



**Chege v Njoroge (Environment & Land Case E003 of 2023)
[2024] KEELC 7213 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7213 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E003 OF 2023
A OMBWAYO, J
OCTOBER 31, 2024**

BETWEEN

JOHN NDUWA CHEGE APPELLANT

AND

JOHN MWAURA NJOROGE RESPONDENT

RULING

Brief Facts

1. This is a ruling in respect the application dated 18th July, 2024 filed by the 1st Defendant/Applicant which sought the following orders:
 - a) Spent.
 - b. That this Honourable court be pleased to join the Kenya Forest Service as a Defendant in this suit.
 - c. That this Honourable court be pleased to issue any other orders it deems fit in the interest of justice.
 - d. That costs of this application be provided for.
2. The Application was based on grounds set out and supported by the Affidavit of John Mwaura Njoroge the proposed interested party herein sworn on 18th July, 2024.
3. It was stated that he resides at the edge of LR No. 12762 among the Munengi Community Settlement which is adjacent to Longonot/Kijabe Block 1/22. He stated that the community was a group of squatters that had been issued with allotment letters by the DO's office and affirmed by the late President Jomo Kenyatta in 1975.



4. He stated that the land had been gazette as a forest and re-allocated to the proposed 2nd Defendant Kenya Forest Service who permitted them to reside on the property.
5. He further stated that the suit land belonged to the proposed 2nd Defendant where he acquired it and thus it would be fundamental that the proposed 2nd Defendant be joined as a Defendant to the suit.
6. It was stated that the property was public forest land whose ownership was under the proposed 2nd Defendant's custody. He further stated that it was fundamental that the proposed 2nd Defendant's custody be joined as a Defendant for determination of the suit. He added that no prejudice would be occasioned to the Plaintiff/Respondent.
7. In conclusion he urged the court that it would be in the interest of justice that the application be allowed.

Response

8. The Plaintiff/Respondent filed his replying affidavit sworn on 27th September, 2024 where he averred that the suit land was only mentioned in the Defendant/Applicant's application and the issues were irrelevant to the main suit. He further averred that the Applicant was aware that he had filed an eviction suit against him for trespass on L.R. No. Longonot/Kijabe Block 1/22 and not Land parcel No. 12762. He averred that the Applicant was aware that the Plaintiff/Respondent had no interest over land parcel no. L.R No 12762. The Respondent also averred that the Applicant was aware that the subject matter was a boundary dispute with the only issue being whether the Applicant encroached onto his private land Longonot/Kijabe Block 1/22.
9. He further averred that a joint survey was conducted to determine boundaries of the land parcels and whether the Applicant trespassed onto the Respondent's land. He added that the report confirmed the said encroachment and that the Respondent requested that the same be adopted as the court's ruling. The Respondent averred that the Applicant has tactfully diverted the court's attention from the finding of the survey report to that of being a member of Munengi Community which is immaterial to the instant suit.
10. He also averred that the Applicant failed to disclose any material evidence to demonstrate how or why the proposed 2nd Defendant was an important party to the suit. In conclusion, he urged the court to dismiss the application with costs.

Submissions

11. Counsel for the Applicant filed her submissions dated 1st October, 2024 where she gave a background of the application and identified three issues for determination. The first being whether Kenya Forest Service was a necessary party to the suit land. She submitted that the case was boundary dispute between the Land Parcel LR NO. 12762 and Longonot/Kijabe Block 1/22 (Eleri). She added that the only way of determining the boundary dispute was involving the rightful owners of the two properties in this suit. Counsel submitted that the legal and registered proprietor of the Land Parcel LR NO. 12762 was Kenya Forest Service and that it is trite law that in a land boundary dispute, the registered owners of the two properties are necessary parties to the suit.
12. She submitted that The Kenya Forest Service has all the ownership documents of the property which are necessary to bring light on the issue of acreage thus a crucial party to this suit. She added that a mere squatter such as the Applicant herein could not be expected to have the necessary ownership documents of the land he is residing on. Counsel cited the case of Zephir Holdings Ltd V Mimosa Plantations Ltd, Jeremiah Maztagaro and Ezekiel Misango Mutisya (2014) eKLR and submitted that



Kenya Forest Service was necessary party to this suit as it will aid in determination of the suit by availing all the crucial ownership documents and official records of the properties in dispute. The second issue was whether Kenya Forest Service should be joined to this suit. While submitting in the affirmative, counsel argued that the proposed 2nd Defendant had the requisite locus standi to defend the suit as it is a boundary dispute in which the owners of the properties should both be involved in. She submitted that if the court was inclined to find in favour of the Plaintiff, the proposed 2nd Defendant should be held liable for settling squatters in a portion of land that did not belong to it. It was counsel's submission that the ultimate order sought could not be enforced without the proposed 2nd Defendant as it will be impossible to reinstall boundaries without the involvement of the owner of the Land Parcel LR NO. 12762. She relied on Order 1 Rule 10(2) of the Civil Procedure Rules and the case of *Kingori V Chege & 3 Others* [2002] 2 KLR. Counsel also submitted that the main suit had never been heard as parties have only been dealing with interim applications. She added that the Respondent's allegation that the application had been earlier brought was withdrawn by the Applicant's former counsel. She relied on the case of *Sammy Kanyi Kareithi V Barclays Bank of Kenya & 2 others; Ross Xavier Whithey (Applicant)* [2021] eKLR and submitted that the proposed 2nd Defendant was a necessary party to the suit and that this court had the proper jurisdiction authorize joinder of a necessary party at any time that it deemed fit. The final issue was on costs where counsel relied on Section 27 of the [Civil Procedure Act](#) and the case of *David Kiptum Korir V Kenya Commercial Bank & another* [2021] eKLR. She urged the court to award them costs of the application.

