



REPUBLIC OF KENYA



Mburu & 3 others (Suing Collectively on their Personal Capacities as Members of Holy Spirit Association for the Unification of World Christianity) v Tanui (Being Sued as an Official and Chairman of Holy Spirit Association for the Unification of World Christianity) & 5 others; Holy Spirit Association for the Unification of World Christianity (Interested Party) (Environment & Land Case E115 of 2024) [2024] KEELC 14180 (KLR) (24 September 2024) (Ruling)

Neutral citation: [2024] KEELC 14180 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E115 OF 2024**

**MD MWANGI, J
SEPTEMBER 24, 2024**

BETWEEN

**JOHN WAINAINA MBURU 1ST PLAINTIFF
JANE KWAMBOKA GACUKI 2ND PLAINTIFF
JUSTUS MOTURI OMAE 3RD PLAINTIFF
AUGUSTINE NAMATSI OKUBO 4TH PLAINTIFF
SUING COLLECTIVELY ON THEIR PERSONAL CAPACITIES AS MEMBERS
OF HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD
CHRISTIANITY**

AND

**EMMANUEL KIPKORIR TANUI (BEING SUED AS AN OFFICIAL AND
CHAIRMAN OF HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF
WORLD CHRISTIANITY) 1ST DEFENDANT
JACINTA WARIE KABWA (BEING SUED AS AN OFFICIAL AND CHAIRMAN
OF HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD
CHRISTIANITY) 2ND DEFENDANT
JOYCE WAKIURU GITHAYA (BEING SUED AS AN OFFICIAL AND
TREASURER OF HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF
WORLD CHRISTIANITY) 3RD DEFENDANT
CHIEF LAND REGISTRAR 4TH DEFENDANT
NAIROBI CITY COUNTY GOVERNMENT 5TH DEFENDANT
FRANCIS NDUNG'U NJOROGE 6TH DEFENDANT**



AND

**HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD
CHRISTIANITY INTERESTED PARTY**

RULING

(In respect to the 5th Defendant's application dated 6th May, 2024 seeking that the Plaintiff's suit against the 5th Defendant/Applicant be struck out with costs)

Background

1. The application under consideration is the 5th Defendant's application dated 6th May, 2024 brought under the provisions of Order 1 Rule 10(2), Order 2 Rule 15 (1), (a), (c) & (d) of the Civil Procedure Rules and Sections 1A, 1B & 3A of the Civil Procedure Act. The 5th Defendant/Applicant prays that the Plaintiffs' suit against it be struck out with costs on the premises that it discloses no reasonable cause of action against it. The Applicant asserts that it is not a necessary party in the suit and has been wrongly and improperly joined as a Defendant. The Applicant further states that there is no adverse order sought against it. Its presence in the suit is therefore unnecessary.
2. The application is supported by the Affidavit of Boniface Waweru sworn on May 6, 2024. The deponent reiterates the grounds on the face of the application. He deposes that the 5th Defendant is a stranger to the dispute between the parties in this suit. The Plaintiffs' claim against the 5th Defendant is a misjoinder and ought to be struck out *ex debito justitiae*.
3. The 1st, 2nd and 3rd Defendants are not opposed to the application by the 5th Defendant.
4. The Plaintiffs on their part in their response to the application assert that the 5th Defendant is a key party in these proceedings and highlights some of the key responsibilities including issuance of a rent clearance certificate which is critical for registration of a transfer of land and approvals for development. The Plaintiffs assert that considering the nature of the orders sought, the 5th Defendant will be affected by such orders when granted. The Plaintiffs urge the court to find that the 5th Defendant/Respondent is crucial for the effective, just and expeditious disposal of the suit as a party who has been properly sued. They pray for the dismissal of the 5th Defendant's application.
5. The 5th Defendant in a further affidavit deposed on July 15, 2024 reiterated its assertions that the Plaintiffs' suit does not disclose a reasonable cause of action against it. The 5th Defendant is therefore not a necessary party in this suit for purposes of determination of the real issues in the suit. The cause of action solely relates to the proprietorship of properties known as L.R No. 209/2794, 9460/3, 7741/366 and 7741/367.
6. The deponent insists that the 5th Defendant has no legal interest whatsoever in the suit properties and cannot therefore be a necessary party in the suit for purposes of determining the issues therein. No adverse orders have been sought against the 5th Defendant.

Issues for Determination

7. The sole issue for determination is whether the 5th Defendant is a necessary party in this matter.



Analysis and Determination

8. According to the *Black's Law Dictionary* a necessary party is defined as;

“A party who, being closely connected to a lawsuit, should be included in the case if feasible, but whose absence will not require dismissal of the proceedings.”
 9. The definition of who a necessary party is was further illustrated by Havelock, J (as he then was) in *Elisbeba Muthoni Mbae -vs- Nicholas Karani Gichobi & 2 Others* (2014) eKLR where the learned Judge cited the case of *Werrot & Co. Ltd & Others v Andrew Douglas Gregory & Others* Nairobi (Milimani) HCCC No. 2363 of 1998 (UR), where Ringera, J (as he was then) observed that;

“The guiding principle in deciding whether to add a party is whether the presence of that party is necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit. As stated in *Sarkar's Law of Civil Procedure*, Vol. I at pages 531 and 532 there are two tests in the application of this principle: -

 - i. There must be a right to some relief against the party sought to be added in respect of the matter involved in the proceedings in question.
 - ii. It should not be possible to pass an effective decree in the absence of such a party.”
 10. In *Civicon Limited vs. Kivuwatt Limited and 2 Others* [2015] eKLR 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.”
 11. In the instant suit, other than in the descriptive part of the Plaintiffs' claim, there is no mention of the 5th Defendant in the Plaint. The pleadings do not reveal a right or relief against the 5th Defendant. The dispute herein is between the Plaintiffs and the 1st, 2nd and the 3rd Defendant arising out of the alleged fraudulent transfer of the suit property owned by the Interested Party to the 6th Defendant. No specific allegation of fraud has been made against the 5th Defendant. Evidently, it is possible to pass an effective decree in the absence of the 5th Defendant. The 5th Defendant's name ought to be struck out from the proceedings herein as it is not a necessary party to the suit
 12. Accordingly, the application is granted and the 5th Defendant's name is struck off the suit with costs to the 5th Defendant. The 5th Defendant shall also have the costs of this application against the Plaintiffs.
- It is so ordered.



RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF SEPTEMBER, 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Wambola for the 1st – 3rd Defendants and the Interested Party

Mr. Gisemba for the 5th Defendant/Applicant

Mr. Osoro for the Plaintiffs/Respondents

N/A by the 4th -6th Defendants

Court Assistant: Yvette

