



**Gitau v Mahuro & 5 others; Mui (Intended Interested Party);
 Karige & another (Intended Defendant) (Environment & Land Case
 E010 of 2021) [2024] KEELC 13243 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13243 (KLR)

**REPUBLIC OF KENYA
 IN THE ENVIRONMENT AND LAND COURT AT MURANGA
 ENVIRONMENT & LAND CASE E010 OF 2021
 LN GACHERU, J
 NOVEMBER 14, 2024**

BETWEEN

RICHARD MAKARA GITAU PLAINTIFF

AND

SHADRACK MAINA MAHURO 1ST DEFENDANT

ESTHER VICTORIA WANJIKU 2ND DEFENDANT

NYASANI EVANSON NYAMARONGE 3RD DEFENDANT

WAWIRA L MUGANIA 4TH DEFENDANT

THE LAND REGISTRAR MURANGA 5TH DEFENDANT

THE LAND REGISTRAR THIKA 6TH DEFENDANT

AND

ALICE NJOKI MUI INTENDED INTERESTED PARTY

AND

SAMUEL KARIMI KARIGE INTENDED DEFENDANT

FLORENCE GATHONI INTENDED DEFENDANT

RULING

1. The Applicants herein Samuel Karimi Karige and Florence Gathoni, brought this Chamber Summons Application dated 16th April 2024, which is premised under Order 1 Rules 10 and 14 of the [Civil Procedure Rules](#) and Sections 1A and 1B of the [Civil Procedure Act](#), and sought for orders that; -



1. That this Court be pleased to add the persons herein namely Samuel Karimi Karige and Florence Gathoni, as the 7th and 8th Defendants in this matter.
2. That the Plaintiff be ordered to amend the Plaint accordingly and add the said parties.
3. That the costs of this application be in the cause.
2. The instant Application is supported by the grounds set out on the face thereof, and on the Supporting Affidavit of Samuel Karimi Karige, 1st Applicant, sworn on 16th April 2024. The Applicants as the Intended 7th and 8th Defendants averred that the 1st Defendant is the registered proprietor of the suit property, being land parcel No Mitubiri/Wempa/Block2/3663, measuring approximately 2.02 Hectares.
3. It was their further contention that on 10th September 2020, they executed an agreement for the disposal of the suit land with the 1st Defendant for the consideration of Kshs 7,000,000/=, out of which they have paid Kshs 6,680,000/=, to the 1st Defendant herein.
4. They further contended that they are in occupation of the suit property, and have extensively developed the same; and therefore, it is imperative that they be joined to the suit herein. Further, that no prejudice would be suffered by the Plaintiff/ Respondent, if the instant Application is allowed.
5. In his Supporting Affidavit dated 16th April 2024, the 7th Intended Defendant/ Applicant, deposed that together with the Intended 8th Defendant, they delivered the sum of Kshs 6,680,000/=, to the 1st Defendant herein, being part of the purchase price in respect of the suit land, and are awaiting processing of title in their names as contracted.
6. He annexed a copy of the Certificate of Official Search in respect of the suit property, which shows that the suit property is registered in the name of Shadrack Maina Mahuro (the 1st Defendant herein). He further annexed copies of a cheque drawn in the 1st Defendant's favour and several acknowledgements of receipts of money by the 1st Defendant marked as HNw3 and HNw4.
7. He also attached photographs of developments which he claimed to have carried out on the suit property together with the Intended 8th Defendant, which were marked as HNw5. He also averred that although he lives on the suit property, and has built his matrimonial home thereon, he was only made aware of the instant proceeding by the local authorities. That the Intended 7th and 8th Defendants stand to suffer irreparable damage if they are not added to the suit herein, having invested enormous resources and time to improve the suit land.
8. The Plaintiff/ Respondent opposed the Application herein through his Replying Affidavit sworn on 1st September 202, wherein he averred that the instant Application is totally defective and misconceived. Further, that the suit property belongs to the estate of his late father Joseph Mahuro, and was transmitted to the 1st Defendant fraudulently.
9. Further, that the 1st Defendant acquired ownership of the suit land without first obtaining Letters of Administration, which renders the conveyance of the said land to the Intended 7th and 8th Defendants null and void.
10. It was the Plaintiff's further contention that his late father Joseph Mahuro died on 12th February 2019, as attested by a copy of his Death Certificate dated 3rd October 2019, attached to his Affidavit and marked RMG 1. That due process was not followed in the process of transfer of the suit land to the 1st Defendant as it was based on a fake Consent purportedly issued by the Makuyu Land Control Board.



