



REPUBLIC OF KENYA



**Ngugi v Kigoro (Environment & Land Case 71 of 2017)  
[2024] KEELC 6014 (KLR) (18 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6014 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT & LAND CASE 71 OF 2017  
A KANIARU, J  
SEPTEMBER 18, 2024**

**BETWEEN**

**CHRISTOPHER MARUBU NGUGI ..... PLAINTIFF**

**AND**

**WANJAGI NYIGI KIGORO ..... RESPONDENT**

**RULING**

1. Before me for determination is a Notice of Motion dated 18.01.2023 brought under Order 1 Rule 1-10 and Order 8 Rule 3, 4, 5 and 7 of the [Civil Procedure Rules](#). The motion has been filed by the plaintiff in this suit - Christopher Marubu Ngugi. He is asking the court mainly for three orders namely:
  1. That Lydon Njuki Nyingibe added as a 2<sup>nd</sup> respondent in this suit and the court give directions that he enters appearance and files a response if any.
  2. That the court grants leave to further amend the originating summons amended on 08.04.2021 and the draft amended originating summons be deemed as filed.
  3. That the status quo of land parcel Mbeti/Gachoka/5929 be maintained by all parties through a conservatory order.
2. The motion is premised on the grounds on the face of it and on the supporting affidavit sworn by the applicant on 19.01.2023 being; that the respondent who is the registered owner of the land in dispute herein Mbeti/Gachoka/5929 has during the pendency of this suit transferred the same to Lydon Njuki Nyingi, a son, to defeat this suit. That it is necessary to amend the originating summons to include Lydon Njuki as a second respondent. That it is also necessary that orders of status quo be issued to conserve the suit property to avoid further applications for amendments and save on the courts time to hear the suit. That no prejudice will be occasioned to the respondent if the orders sought are issued.



3. The application was responded to *vide* a replying affidavit sworn by the intended respondent - Lydon Njuki Nyigi - on 10.08.2023. He deposed that he became the registered owner of the suit land in 2020 after subdivision of the original parcel of land, being Mbeti/Gachoka/775, in 2016. He denies that the applicant is entitled to the suit land herein and contends that the applicant has his own land which is within the same locality as the suit land. That the application and originating summons is an abuse of the court process as the applicant has filed a similar case at Siakago SPMCC No. 55 of 2021.
4. The application was canvassed through written submissions. The applicant's submissions were filed on 07.11.2023 whereas the intended respondent filed his submissions on 04.03.2024.
5. The applicant submitted that at the time of filing this suit, the original land parcel Mbeti/Gachoka/775 was in the name of the respondent -Wanjagi Nyingi -who during pendency of the suit caused the same to be subdivided into Mbeti/Gachoka/5926-5931. That the portion the applicant occupies being parcel 5929 and the subject of this suit was transferred to the intended respondent. That it is imperative that the intended respondent be joined in this suit. That an amendment will always be allowed by the court for purposes of determining the real question in controversy. It was urged that the application be allowed as prayed.
6. The intended respondent submitted that the law on adverse possession is settled that a party ought to be in occupation of the other persons land for at least 12 years. That time starts running from the time the person against whom adverse possession is sought is registered as the owner. That since 12 years have not lapsed since the intended respondent became registered owner of the suit land in 2020, then allowing the application to join him as a party shall be an exercise in futility. He denied that the suit land was transferred to him during pendency of this suit. The case of *Muchambi Ndwiga & Anor v Octavian Mwaniki Kariuki* ELC Case No. 42 of 2017 (O.S) was cited in support of the submissions.
7. Before making a determination on the orders sought, the intended respondent raised an issue that this suit is res judicata as he accused the applicant of filing a similar suit in Siakago - SPMCC 55 of 2021. He however did not attach the pleadings to that suit except for a defence and counterclaim filed therein, which does not give a clear picture of that case or the issues in dispute. It therefore makes it difficult for this court to determine the issue of res judicata with such limited information.
8. The legal position on joinder of parties is Order 1 Rule 10 (2) of the *Civil Procedure Rules* which provides as follows:
 

"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."
9. The principles to be considered for joinder of a party were well enumerated in the decision in *Meme vs Republic* [2004]1 124, which principles are;
  - a) joinder of a person because his presence will result in the complete settlement of all questions involved in the proceedings,
  - b) joinder to provide a protection of a party who would otherwise be adversely affected in law,



