



Njomo & another v Mweni & 2 others (Environment & Land Case E010 of 2021) [2024] KEELC 13494 (KLR) (27 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13494 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E010 OF 2021
FM NJOROGE, J
NOVEMBER 27, 2024**

BETWEEN

JUDE L KANGETHE NJOMO 1ST PLAINTIFF

JOHN MAINA GITHAIGA 2ND PLAINTIFF

AND

JOHANA KACHANGA MWENI 1ST DEFENDANT

HOSEA KIMETHU MBURU 2ND DEFENDANT

SAMUEL KIMANA BURU 3RD DEFENDANT

RULING

1. The 2nd and 3rd defendants have filed a notice of motion dated 16/6/23. It seeks to strike out the plaint in this case as against them. The grounds on which the motion is brought are that the plaint does not disclose any cause of action against them, is incurably defective in so far as it gives no particulars and/or makes no allegations as against them. The application is supported by the sworn affidavit of the 2nd defendant.
2. The application is opposed. The plaintiffs filed a replying affidavit sworn by the 2nd plaintiff on 10/7/2023. In that affidavit it is deponed that the 1st defendant was the legally registered owner of the suit property and he offered the same for sale in 2014 vide a written sale agreement to the two plaintiffs, but upon payment of the deposit they later discovered after an official search that the 1st defendant had sold the land again to the 2nd and 3rd defendants; it is averred that it is impossible to grant an effective remedy, or to have all questions settled and issues fully adjudicated without the joinder of the 2nd and 3rd defendants who are the present registered proprietors of the suit land, and who shall be bound by the result of the present action; that the plaint seeks a revocation of the transfer to the 2nd and 3rd defendants on the ground of illegality.



3. The application was ordered to be disposed of by way of written submissions. I have perused through the court file and I have found only the submissions of the applicants.
4. The applicant citing blue Shield Insurance Co Ltd V Joseph Mboya Oguttu 2009 eKLR (CA) and quoting Order 2 Rule 15 (1) (a) urged the court to examine the plaint to determine whether a cause of action has been disclosed as against the 2nd and 3rd defendants and they aver that none has been. However, they admit that the plaint discloses a contractual claim against the 1st defendant and that there is indeed an order of specific performance sought.
5. Relying on the Court of Appeal case of Jepkemboi Ngeny Vs Joseph Tireito & Another 2021 eKLR on what constitutes a cause of action the defendants aver that the plaint contains no factual averments against them, that the prayer for revocation of the transfer does not warrant their joinder in the suit.

Determination.

6. I have considered the application and the filed submissions. Though the applicants have done a great deal attempting to persuade this court that the plaint ought to be struck out with respect to them, I think the best manner of approaching the applicants' motion lies in considering the rules as to joinder of parties. It is usually the case that a person who is likely to be affected by the decision of the court in any matter to be joined as a party so that he may be heard before that decision is made. Failure to join such a party may result in their not being heard and in reviews or setting aside or appeals which would breed a multiplicity of suits regarding the same subject and waste considerable judicial time. Order 10 rule 2 CPR allows the court to order joinder of a party suo moto in appropriate instances.
7. In the present case, it is incontrovertible that the plaint states categorically that the 1st defendant in breach of the agreement with the plaintiffs sold the land to the 2nd and 3rd defendants. This court is unable to agree that the plaint has not pleaded any particulars against the 2nd and 3rd defendants. Even the first particular in paragraph 8 states that the land was sold to other parties. The prayer no (b) seeks a revocation of the transfer to those parties. Those parties are introduced in paragraph 8 as the 2nd and 3rd defendants.
8. Though a pleading may not be very precise, the aim of pleadings is to bring the parties to an issue and the plaint in the present case does exactly that. None of the defendants can say that they do not have an issue to answer to by a reading of the plaint, whether it is to merely insist that the sale was clean or otherwise. I am constrained to refer to the Court of Appeal case of Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR in which the court held the position that pleadings need not be exact or precise but they must convey the complaint of the petitioner with reasonable understandability. The court stated as follows:

“(40) It was the averment of learned counsel for the 1st, 5th and 6th respondents that the petition had cited with precision complaints regarding the violation of Articles 10 and 73 of *the Constitution*; that Article 159 of *the Constitution* enjoined the courts to administer justice without undue regard to procedural technicalities.

(41) We cannot but emphasize the importance of precise claims in due process, substantive justice, and the exercise of jurisdiction by a court. In essence, due process, substantive justice and the exercise of jurisdiction are a function of precise legal and factual claims. However, we also note that precision is not coterminous with exactitude. Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of



the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated. We speak particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation and adjudication, and to demand exactitude ex ante is to miss the point.”

9. In a recent case ELC Petition No. E003 OF 2021 James Mwamuye Munga Vs Tinga Kalu Tinga this court held as follows:

“The question that arises then is “Can the court make out the sort of claim lodged before it by the petitioner by a reading of the petition and the supporting affidavit and the annexures?”

10. Judging from the contents of the plaint, the issue that arises in this case is very clear: whether the 1st and 2nd defendants breached their agreement with the plaintiffs in respect of the sale of the suit and whether the transfer of the suit land to the 2nd and 3rd defendants ought to be revoked for that reason. That impugned plaint is not so hopelessly drafted as to render it impossible for the reader to see the case against the 2nd and 3rd defendants. It is not understandable why they can not see the danger they face by seeking to be excluded from these proceedings while the property registered in their name is in potential peril of being taken away from them by a judgment of this court.
11. It is as clear as day to see that the 2nd and 3rd defendant would be affected by the decision of this court in the event the prayer for specific performance and the cancellation of transfer sought by the plaintiffs are granted as prayed. On that basis alone, and also bearing in mind the policy of preventing a multiplicity of suits on the same subject matter the application before me ought to fail and I hereby dismiss it with costs to the plaintiffs.

RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 27TH DAY OF NOVEMBER, 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