The Plaintiff accused the 2nd Defendant of the illegal and fraudulent transfer of land parcel number Juja Kalimoni Block 10/92, from the estate of his late father Joseph Mahuro, to the 2nd Defendant.

11. The Court directed that the Application be canvassed by way of written submissions.

The Applicants/intended 7th and 8th Defendants' Submissions

12. The Applicants herein filed their written submissions dated 9th July 2024, through the Law Firm of Kanyi Kiruchi & Co. Advocates, and reiterated their claim of purchase of the suit property from the 1st Defendant for a consideration of Kshs 7,000,000/=, and that they have so far rendered Kshs 6,680,000/=, to the 1st Defendant. Further, that they established their matrimonial home on the suit property upon entering and occupying the same in year 2020. Two (2) issues for determination were identified as follows:
 - a. Whether the Intended 7th and 8th defendants should be added to the suit.
 - b. Who shall bear the costs of the Application.
13. They relied on case of *Kingori v Chege & 3 others* [2002] 2 KLR 243, to buttress the argument that a party seeking joinder in a suit needs to satisfy certain conditions. Further, that the 7th and 8th Intended Defendants/ Applicants have paid huge sums of money to the 1st Defendant in respect of the purchase of the suit property, which they stand to lose if the case is determined without affording them an opportunity to be heard and/or put in their defence.
14. The Applicants questioned the Plaintiff's choice not to join them in the suit, whereas their occupation of the suit land is well known. They also faulted the 1st Defendant for failing to disclose to the Court that he sold the suit property to them. They described themselves as innocent purchasers for value of the suit land, without notice.
15. On the question of costs, they submitted that the award of costs is discretionary, and costs follow the event, and is normally awarded to the successful party in a suit. Reliance was sought in the cases of *DGM v EWG*, which was cited by the court in the case of *Party of Independent Candidates v Mutula Kilonzo & another* [2013] eKLR.
16. The Plaintiff/Respondent filed his written submissions through the Law Firm of Kirubi, Mwangi Ben & Co. Advocates, and submitted that the instant suit was commenced in year 2021, and relates to the illegal transfer of the suit property, and land parcel No Juja Kalimoni Block 10/92, following the death of the registered proprietor Joseph Maina Mahuro, on 12th February 2019.
17. Further, that there is a pending suit namely Muranga Succession Cause No 519 of 2019: Estate Of Joseph Maina Mahuro wherein, the Plaintiff and the 2nd Defendant are joint administrators of the said estate. Further, that the grant in respect of the said estate is yet to be confirmed, which means that they lack the power to sell any assets belonging the above mentioned estate.
18. The Plaintiff argued that the 7th and 8th Defendants did admit that they purchased the suit property from the 1st Defendant, who was neither the lawful owner thereof, nor administrator of the estate to which the property belongs; therefore the 7th and 8th Intended Defendants intermeddled with the estate of the deceased as the transaction between themselves and the 1st Defendant took place without a grant having been issued in the estate of Joseph Maina Mahuro.
19. It was further submitted that the 7th and 8th Defendant's /Applicants' claim is not directed against the legal administrators of the estate of the deceased, but against the 1st Defendant, and their joinder in the present suit will serve to confuse the issues and to derail and frustrate the disposal of the instant suit.



