



Muhindu & another (Suing in their Capacity as the Administrators of the Estate of Elizabeth Mumbi) v Kimani (Sued in her Capacity as the Administrator of the Estate of Timothy Kimani Mungai) & another; Wanjohi & 12 others (Intended Interested Party) (Environment & Land Case 87 of 2017) [2024] KEELC 13353 (KLR) (19 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13353 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 87 OF 2017
JG KEMEI, J
NOVEMBER 19, 2024
(FORMERLY NAIROBI ELC NO. 562 OF 2009)**

BETWEEN

**ANTHONY JUSTUS MUHINDU 1ST PLAINTIFF
ALICE JOYLINE THUGURI 2ND PLAINTIFF
SUING IN THEIR CAPACITY AS THE ADMINISTRATORS OF THE ESTATE
OF ELIZABETH MUMBI**

AND

**VIRGINIA WANJIKU KIMANI (SUED IN HER CAPACITY AS
THE ADMINISTRATOR OF THE ESTATE OF TIMOTHY KIMANI
MUNGAI) 1ST DEFENDANT
AWENDO COMPANY LIMITED 2ND DEFENDANT**

AND

**EUNICE WAKERA WANJOHI INTENDED INTERESTED PARTY
CLEMENT NGATIA MUNYIRI INTENDED INTERESTED PARTY
JAMES MWANGI GICHINI INTENDED INTERESTED PARTY
FRANCIS KARIUKI MACHARIA INTENDED INTERESTED PARTY
LEAH WAIRIMU MUTHIGAU INTENDED INTERESTED PARTY
ISAAC KARAIGH KAMAU INTENDED INTERESTED PARTY
JOSEPH MUTISYA DAVID INTENDED INTERESTED PARTY
SAMUEL ANTHONY MUNYIRI INTENDED INTERESTED PARTY**



REBECCA WAHU MAINA INTENDED INTERESTED PARTY
FRANCIS NDIRANGU GATETI INTENDED INTERESTED PARTY
HARRIZONE AGWENGE I INTENDED INTERESTED PARTY
GEOFFREY BOSIRE NYAKUNDI INTENDED INTERESTED PARTY
JANET A NANDI ORINDA INTENDED INTERESTED PARTY

RULING

1. The Applicants/Interested parties filed the chamber summons dated the 23/5/2024 seeking joinder to the suit as well as leave to file pleadings therein.
2. The application is supported by the grounds annexed thereto and the Supporting Affidavit of Francis Kariuki Macharia sworn on the 23/5/24 deposed on his behalf and that of his co-Applicants.
3. The deponent states that they acquired properties from the 2nd Defendant in good faith as third parties. That the Plaintiffs have sought orders against the 2nd Defendant and or third parties to whom the 2nd Defendant sold the suit land upon subdivision thus the Applicants stand to be prejudiced if the Plaintiff's suit succeeds without their participation.
4. In addition, they aver that their presence is necessary in the determination of the Plaintiffs suit dated the 7/1/2019 to enable the Court to effectually and completely adjudicate upon and settle all the claims involved in the suit.
5. That justice shall be served if they are enjoined in the suit so as to be afforded the right to be heard.
6. The Plaintiff opposed the application vide its Replying Affidavit filed by the 2nd Plaintiff on the grounds that the hearing closed; the application amounts to a trial by ambush ; their claim is strictly against the Defendants and have not fashioned any reliefs against the IPs; the application is coming too late in the day after the hearing was long closed hence it will delay the delivery of justice and that justice delayed is justice denied; no evidence of purchase of suit of the lands in support of their alleged claim in the suit land; the titles held by the Applicants demonstrate that they were issued during the pendency of the case hence they are guilty of contempt of Court; no intended draft statement of defence was enclosed; finally the portion of land alleged to have been purchased has not been demonstrated.
7. The 1st Defendant opposed the application for joinder on the grounds that; the application is an attempt by the 2nd Defendant to introduce 3rd parties to the suit to delay its conclusion; Applicants are here at the invite of the 2nd Defendant who seeks to patch up its evidence post hearing; if the Applicants are aggrieved by the wrongs of the 2nd Defendant they are at liberty to file their fresh suit; the claim of the Interested Parties is time barred having arisen 16 years ago; the claim is but speculative in a matter in which they are not parties nor have they ever transacted with the Plaintiff and the 1st Defendant; the application is devoid of any agreements nor documents connecting them to the suit lands under dispute in the case.
8. The submissions were filed by the Plaintiff and the Interested Parties only. I have read and considered the submissions in the ruling.
9. The key issue for determination is whether the application is merited.



