



Kiama & another v Wairegi & 8 others (Environment & Land Case 41 of 2021) [2024] KEELC 5869 (KLR) (20 August 2024) (Ruling)

Neutral citation: [2024] KEELC 5869 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE 41 OF 2021**

**AK BOR, J
AUGUST 20, 2024**

BETWEEN

JANE NYAWIRA KIAMA 1ST PLAINTIFF

STEPHEN RUHENI KIAMA 2ND PLAINTIFF

AND

MURAKARU WAIREGI 1ST DEFENDANT

COUNTY GOVERNMENT OF LAIKIPIA 2ND DEFENDANT

LAND REGISTRAR, LAIKIPIA 3RD DEFENDANT

CHIEF LAND REGISTRAR 4TH DEFENDANT

THE HON ATTORNEY GENERAL 5TH DEFENDANT

NATIONAL LAND COMMISSION 6TH DEFENDANT

DIRECTOR OF PHYSICAL PLANNING 7TH DEFENDANT

DIRECTOR OF LAND ADMINISTRATION 8TH DEFENDANT

DIRECTOR OF SURVEYS 9TH DEFENDANT

RULING

1. The Plaintiffs brought the application dated 29/11/2023 seeking leave to amend their Further Amended Plaintiff with line with the draft annexed to the application and to have the draft Further Amended Plaintiff deemed as duly filed upon payment of the requisite fees. The application was made on the grounds that the 1st Plaintiff desires to add the 10th Defendant to the suit and plead against him on the basis of the addition was necessitated by new information relating to the suit land that came to the



- fore during the pendency of the suit. The Plaintiffs stated that the proposed amendments would not prejudice the Defendants and that they will enable the court determine all issues relating to the dispute.
2. Jane Nyawira Kiama, the 1st Plaintiff swore the supporting affidavit in which she deponed that they filed suit on 11/4/2017. During the pendency of the case and after the filing of a report by Rodgers Gasewa, Principal Land Surveyor in the Ministry of Lands, Directorate of Surveying and Mapping, critical information that would assist this court in determining the issues in question came to the fore. She deponed that adding Wilson Githinji Ngunjiri as the 10th Defendant in the suit so that they could plead against him had necessitated the amendment sought. She added that the amendment was necessary and would assist the court to decide on all the issues forming the dispute. Further, that no prejudice would be occasioned to the other Defendants by the amendments.
 3. Murakaru Wairegi, the 1st Defendant swore the replying affidavit opposing the application. He deponed that he was the registered owner of the land known as Nanyuki Municipality Block 8/848 over which a title was issued to him following the survey of Uns Plot No. 27 Nanyuki Municipality in 2001. His property is adjacent to Nanyuki Municipality 8/926. That the plots were not superimposed on each other but were two separate and distinct plots on the ground as shown on survey plan. He averred that the Plaintiffs had failed to disclose or exhibit the actual plan which they referred to as the actual pdp in the draft amended plaint and which is what they are relying on to identify Uns. Plot No.28 Nanyuki Municipality. He added that the Plaintiffs' claim against him was brought out clearly in paragraphs 14 and 16 of the Further Amended Plaint and that their claim with respect to Nanyuki Municipality Block 8/848 had not changed.
 4. He believed that the cause of action sought to be introduced against the 10th Defendant was separate from the claim against him and there is no way two persons could be jointly liable to the Plaintiffs. He added that the reliefs sought were not based on the same act of transaction since the 1st Defendant bought plot Uns Plot no. 27 which is now Nanyuki Municipality Block 8/848 from Charles Kipchumba which is not the case for the intended 10th Defendant. Lastly, he maintained that there were no common questions of fact or law which were involved in the acquisition of the separate items.
 5. The 1st Defendant's view was that if the Plaintiffs had a claim in respect of Nanyuki Municipality Block 8/926, then that could only be tried in a separate action because that land is distinct and separate from Nanyuki Municipality Block 8/848. He elaborated that the proposed 10th Defendant did not have a claim over his land which is parcel no. 848. Further, that the issue of the survey of plot no. 27 had not just emerged but had always been within the knowledge of the Plaintiffs since 2012 as evidenced in paragraphs 10, 11 and 12 of the plaint which meant that the amendment sought would only be a waste of the court's precious time. He added that the Plaintiffs should come out clear and declare which of the two plots that is 848 and 946 they wanted or if they wanted both of them. He concluded that the intended amendments would not assist the court in arriving at a just decision but would only delay the hearing and determination of the suit which goes against the spirit of the overriding objective of the expeditious disposal of suits. He urged the court to dismiss the application.
 6. The court directed parties to file submissions which it has read and considered. The Plaintiffs submitted that their late father was allotted Uns Plot No. 28 Nanyuki Municipality during a plot allocation committee meeting held on 30/10/1985. The plot was known to them on the ground and with a view to having it surveyed so that they could obtain the lease and certificate of title, they engaged Homeland Surveys who through the letter dated 28/1/2012, advised them that plot no. 28 had been surveyed through survey plan F/R 404/144 and after the survey it was given a new number being Nanyuki Municipality Block 8/848. While the Plaintiffs were pursuing the matter, the 1st Defendant started developing what the Plaintiffs knew to be their plot no. 28 on the ground and that triggered this



