



**Kimitei v Kimitei & 2 others (Environment & Land Case E008 of 2024)  
[2024] KEELC 6237 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6237 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE E008 OF 2024  
EO OBAGA, J  
SEPTEMBER 30, 2024**

**BETWEEN**

**JOSEPHAT KOSKEI KIMITEI ..... PLAINTIFF**

**AND**

**LILIAN CHEPKOECH LELEI ..... 1<sup>ST</sup> DEFENDANT**

**SAMSON LELEI ..... 2<sup>ND</sup> DEFENDANT**

**KIPLIMO LELEI ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

**Introduction**

1. This is a ruling in respect of a Notice of motion dated 13.3.2024 in which the Defendants/Applicants are seeking the following orders:-
  1. Spent
  2. Spent
  3. The plaint and the entire suit as against the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants be and is hereby struck out for want of a reasonable cause of action and being bad in law with costs to the Defendants.
  4. The costs of this application are awarded to the Defendants/Applicants.

**Background:**

2. The plaintiff/Respondent is a Stepson of the 1<sup>st</sup> Applicant. The 1<sup>st</sup> Applicant is the third wife of Francis Kimitei Samoei (Deceased) and father to the Respondent. The 2<sup>nd</sup> and 3<sup>rd</sup> Applicants are brothers to the 1<sup>st</sup> Applicant.



3. On 20.2.2024, the Respondent filed a suit against the three Applicants in which he sought for an injunction to restrain the Applicant from interfering with parcel No. 49 within Lamaon Farm and an order directing the Applicants to compensate him for the trees which were cut down and carted away in 2024. As against the 1<sup>st</sup> Applicant, the Respondent sought an eviction against her from parcel No. 49 within Lamaon Farm and for a declaration that the 1<sup>st</sup> Applicant being a licensee on parcel No. 49 within Lamaon Farm she cannot continue to be on the land.

**Applicants contention;**

4. It is the Applicants' contention that this suit does not disclose any reasonable cause of action against the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants as they have no interest in parcel 49 within Lamaon Farm (suit property). The 1<sup>st</sup> and 2<sup>nd</sup> Applicants contend that they do not reside on the suit property and that according to Kalenjii culture, it is an abomination for brothers in-law to interfere with properties of their in-law. It is on this basis that the Applicants seek that the names of the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants be struck out of this suit.

**Respondent's contention;**

5. The Respondent contends that the Applicants have trespassed on to the suit property where they have cut down cypress trees which he had planted and carried them away. He contends that the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants should be allowed to remain in the suit and defend themselves and that should it turn out that there was no case against them, they can be compensated by way of costs.
6. The Respondent states that he will be able to demonstrate at the hearing that the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants have been part and parcel of those who have trespassed and done wrongs on the suit property. He further states that he had reported the activities of the Applicants to Police who are investigating the Applicants with a view to preferring appropriate charges.
7. The Respondent goes on to state that the suit property is not part of his father's estate and that whatever settlement which was reached in the succession cause was temporary.

**Applicant's further affidavit;**

8. In a further affidavit sworn on 15.5.2024, the 1<sup>st</sup> Applicant states that she was settled on the suit property by her late husband over 20 years ago and that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who are her brothers have never utilized the same and that the Respondent is seeking to drag them into the family succession and scaring them from lending any assistance to her with a view to rendering her children destitute.
9. The 1<sup>st</sup> Applicant states that the High Court in the succession cause allowed her to utilize the suit property and that the Respondent has not placed any evidence before court to show that he had a cause of action against the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants.

**Applicants' submissions;**

10. The Applicants submitted that the Respondent has failed to particularize the interference by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and hence there is no cause of action shown against them. They relied on the case



of DT Dobie & Co (K) Ltd –Vs- Muchina (1982) KLR which defined “a reasonable cause of action” as follows: -

“an action with chance of success when allegations in the plaint only are considered. A cause of action will not be considered reasonable if it does not state such facts as to support the claimed prayer...”