- c) joinder to prevent a likely course of proliferated litigation.
10. The law as seen above is clear that any party can be joined to a suit either as a plaintiff or a defendant or whose presence before the court may be necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. The considerations by the court before allowing a person to be joined in a suit have been said to include those who would be adversely affected in law and also to prevent proliferated litigation.
11. It is not in dispute that the intended respondent is the current registered owner of land parcel Mbeti/Gachoka/5929, the subject of dispute herein, which is one of the resultant subdivision of land parcel Mbeti/Gachoka/775. The intended respondent admits that the said land was transferred to him in the year 2020 by the respondent though he denies that subdivision of the original parcel of land occurred during pendency of this suit. He argues that the applicant would not succeed in a claim for adverse possession against him as the required period of 12 years of uninterrupted occupation of the suit land have not lapsed since he was registered as the owner of the land. That his presence in the suit would be pointless.
12. In my view the intended respondent is a necessary party to be joined in the suit. This is to enable him defend his interest in the suit land since should the court make adverse orders with regard to the title he holds, then his interest in the land will be affected. In addition to that, his joinder in the suit will prevent a multiplicity of suits as the questions and issues relating to ownership of the suit land will be determined with finality. His presence in this suit will also ensure that they are accorded a right of hearing by participating in the suit and therefore not be condemned unheard. I therefore find that the prayer for joinder is merited.
13. The applicant has also made prayer for amendment of the originating summons to include the name of the intended respondent. He also urges that the draft amended originating summons attached to his application be deemed as duly filed. The legal provisions on amendment of pleadings is Order 8 Rule 5 of the *Civil Procedure Rules* which provides that:
- “For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any documents to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.”
14. The court has the power to amend pleadings which power can be exercised at any stage of the proceedings before judgment as per *Bullen and Leake & Jacob's Precedents of Pleading*, 12<sup>th</sup> Edition, which provides as follows concerning amendment of pleadings:
- “...power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); that as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action...”



Similarly, in *Halsbury's Laws of England*, 4<sup>th</sup> Ed. (re-issue), Vol. 36(1) at paragraph 76, state the following about amendments of pleadings: -

“...The purpose of the amendment is to facilitate the determination of the real question in controversy between the parties to any proceedings, and for this purpose the court may at any stage order the amendment of any document, either on application by any party to the proceedings or of its own motion. .... The person applying for amendment must be acting in good faith. Amendment will not be allowed at a late stage of the trial if on analysis of it is intended for the first time thereby to advance a new ground of defence. If the amendment for which leave is asked seeks to repair an omission due to negligence or carelessness, leave to amend may be granted if the amendment can be made without injustice to the other side...”

15. From the above it is clear that amendment of pleadings should be allowed freely and at any stage of the proceedings unless the said amendments are prejudicial to the other party. The amendment sought herein is inclusion of the name of the intended respondent who is the registered owner of the suit land. The respondent has not demonstrated any prejudice that he would suffer should such amendment be done. Having also found that the intended respondent is a necessary party to the suit, I find that the said amendment would be inevitable. The prayer for amendment is therefore also allowed.
16. I note however, that since this is a second amendment to the originating summons, then the draft amended originating summons has not been amended in accordance with the provisions of Order 8 Rule 7 of the Civil Procedure Rules. I will therefore not admit the draft amended originating summons but direct that the amendments be carried out in the right manner.
17. The applicant has also made a prayer for status quo to be maintained on the suit land through a conservatory order. He argued that the respondent had the suit land sub divided and a portion of the land he occupies transferred to the intended respondent during the pendency of this suit. I have looked at the pleadings and the documents attached and noted that the suit was filed on 11.04.2017 whereas the subdivision of the original land was carried out on 07.12.2016. This was done before the suit was filed. However, the suit land which was as a result of the subdivision, was indeed transferred as confirmed by the intended respondent while this suit was pending in court.
18. An order for status quo usually means that things be left as they are until the determination of a certain facts. The meaning of status quo was defined by the Court in Nairobi Civil Appeal No. 33 of 2012 *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR as cited in *Bakari Shaban Gakere v Mwana Idd Guchu & 3 others* [2022] eKLR as “the present situation, the way things stand as at the time the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events”. The purpose of which is to maintain the substratum of the suit.
19. In my view, it would be in the best interest to make an order for status quo to be maintained on the suit land in order to ensure that the land does not keep changing hands hence defeating the substance of the suit.
20. The upshot of the above is that I allow the notice of motion application dated 18.01.2023 in the following terms:
  - a. The amended originating summons be further amended to include the intended respondent in terms of Order 8 Rule 7 and served within 14 days of this ruling.
  - b. The intended respondent to file a response if any within 14 days of service.



- c. Status quo shall be maintained on land parcel Mbeti/Gachoka/5929 pending hearing and determination of this suit.
- d. Costs to be in the cause.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 18<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

In the presence of Macharia Muraguri for Plaintiff/ Applicant and Muthoni Mboi for Momanyi for defendant/ Respondent.

Court Assistant - Leadys

**A. KANIARU**

**JUDGE- ELC, EMBU**

18.9.2024