13. The Plaintiff/Respondent's counsel filed her submissions dated 1st October, 2024 and identified three issues for determination. First issue was whether the Applicant trespassed onto the Respondent's land. Counsel while submitting in the affirmative argued that the Applicant has continually trespassed on his land. She further submitted that prior to filing the suit, the Respondent and his siblings had on several occasions tried to evict the Applicant from their land but their efforts were met with hostility from the Applicant. She submitted that on 22nd April 2022 the Land Registrar summoned them to determine the boundary dispute and on 12th July 2022 a survey of the boundary of the Respondent's land and Kijabe Hills Forest was conducted which established that the
14. Applicant had encroached onto the Respondent's land. Counsel added that the Respondent on 14th September 2022 served the Applicant with a 3 months' notice to vacate his land but he refused necessitating filing of the suit. She further submitted that another survey was conducted on 17th July, 2023 which reports are conclusive proof that the Applicant trespassed on the Respondent's land. She added that the instant application is a mere denial of the obvious facts and evidence with no triable issues.
15. The second issue is whether the application is a sham and abuse of the court process. Counsel submitted in the affirmative and relied on Order 2 (Rule 15) of the Civil Procedure Rules, 2010 and the case of *Kenya Commercial Bank Ltd V Suntra Investment Bank Ltd* [2015] eKLR. She submitted that the Applicant's defence and application do not disclose any triable issues which should go for trial and adjudication and have only been filed as mere formality to prolong the Applicant's unlawful occupation of the Respondent's land.
16. The final issue is whether the Respondent should be granted summary judgment. Counsel while submitting in the affirmative relied on Order 36 of the Civil Procedure Rules, 2010 and the case of *ICDC V Daber Enterprises Ltd*. She submitted that the prolonged and unlawful occupation by the Applicant has caused the Respondent and his siblings untold suffering, anxiety, losses and expenses. She submitted that the Respondent proved a prima facie case against the Applicant and urged the court to dismiss the application with costs.



Analysis and Determination

17. This court has considered the application, replying affidavit and submissions and is of the view that the main issue for determination is whether the proposed 2nd Defendant ought to be joined to this suit

18. Order 1 rule 10(2) of the Civil Procedure Rules 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.

19. In the case of *Ongenga V Sioka; Wanjala (Intended Defendant)* [2022] KEELC 12639 (KLR) the court cited with approval the case of *Technomatic Limited T/A Promopack Company V Kenya Wine Agencies Limited & another* [2014] eKLR Havelock J set out the guiding principles in enjoining a party to a suit as follows:

1. He must be a necessary party.
2. He must be a proper party.
3. In the case of a defendant there must be a relief flowing from that defendant to the plaintiff.
4. The ultimate order or decree cannot be enforced without his presence in the matter.
5. His presence is necessary to enable the court to effectively and completely to adjudicate upon and settle all questions involved in the suit.

20. It was the Applicant's case that the proposed 2nd Defendant was a necessary party to the case since it was the owner of the said parcel. The Respondent on the other hand opposed the said joinder on the basis that the suit property in question was Longonot/Kijabe Block 1/22 where the Applicant had trespassed and not Land parcel No. 12762. He argued that the present application was a diversionary tactic by the Applicant from the surveyor's outcome.

21. This court has keenly perused the surveyor's report and is of the view that the same does not outrightly indicate that the Applicant had occupied Longonot/Kijabe Block 1/22. It is also noteworthy that the report did not address ownership of both properties and it is this court's view that the same ought to be determined by this court on merit. In addition, it is this court's view that the report cannot conclusively determine the issues raised by both parties unless both parties are heard. Furthermore, the case is yet to be heard and it is my view that the Respondent does not stand to suffer any prejudice if the proposed 2nd Defendant joined as a party. From the principles set out in Order 1 Rule 10 of the Civil Procedure Rules as well as the case of *Technomatic Limited* (supra), I am satisfied that the proposed 2nd Defendant meets the threshold under grounds 3, 4 & 5 above. Consequently, it is this court's view that the proposed 2nd Defendant has an identifiable stake in the suit and therefore a necessary party to enable this court reach a just determination.

22. In the upshot, this court makes the following orders:

- a. The proposed 2nd Defendant is joined to this suit as the 2nd Defendant and granted 14 days to file and serve its pleadings together with witness statements and documents.



- b. Upon service, the Applicant and Respondent are granted 14 days to file and serve their pleadings, witness statements and documents in response to the 2nd Defendant. c) Each party to bear its own costs. It is so ordered.

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

THE JUDICIARY OF KENYA.

NAKURU ENVIRONMENT AND LAND COURT

ENVIRONMENT AND LAND COURT DATE: 2024-10-31 15:43:21

THE JUDICIARY OF KENYA

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