



Gicimu (As personal representative of the Estate of the Late Uwe Kerchek) v Ouya & Ogada (As personal representatives of the Estate of the Late Ruth Judith Ouya) & 2 others (Environment & Land Case 133 of 2014) [2024] KEELC 13229 (KLR) (18 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13229 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 133 OF 2014
SM KIBUNJA, J
NOVEMBER 18, 2024**

BETWEEN

ESTHER GATHONI GICIMU (AS PERSONAL REPRESENTATIVE OF THE ESTATE OF THE LATE UWE KERCHEK) PLAINTIFF

AND

DICKENS OUYA & COLLINS OTIENO OGADA (AS PERSONAL REPRESENTATIVES OF THE ESTATE OF THE LATE RUTH JUDITH OUYA) 1ST DEFENDANT

PURITY WANGUI KURIA 2ND DEFENDANT

REGISTRAR OF TITLES 3RD DEFENDANT

RULING

1. This ruling/directions was prompted by the oral submissions by the learned counsel on 15th October 2024, on whether or not the 2nd & 3rd defendants are still parties in this suit. Mr. Omollo, the learned counsel for the plaintiff submitted that the case against the two was withdrawn under the notice of withdrawal dated 6th September 2017 and filed on 11th September 2017. That position was supported by Mrs. Waswa, the learned counsel for the 3rd defendant, but opposed by Mr. Abidha, learned counsel for the 1st defendant, who inter alia submitted that following the Court of Appeal decision, they filed an amended defence and counterclaim, with the Registrar of Tiles as the 3rd defendant. That as a counterclaim is a suit on itself, the Registrar of Titles is therefore still a party. In reply, Mrs. Waswa submitted that she did not find any problem with the Registrar of Titles remaining as a party, only if the plaintiff's require the office for execution. Mr. Omollo for the plaintiff pointed out to the court that the 1st defendant's counterclaim does not specify who the defendants are, and insisted the 2nd & 3rd defendants are not parties in this suit.



2. I have perused the 1st defendant's amended statement of defence dated the 7th May 2024, that contains a counterclaim running from paragraphs 19 to 28, and indeed the counterclaim does not contain a heading with the parties upon whom it was to be served, so as to file rejoinders in the form of statements of defence. This is a serious omission considering that the plaintiff's claim against the 2nd & 3rd defendants had undoubtedly been withdrawn through the notice of withdrawal dated 6th September 2017 and filed on the 11th September 2017, that was adopted on the 15th September 2017. The 2nd & 3rd defendants ceased being parties in the suit from the date the plaintiff withdrew the claim against them. The 1st defendant therefore needed to include them as defendants in their counterclaim, and thereafter have summons taken out and served upon each one of them in accordance with the rules.
3. It is important to note that the Court of Appeal decision in Civil Appeal No. 64 of 2019, over the court ruling of 11th March 2019, did not affect the notice of withdrawal dated the 6th September 2017, filed on the 11th September 2017 and adopted on the 15th September 2017. The Court of Appeal only set aside the order of 11th March 2019, and issued on 12th April 2019. The Court of Appeal directed the applications dated 18th September 2018 and 25th November 2015, to be heard by this court. Indeed, the two applications have since been heard, and determined through this court's ruling of 11th April 2024.
4. In view of the foregoing, the court find and orders as follows:
 - a. That Purity Wangui Kuria and the Registrar of Titles, who were initially the 2nd & 3rd defendants respectively in the plaintiff's suit, are not parties in the 1st defendant's counterclaim as drawn and filed.
 - b. That in case the 1st defendant needed them as parties in the counterclaim, and so as to avoid undue delay in this matter, the 1st defendant is granted leave to file and serve a further amended defence and counterclaim, clearly particularizing the defendants, within the next 14 days, and in default this leave to automatically lapse.
 - c. A suitable date for trial conference to be fixed for next term.

Orders accordingly.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 18TH DAY OF NOVEMBER 2024.

S. M. KIBUNJA, J.

ELC MOMBASA.

In The Presence Of:

Plaintiff : Mr Omollo

Defendants : Mr Abidha For 1st Defendant

Leakey – Court Assistant.

