



**Mwavumbani & 85 others v Msambweni Development Company Limited; Sadi & 222 others (Applicant) (Environment & Land Case 99 of 2014) [2024] KEELC 7191 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7191 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 99 OF 2014  
SM KIBUNJA, J  
OCTOBER 30, 2024**

**BETWEEN**

**MOHAMED ABDALLA MWAVUMBANI & 85 OTHERS & 85 OTHERS & 85 OTHERS ..... PLAINTIFF**

**AND**

**MSAMBWENI DEVELOPMENT COMPANY LIMITED ..... DEFENDANT**

**AND**

**HASSAN SADI & 222 OTHERS & 222 OTHERS & 222 OTHERS ... APPLICANT**

**RULING**

1. The applicants filed the notice of motion dated the 2<sup>nd</sup> May 2024 seeking for primarily to be joined in the proceedings as interested parties. The application is premised on the eleven (11) grounds on its face and is supported by the affidavit of Hassan Yusuf Sadi, the 1<sup>st</sup> applicant, sworn on 2<sup>nd</sup> May 2024, inter alia deposing that the applicants have lived on the suit land registered with the defendant peacefully and continuously for over twelve (12) years; that in 2011, one Joseph Njoya, a director with defendant, told them the land was his and they should vacate; that the said director reported the matter to the chief who asked the applicants to vacate after hearing the parties and on being compromised; that the applicants did not vacate, and again the said director asked them to vacate in 2013, but they declined; that the director reported to the police, and then asked the applicants to constitute a committee to negotiate with him, but in 2014, he insisted they vacate; that the committee that they had constituted proposed that they contribute money to engage a lawyer to sue the defendant, and those that raised the money, are the plaintiffs herein; that the applicants could not raise the money then and in 2022 they instructed Ms. Imeli Inyangu & Co. Advocates to institute suit but the firm did not do so; that as the applicants have occupied the suit property alongside the plaintiffs for over 12 years, they should be considered to be joined in the suit as interested parties.



2. The plaintiffs opposed the application through the replying affidavit of Hassan Rashidi Shee, one of the plaintiffs, among others deposing that the applicants are strangers and busy bodies whose aim is to derail the suit for ulterior motives.
3. The defendant opposed the application through the replying affidavit of Colonel [RTD] Joseph Nyaga, the organizing secretary, among others deposing that in view of the lists of claimants in HCC Nos. 60 of 2011, 463 of 2010 and this suit, that are all pending, the application should be rejected, and if the applicants have evidence to sustain adverse possession claim, they should initiate their own suit.
4. The learned counsel for the applicants, plaintiffs and defendant filed their submissions dated the 5<sup>th</sup> July 2024, 16<sup>th</sup> July 2024 and 26<sup>th</sup> July 2024 respectively, that the court has considered.
5. The following are the issues for the determination by the court:
  - a. Whether the applicants have met the threshold to be joined in this suit.
  - b. Who pays the costs?
6. The court has carefully considered the grounds on the application, affidavit evidence filed, submissions by the learned counsel, superior courts decisions cited and come to the following conclusions:
  - a. The record confirms that this suit was settled as between the existing parties through the consent order issued on the 9<sup>th</sup> March 2021, that has not been reviewed, set aside or successfully appealed against. What remains is the execution of the decree. That as prayers (1) and (3) of the notice of motion by the applicants are now spent, only prayer (2) which seeks for joinder of the applicants in the suit and prayer (4) for costs are pending determination. Order 1 Rules 1, 3, & 10 of the Civil Procedure Rules provides for who may be joined as plaintiff and defendant, and substitution and addition of parties, during the life of a suit. While determining whether or not, to allow a joinder application, Order 1 Rule 10(2) of the Civil Procedure Rules obligates the court to consider whether the presence of the applicant may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit. In this matter as it is, the suit is already determined through the parties' consent, and there are no pending issues, other than execution of the decree. The applicants herein have not sought to reopen the suit, through for example, setting aside the consent order of 9<sup>th</sup> March 2021 and leave to file and serve their pleadings.
  - b. There are instances where joinder applications may be considered even in finalised and determined suits. In the case of Bellevue Development Company Limited versus Vinayak Builders Limited & another [2014] KEHC 5507 (KLR) the court held that:

“Joinder of parties is possible after judgment. I will give some example where such joinder of parties is permitted; 1) in cases of representative suits; or 2) substitution of one or more parties, for instance, in case of death, or incapacity of a party or change of status of a party; or 3) in execution process. In the broader sense, it is deemed to be a kind of joinder of parties where a contemnor was not a party in the suit where judgment has already been entered and for which he is being cited for contempt of court. Equally, it is a joinder of parties where an objector raises objection to execution under Order 22 rule 51 of the CPR. However, any joinder of parties post-judgment will have to surmount any possible constitutional objections on the front of rules of natural justice and the principle of finality of litigation.”



And, in the case of J M K versus M W M & Another [2015] eKLR, the Court of Appeal elaborated on the provision of Order 1 Rule 10 (2) of Civil Procedure Rules and stated that:

“We would however agree with the respondent that Order 1 Rule (10) (2) contemplates an application for amendment or joinder of parties where proceedings are still pending before the Court. Sarkar’s Code, (supra) quoting as authority, decisions of Indian Courts on the provision, expresses the view that an application for joinder of parties can be filed only in pending proceedings.”

Further, in the case of Lilian Wairimu Ngatho & another v Moki Savings Co-Operative Society Limited & another [2014] eKLR the court held that:

“The provisions of Order 1 Rule 10(2) state that joinder of a party can be made “at any stage of the proceedings”. “Proceedings” are defined in Black’s Law Dictionary Ninth Edition at page 1324 as “the regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment”.

The applicants herein have not established through their application that they are necessary parties to be joined in the suit that has been settled by the parties through consent. In any case, noting that this suit was filed in 2014, the court expected the applicants would have attempted to explain why they delayed for about ten (10) years, until 2024, to seek for their joinder.

- c. That if indeed the applicants have a claim against the defendant herein on adverse possession, they are at liberty to take legal advice from their counsel on how to pursue it. Their claim must be on specified portions of land, and will not be prejudiced by the failure to join them in this suit that is already settled as between the parties before the court.
  - d. That as the applicants have failed in their application for joinder, and under section 27 of *Civil Procedure Act* chapter 21 of Laws of Kenya, costs follow the event unless where for good cause ordered otherwise, they will pay the other parties’ costs.
7. Having arrived at the above conclusions in respect of the applicants’ application, the court finds and orders as follows:
- a. The notice of motion dated May 2, 2024, is without merit.
  - b. The said application is dismissed with costs.

It is so ordered.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 30<sup>TH</sup> DAY OF OCTOBER 2024.**

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

In the presence of:

Plaintiffs : No Appearance

Defendants : Mr Akanga

Applicants : Mr Gambp

Leakey – Court Assistant.



**S. M. KIBUNJA, J.**  
**ELC MOMBASA.**