suit. When the 7th, 8th and 9th Defendants filed their defence on 17/11/2023 together with their bundle of documents containing a report by Rodgers Gachewa dated 16/11/2023. The report indicated that the numbering for plots 24 to 31 had changed to new numbers and that there was a letter of allotment issued to Wilson Githinji Ngunjiri in the computations file in respect of Uns Plot no. 27. He believed that the Commissioner of Lands made a mistake when he issued two letters of allotment over Uns Plot no. 27 Nanyuki Municipality to Charles Kipsang Chumba and to Wilson Githinji Ngunjiri. The Plaintiffs also referred to another report filed by the 1st Defendant in his list of documents regarding Uns Plot No. 27 which was surveyed in 2009 and became Nanyuki Municipality Block 8/926. They submitted that the two letters of allotment led to two different surveys and the preparation of different survey plans as a result of which Uns Plot no. 27 gave rise to two titles being Nanyuki Municipality Block 8/848 and Nanyuki Municipality Block 8/926.

7. They submitted that the 1st and the intended 10th Defendants had both occupied parcels Nanyuki Municipality Block 8/848 and 926 on the ground, the effect of which there was no vacant plot on the ground which the Plaintiffs could survey. They argued that either the 1st or intended 10th Defendant was occupying the Plaintiffs Uns Plot No. 28 disguised as Uns Plot no. 27 Nanyuki Municipality. They submitted that it was not possible for the Commissioner of Lands to issue two letter of allotments over plot no. 27 nor was it possible for the plot to be surveyed twice to yield two different titles and separate plots on the ground. With the confusion created by the alteration of the numbers on Block 8 for plot nos. 24 to 31 on the part development plan within which the disputed plot fell, it was necessary to have the proposed 10th Defendant joined to these proceedings because the issue for determination affected him. The Plaintiffs opined that the court needed to hear the evidence from the experts for it to determine the issue as to who between the 1st and the proposed 10th Defendant was occupying the Plaintiffs plot. They could not see what prejudice would be occasioned to the 1st Defendant by adding the intended 10th Defendant as a party to the suit.
8. In his submissions, the 1st Defendant relied on Order 1 Rules 3 and 10 (2) of the [Civil Procedure Rules](#) on joinder of parties and submitted that the conditions to be fulfilled before joinder were that the relief claimed must be based on the same act or transaction and secondly, a common question of law or facts must be involved. The 1st Defendant referred to paragraphs 14, 14B and 14C of the further amended plaint which bring out the Plaintiffs claim against him by alleging that he had trespassed on their land being Uns plot no. 28 Nanyuki Municipality which they allege is the same as Nanyuki Municipality Block 8/848. That from the averments in the draft amended plaint, it could be deduced that the proposed 10th Defendant was in occupation of his plot which is not the same plot developed by the 1st Defendant since the two plots are adjacent to each other. He emphasised that the two plots were acquired by two different owners in different ways and were even surveyed at different times through different survey plans. It was the 1st Defendant's contention that since the two plots were separate and distinct and the Plaintiffs were only claiming parcel no. 848, then they ought not to introduce parcel no. 926 in the same suit because they would be at liberty to call the proposed 10th Defendant as a witness to support their case. He reiterated that the Plaintiffs had not exhibited the plan which they referred to as the actual pdp in the draft amended plaint which would demonstrate what they used to identify their plot. He maintained that he and the proposed 10th Defendant could only be joined in the same suit if they were jointly interested in the cause of action which is not the case in this matter.
9. The 1st Defendant submitted that the cause of action sought to be introduced against the 1st Defendant and the proposed 10th Defendant were separate and two different persons were not jointly liable to the Plaintiffs. Further, that the relief sought was not based on the same act or transaction and that no common questions of law or facts were involved in their acquisition of their two separate titles. The 1st Defendant also submitted that the Plaintiffs application was premature as the further amendments of