10. It is not in dispute that the suit has been heard and concluded and what was pending were directions on compliance with the filing of the written submissions and the date for Judgment.

11. The observation by the Plaintiff and the 1st Defendant that the same has been brought at the tail end of the suit is correct.

12. That said, the provisions of Order 1 Rule 10 (2) of the [Civil Procedure Rules](#) provide that: -

“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.”

13. The question the Court should ponder on is whether the delay in joining the suit is inordinate or in other words whether it is too late for the Applicants to be part of the suit. The provisions of the [Civil Procedure Rules](#) above state that “the Court may at any stage of the proceedings.” The proceedings in this case are undoubtedly still alive given that the Court has not pronounced itself on the Judgment. The Court finds that there is no time bar to the Applicant’s application being enjoined at this stage of the proceedings.

14. I am guided by the decision of the Court in the case of [Kingori v Chege](#) (2002) 2 KLR whether it was stated as follows;

“In my view in deciding an application for joinder, the Court must exercise a liberal approach so as not to shut out a genuine litigant who is effectively interested or bound by the outcome of the suit. However, the Court must guard against frivolous or vexatious litigant whose sole motivation is to complicate and confuse issues that are before the Court for determination.”

15. In the case of [Francis Kariuki Muruatetu & another v Republic & 5 others](#) (2016) eKLR the Court held that an Applicant must demonstrate the personal interest that he has in the matter by laying sufficient grounds before the Court; the prejudice he would suffer if he is not enjoined as interested party; set out the case that he intends to make before the Court and demonstrate the relevance of the evidence being proffered to the Court in determining the issue in controversy. In other words, a party must disclose a cause of action which is either not before the Court or if it is before the Court, the nature of it is such that it cannot be effectually and completely determined by the Court without the party being heard.

16. In addition, the Court should look at the rights being claimed and reliefs that would flow from the party being sought to be enjoined. The safeguard being so as not to throw out a litigant from the seat of justice without being heard. The Court is guided by the decision in the case of [Lucy Nungari Ngigi & 128 others v National Bank of Kenya Limited & another](#) Civil case No 517 of 2014 (2015) eKLR which stated as follows;-

“Joinder of parties is governed by Order 1 of the [Civil Procedure Rules](#). In law, joinder should be permitted of all parties in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally; or in the alternative, where such persons brought separate suits, any common question of law or fact would arise. See also Order 7 Rule 9 of the [Civil Procedure Rules](#). The Court may even on its own motion add a party to the suit if such party is necessary for the determination of the real matter in dispute or whose presence is necessary in order to enable



the Court to effectively and completely adjudicate upon and settle all questions involved in the suit. Therefore, joinder of parties is permitted by law and it can be done at any stage of the proceedings. But, joinder of parties may be refused where such joinder: will lead into practical problems of handling the existing cause of action together with the one of the party being joined; is unnecessary; or will just occasion unnecessary delay or costs on the parties in the suit. In other words, joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible to or totally different from existing cause of action or the relief. The determining factor in joinder of parties is that a common question of fact or law would arise between the existing and the intended parties.”

17. Joinder of a party is a discretionary relief and like all discretions flowing from the Court, Courts are called upon to be guided by the principles set out in the case of *Shah v Mbogo* [1967] E A 116 and 123B where Judge Harris J as he then was, had this to say–

“The discretion is intended so to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but is not designed to assist the person who has deliberately sought whether by evasion or otherwise, to obstruct or delay the course of justice.”

