposed through a ruling rendered on 23/3/2023.
 3. In February 2024, the County Government of Kiambu brought a post-judgment application dated 9/2/2024, seeking a post-judgment order of joinder to this suit. They also sought orders reviewing and setting aside the Judgment of the court. The said application dated 9/2/2024 is the subject of this ruling.
 4. The application was anchored on the grounds outlined on the face of the motion and in the supporting affidavit sworn by Waithira Waiyaki. It was canvassed through written submissions dated 20/2/2024, filed by David Mararo of the Office of the Kiambu County Government Attorney.
 5. The case of the applicant is that the suit property is public land that is vested in the County Government by dint of the provisions of Article 62(2) of the *Constitution*. They contend that the suit land is held by the County Government in trust for the community, adding that, the plaintiffs' decision to exclude them and the National Land Commission from this suit denied the duo the opportunity to tender important evidence in the suit.
 6. The plaintiffs opposed the application through a replying affidavit sworn on 15/2/2024 by Philip Mionki M'Mwereria. The case of the plaintiffs is that the application is an abuse of the process of the court because the applicant was a defendant in Thika CMC Civil Case No 694 of 2009 in which the question of the plaintiff's title was adjudicated and determined. They fault the applicant for failure to disclose the above fact. They further fault the applicant on the allegation that the suit property was earmarked for cemetery, contending that in Thika CMC Civil Case No 694 of 2009, the applicant had contended that the suit property was a road truncation. They add that, in a letter dated 23/3/2009, the Commissioner of Lands explained how the suit property was acquired.
 7. The court has considered the application; the response to the application; and the parties' respective submissions. The single question to be answered in this ruling is whether the application meets the threshold for joinder to a suit post-judgment.
 8. The general law on joinder is that a court can, either on its own motion or by an application, join a party to a case before passing judgment in the case. Secondly, the jurisdiction to join a party to a case post-judgment is exercised only in exceptional and justifiable circumstances. One such exceptional scenario is where a case has been determined and adverse orders have been issued against a party who was neither given notice of the case nor heard on the issue in dispute.
 9. Kenya's Court of Appeal outlined the above principle in *Merry Beach Limited v Attorney General & 18 Others* [2018]eKLR as follows:

“However, there are exceptional circumstances that could justify a court to enjoin a party even after judgment has been passed. One such exception is where a matter has been determined and adverse orders have been issued against a party who was neither given notice of the suit nor heard on the issue in dispute. The order enjoining a party would also have to set aside the judgment entered to give him / her an opportunity to be heard.”
 10. In their opposition to the application, the plaintiffs contended that the applicant was a defendant in Thika CMC Civil Case No 694 of 2009 in which the question of their title to the suit property was adjudicated and settled. I have considered that point. The plaintiffs did not exhibit the pleadings



relating to Thika CMC Civil Case No 694 of 2009. They only exhibited the Judgment and the decree issued in the said case. It does emerge from the exhibited decree that the suit property in Thika CMC Civil Case No 694 of 2001 was Thika Municipality Block 9/669. The suit property in the instant suit is Thika Municipality Block 9/1109. The plaintiff did not explain the difference in terms of parcel numbers. For this reason, their point is rejected.

11. Has the County Government of Kiambu satisfied the threshold for joinder post judgment? I do not think so. The gravamen of the plaintiffs' claim in this suit was that the defendants were trespassing on the suit property which was registered in their names. The plaintiffs came to court waving a title expressed as issued by the Department of Lands. None of the orders issued in the suit is directed against the County Government.
12. Secondly, if the County Government has a claim against the title held by the plaintiffs in relation to the suit land, they are entitled to ventilate their claim in their own suit within the existing legal parameters. There is nothing in the impugned Judgment that prevents them against ventilating their claim in a court of law. If there is a reason why they cannot independently ventilate their claim against the plaintiffs' title, that reason is certainly not in the Judgment rendered in this suit. Put differently, nothing in the Judgment rendered in this suit prevents the County Government of Kiambu against initiating independent proceedings to invalidate the title held by the plaintiffs.
13. For the above reasons, it is the finding of this court that the applicant has not satisfied the criteria for joinder post-judgment. The application dated 9/2/2024 is rejected for lack of merit. The applicant shall bear costs of the application.

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

B M EBOSO

JUDGE

In the presence of:

Ms Mugo for the Plaintiff

Court Assistant: Hinga