the plaintiff could only happen after the proposed 10th Defendant had been joined as a party in the suit as provided under Order 1 Rule 10 (4) of the Civil Procedure Rules.

10. Regarding amendments, the 1st Defendant submitted that Order 2 Rule 6 (1) deterred parties from departing from their pleadings yet the relief sought at paragraph C in the draft amendment was for cancellation of parcel no. 848 issued to the 1st Defendant and or parcel no. 926 issued to the 10th Defendant and for directions to be made that the land be registered in the Plaintiffs' names. The 1st Defendant submitted that this showed that the Plaintiffs were not seeking to be granted either of the plots but wanted to benefit from the two plots yet their claim is that their late father was the original allottee of Uns Plot no. 28. He also referred to paragraph 18 which does not mention a parcel number but claims an encroachment by the 1st Defendant had caused them loss of use of the suit land. If the Plaintiffs were certain as they claimed in paragraph 14C that parcel no. 848 was the same as Uns Plot No. 28 then there was no need of joining the proposed 10th Defendant in the suit, as he was rightfully on his plot no. 926.
11. The 1st Defendant argued that the proposed amendment seeks to introduce a totally different, inconsistent and contradictory allegation which would change the character of the suit and that if the amendments were allowed, it would go to substitute the cause of action.
12. The 1st Defendant relied on case law and urged that if the amendments were allowed and the proposed 10th Defendant were joined in the suit, the suit would be bad for misjoinder of defendants and causes of action. He was emphatic that the Plaintiffs were not barred from filing a separate suit against the proposed 10th Defendant.
13. The issue for determination is whether the court should allow the proposed amendments to join the proposed 10th Defendant to the suit. The Plaintiffs' claim is that their late father was allocated Uns Plot No. 28 Nanyuki Municipality but when they tried to survey the land for purposes of issuance of a title deed, they found the land already subdivided and registered. Their contention is that either the 1st Defendant or the intended 10th Defendant is occupying their plot no. 28 disguised as Uns Plot no. 27 Nanyuki Municipality since the Commissioner of Lands could not have issued two letters of allotment for what was plot no. 27. In addition, that plot cannot have been surveyed twice to yield two different titles and separate plots on the ground. They attribute this to the confusion created by the alteration of the numbers for plot nos. 24 to 31 on the part development plan for Block 8, which is where their plot is and urge that it is necessary to have the proposed 10th Defendant added to these proceedings to assist the court to resolve the dispute.
14. The court has considered the application dated 29/11/2023 and is persuaded that it is necessary to have the proposed 10th defendant added to the suit so that a fair determination of the dispute can be made as to who between the 1st Defendant and the proposed 10th Defendant occupies the plot which the Plaintiffs seek to recover in this suit.
15. The court grants the Plaintiffs leave to amend the suit in terms of the draft attached to the application dated November 29, 2023. The costs of the application will be in the cause.

DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF AUGUST 2024.

K. BOR

JUDGE

In the presence of: -

Mr. Robert Kimunya for the Plaintiff



Mr. Geoffrey Mahinda for the 1st Defendant

Ms. Emily Miano for the 2nd Defendant

Court Assistant: Diana Kemboi

No appearance for the other Defendants