18. The Court is also enjoined to look favourably at an application for joinder if it is in the best interest of justice and would not prejudice the interests of the Defendant. See the case of *Anthony Gachoka v National Hospital Insurance Fund & 3 others* [2005] KEHC 1164 (KLR).
19. In this case the Plaintiffs have sued the 1st Defendants for a claim of 3 acres and one acre from the 2nd Defendant allegedly sold by the said 2nd Defendant to other third parties. In her defence, the 1st Defendant admits to have sold 4 acres out of LR No 61/37 Ruiru Mwihoko to the Plaintiff. She also admits transferring the whole of 31.5 acres comprised in LR 61/37 Mwihoko to the 2nd Defendant, out of which 4 acres was to be transferred to the Plaintiff, the 2nd Defendant was to retain 24 acres and the 1st Defendant was to receive 3.5 acres from the 2nd Defendant.
20. It is the Applicant’s case that they purchased several plots being the subdivisions from the main parcel LR No 61/37. Though the Applicants have not placed before the Court the subdivision details linking the suit land to the 2nd Defendant’s parcels, the 1st Defendant and the Plaintiff have admitted that the 2nd Defendant issued the titles during the pendency of the case so much so that they accuse the 2nd Defendant of contempt of Court. The Court then finds that the claims of the parties flow from the same suit land
21. A close scrutiny of the sale agreements between the parties annexed by the Applicants and which form the larger part of the controversy between the Plaintiff and the Defendants being dated the 18/6/2008 and 10/11/2010, clearly shows that the source of the parties grievances emanate from the agreements. It was a term of the said agreements that the 2nd Defendant was going to be at liberty to sell portions to third parties as alluded to by the Applicants. The rights or reliefs of the parties therefore flow from the same or series of transactions comprised in the agreements. It is noted that the Applicants have not disclosed the kind of remedies that they are seeking by being enjoined to the suit. A party ought to fashion the cause of action and its remedies clearly so as to inform the other party the case they are going to confront. Save that they are likely to be affected by the orders of the Court on account that they have purchased some of the properties, the Applicants failed to annex their pleadings. That said, if the Applicants are not enjoined, will the Plaintiff be able to execute any Judgements in their favour should they turn out to be successful? If they must sue the Applicants for them to actualize their Judgement will that lead to multiplicity of suits? If indeed the 2nd Defendant sold the parcels during



- the pendency of the case, will that affect the rights of the parties in the current suit? If the application is disallowed will the Applicants have been denied their right to be heard? All these are pertinent issues that the Court must apply its mind to in its exercise of its discretion.
22. Having considered all the above factors, the Court is satisfied that the Applicants are necessary parties to enable the Court to determine the matter effectively to its logical conclusion and to avoid multiplicity of suits.
 23. With respect to the prejudice that the parties shall suffer, the Court agrees with the Plaintiffs and the 1st Defendant that the suit having been filed in 2009, any further delay is prejudicial to the parties. Save for the expectation to conclude the case, the Court finds that the prejudice can be ameliorated by payment of costs. I shall make the necessary orders in the end.
 24. Final orders for disposal:-
 - a. For the reasons above the Court finds that the Application is merited. It is allowed as prayed.
 - b. The Applicants are directed to file their pleadings within the next fifteen (15) days in default the order shall lapse.
 - c. The Applicants shall pay throw away costs in favour of the Plaintiffs and the 1st Defendant in the sum of Kshs 65,000/- within the next fifteen (15) days.
 - d. Thereafter the parties to fix the matter for hearing at the earliest.
 - e. Costs shall be paid by the Applicants in favour of the Plaintiffs and the 1st Defendant.
 25. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 19TH DAY OF NOVEMBER, 2024 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Kimani for the Plaintiff

Tumu for the 1st and 2nd Defendants

Githinji HB Ms. Kemunto for 1st – 13th Interested Parties / Applicants

Court Assistant – Phyllis