11. The Applicants also relied on the case of Crescent Construction Company Ltd –Vs- Delphis Bank Ltd (2007) eKLR where the Court of Appeal stated as follows: -

“... one thing remains clear, and that is that the power to strike out a pleading is a discretionary one. it is to be exercised with the greatest care and caution. this comes from the realization that the rues of natural justice that the court must not drive away any litigant, however weak his case may be, from the seat of justice. This is a time-honoured legal principle. At the same time, it is unfair to drag a person to the seat of justice when the case purportedly brought against him is a non- starter.” Emphasis ours.

### **Respondent’s submissions;**

12. The Respondent submitted that the power to strike out a pleading is draconian and ought to be exercised in such a way as not to drive a party from the seat of justice before a case is heard on merits. The rules of natural justice demand that a litigant must not be driven out of the seat of justice however weak his case may be.
13. The Respondent further submitted that it is also unfair to drag a person to the seat of justice when a case brought against him is a non starter. The Respondent referred to order 2 Rule 15 and submitted that that rule sets out the circumstances under which the power to strike out a pleading may be exercised.
14. The Respondent submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants are necessary parties in this suit. He referred to the case of Kingori –V- Chege & 3 others (2002) KLR 243 in which the principles for joinder of a person to a case were set out. He also referred to the case of Departed Assians Propert Custodian Board – Vs- Jaffer Brothers Ltd 1999 I EA 55 where it was 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 court is necessary in order to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit.”

### **Analysis and determination;**

15. I have carefully gone through the application by the Applicants as well as the opposition thereto by the Respondent. As can be seen from the background herein, and the pleadings, the real contest is between the 1<sup>st</sup> Applicant and the Respondent. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are brothers to the 1<sup>st</sup> Applicant. The two have their own land and are not residing with their sister who is the 1<sup>st</sup> Applicant.
16. The only reason which is being given by the Respondent for suing the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents is that they are the ones who have been assisting their sister to cut down trees which were planted by the Respondent. Further, it is claimed that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are the ones who are mobilising goons to resist the Respondent’s attempt to regain entry to the suit property.
17. A look at the reliefs being sought clearly show that even if the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants were not sued, the Respondent can still claim those reliefs from the 1<sup>st</sup> Applicant. The court can effectually and completely decide the Respondent’s case without the presence of the 1<sup>st</sup> and 2<sup>nd</sup> Applicants. The 2<sup>nd</sup>



and 3<sup>rd</sup> Applicants are only brothers to the 1<sup>st</sup> Applicant. Even if they at some stage assisted their sister on the suit land, this does not entitle the Respondents to sue them as defendants.

18. As was stated in the case of Kingori – Vs- Chege Supra, for one to be included in a suit, it must be shown that the ultimate order or decree cannot be enforced without the presence of the party sought to be joined. In the instant case, the Respondent has sued the first Applicant and if he succeeds, the decree arising therefrom will be enforced against the 1<sup>st</sup> Applicant even if the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants are not parties to this suit.
19. Apart from the Respondent claiming that the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants are assisting the 1<sup>st</sup> Applicant, he has not particularized such interference in the pleadings. This being the case the suit against the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants has not shown a reasonable cause of action against them. The allegations do not meet the test of a reasonable cause as was stated in the D.T Dobie & Co. (K) Ltd case Supra. The Respondent has not stated the facts which support the allegations against the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants. The suit against the two does not therefore disclose a reasonable cause of action against them.
20. I notice that the suit property is subject of succession in respect of the deceased who is father to the Respondent and husband to the 1<sup>st</sup> Applicant. There are interim orders which were granted and some of those orders gave the 1<sup>st</sup> Applicant authority to utilize the suit property as the succession cause goes on. The Respondent is clearly dragging the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants into a matter which they have no interest in.

#### **Disposition;**

21. From the above analysis, it is clear that the Respondent has no reasonable cause of action against the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants. I proceed to allow the applicants' application with the result that the suit against the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants is struck out with costs to the Applicants.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**E. O. OBAGA**

**JUDGE**

In the virtual presence of;

Mr. Ngigi Mbugua for Respondent.

M/s Chelogoi for Applicants.

Court Assistant –Laban

**30<sup>th</sup> SEPTEMBER, 2024**

