



REPUBLIC OF KENYA



Mwangi & 2 others v Kariuki & 16 others (Environment & Land Case 420 of 2018) [2024] KEELC 7256 (KLR) (24 October 2024) (Ruling)

Neutral citation: [2024] KEELC 7256 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 420 OF 2018**

**AA OMOLLO, J
OCTOBER 24, 2024**

BETWEEN

**SARAH WACERA MWANGI 1ST PLAINTIFF
NZILI KINGOLA 2ND PLAINTIFF
MICHAEL MUCHIRI 3RD PLAINTIFF**

AND

**TITUS MWAI KARIUKI 1ST DEFENDANT
ISAAC WANGOMBE 2ND DEFENDANT
MARY NJERI MAHINDA 3RD DEFENDANT
JOHN KIMANI KABIRU 4TH DEFENDANT
JOSEPH KINGOO KIEMA 5TH DEFENDANT
SUSAN WANJIKU KIMANI 6TH DEFENDANT
GEOFFREY MUNA KIMANI 7TH DEFENDANT
KATUA MULI 8TH DEFENDANT
GEOFFREY MUNA 9TH DEFENDANT
VICTORIA N. MUISYO 10TH DEFENDANT
PENINAH MUKAMI BERNARD 11TH DEFENDANT
MONICA MUKAMI GITAU 12TH DEFENDANT
MARY AUMA NJAU 13TH DEFENDANT
JAMES MWANGI MUIGAI 14TH DEFENDANT
ELIUD KARUMBA NJOROGE 15TH DEFENDANT**



JOHN KIMANI RUGURU 16TH DEFENDANT

PAUL MUTIE 17TH DEFENDANT

RULING

1. This determination is in respect to the application dated 4th June, 2023 where the Sarah Wambiro sought for leave to be allowed to file her witness statement and documents out of time. She also prayed to be allowed to testify during the hearing set for 28th September, 2023.
2. The Application is premised on the affidavit sworn by Sarah Wambiro in support and on the grounds listed on its face thus;
 - a. The Applicant and one Mary Wanjiru Ndung'u jointly bought plot No. 43 Canaan Project, Nairobi from Jane Sarah Wambui on 19th July, 1996.
 - b. The Applicant has learnt that Mary Wanjiru Ndung'u did not make a witness statement as she is deceased.
 - c. That if leave is granted, it will not cause prejudice to the defence.
3. The Defendants opposed the application by filing grounds of opposition dated 30th January, 2024. It listed 11 grounds of objection inter alia;
 - a. The Applicant has not demonstrated with precision the necessity for their addition as a party to this matter.
 - b. The Applicant's addition as a party serves no purpose at this stage of the proceedings since both sides are already too far gone into the hearing of the main suit, other than to delay the proceedings.
 - c. To ambush the Defendants this far into the defense of this matter will occasion a grave miscarriage of justice since this is a move that intends to blindside the Defendants.
 - d. That to allow this addition at this stage will impact the conclusion of this matter negatively as the consequent amendment to both plaintiffs and Defendants case will render all progress so far null.
4. The Applicant filed a further affidavit and deposed inter alia that the plaintiffs have not closed their case. She avers the Defendants have not exactly indicated how they would be prejudiced if the application is allowed. She added that she was not aware of the death of her fellow co-owner Mary Wanjiru Ndung'u who had undertaken to follow up their interest.
5. I have considered the pleadings as filed. There is no prayer sought in the application for joinder of a new party. The Applicant is seeking to be allowed to give evidence in place of Mary Wanjiru Ndungu – deceased who she stated died before filing a written statement. The suit as drafted is that the three people named as plaintiffs have brought the suit on behalf of 23 others.
6. In the supplementary list of witness dated 10th May, 2022, and served on the Defendants counsel on 16th May, 2022, the name of the deceased appears at number 4 of the list and is indicated as the owner of plot No. 143. The Applicant has explained that they bought this plot jointly and she was not aware of the demise of her co-owner. Therefore, the Applicant is not a new party as such since the Defendant was already made aware of the plot number she is claiming.



7. As the record confirms, the plaintiffs have not closed their case and the Applicant in my view is a replacement of witness already stated in the pleadings. I do not see any prejudice the Defendants will suffer which cannot be remedied if the orders sought are granted.
8. Consequently, the application dated 4th June, 2023 is granted as prayed with no orders as to costs. The Applicant (Sarah Wambiro) to file and serve the statement and list of documents within 14 days hereof. The matter to be set down for further hearing.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF OCTOBER, 2024

A. OMOLLO

JUDGE