20. It was further submitted that the 7th and 8th Defendant/ Applicants herein have not filed their Statement of Claim, thus, the nature of their claim and the remedy sought from this Court are both unknown. The Plaintiff/ Respondent argued that in his Plaintiff he is seeking the title to the suit property to revert to the name of the deceased owner awaiting distribution through the Succession cause, which means that the 7th and 8th Defendants do not have a sustainable claim against the Plaintiffs herein. The Court was urged to dismiss the instant Application with costs.
21. After a thorough and careful consideration of the instant application, response thereto and the rival written submissions, cited authorities and relevant provisions of law, the court finds the issues for determination are; -
- i. Whether the 7th and 8th Defendants are entitled to the Orders sought?
 - ii. Who shall bear the costs of the Application?
22. On the 1st issue, the court finds that the Applicants herein have contended and submitted that they have been in occupation of the suit property since year 2020, and have extensively developed the said land by constructing their matrimonial home thereon. They further argued that it is imperative that they be enjoined to the suit herein. Further, that no prejudice will be suffered by the Plaintiff/ Respondent if the instant Application is allowed.
23. Order 1 Rule 10(2) of the [Civil Procedure Rules](#) provides as follows:
- “The Court may at any stage of the proceedings, either upon or without the application of either party, and as 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 might 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.”
24. In the case of [Civicon Limited v Kivuwatt Limited & 2 others](#) {2015} eKLR, the Court interpreted the provisions of Order 1 Rule 10 of the [Civil Procedure Rules](#), and held that in an application for joinder, the Court’s discretion is unfettered:
- “Again the power given under the rules is discretionary which discretion must of necessity be exercised judicially. The objective of these rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protractor, inconvenience and to avoid multiplicity of proceedings thus, any party reasonably affected by the pending litigation is a necessary and proper party and should be enjoined.”
25. Further, in the case of [Deported Asians Property Custodian Board v Jaffer Brothers Ltd](#) {1991} E. A. 55 SCU, the Court reasoned as follows:
- “A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the Court effectually and completely adjudicate upon and settle all questions involved in the suit. A party may be joined in a suit because the party’s presence is necessary in order to enable the Court effectually and completely adjudicate upon and settle all questions involved in the case or matter.”



26. Further, in the case of *Kariuki & 11 others v County Government of Nyeri & another* [2022] KEELC 3398 (KLR), the Court offered the following guidance in respect of an Application for joinder such as the one before the Court:

“...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 if such persons brought separate suits, any common question of law or fact would arise. The determining factor in my view, is whether a common question of law or fact would arise between the existing and the intended parties.”

27. In the instant Application, the 7th and 8th Intended Defendants argued, and submitted that they purchased the suit property from the 1st Defendant for the consideration of Kshs 7,000,000/=, out of which they have already paid to the 1st Defendant the sum of Kshs 6,680,000/=, They attached the sale agreement allegedly executed between themselves and the 1st Defendant dated 10th September 2020, and a copy of a cheque drawn in favour of the 1st Defendant/ Respondent as well as several acknowledgments of receipts dated between November 2020 and December 2020, in respect of diverse amounts paid to the 1st Defendant in respect of the disposal of the suit property.
28. On the basis of the foregoing, this Court is satisfied that the Applicants herein as the intended 7th and 8th Defendants have established a demonstrable link to the suit property as was held in the case of *Mumo Matemu v Trusted Society of Human Rights Alliance & others* [2013] KECA 445 (KLR).
29. On the other hand, the Plaintiff/ Respondent asserted and submitted that the Applicants herein as 7th and 8th Intended Defendants have not sought any reliefs as against the Plaintiff/ Respondent, and also have failed to disclose the nature of their proposed claim.
30. In their Supporting Affidavit, the Applicants averred that they are pursuing the opportunity to file a defence in the matter. On the basis of the evidence availed to the Court by the Applicants herein in support of the instant Application, the Court is persuaded that they are not mere busybodies, but they are parties with demonstrable interests in the suit property herein. Further, their presence in the suit herein will assist the Court to adjudicate upon all issues that have arisen in the dispute.
31. Therefore, having considered all factors herein and having regard to the foregoing analysis of the available evidence, it is evident that the Application herein is merited, and that the Applicants deserves the orders sought.
32. Accordingly, the Court allows the instant Notice of Motion Application dated 16th April 2024, in terms of prayers Nos 2 and 3 of the said Application.
33. Consequently, having allowed the Applicants' Application for joinder, the court further directs the Applicants herein as the 7th and 8th Defendants to file their Defence within the next 21 days from the date of this Ruling. In default and/or in case no defence is filed within a period of 21 days as directed above, then the instant Application for joinder shall stand dismissed.
34. On the issue of Costs, the court directs the same to abide the outcome of this suit.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14TH DAY OF NOVEMBER, 2024

L. GACHERU

JUDGE



14/11/2024

Delivered online in the presence of:

Joel Njonjo – Court Assistant.

Richard Makara, the Plaintiff/ Respondent, present in Person

Mr Moenga H/B for Mr Nyasani for 1st & 2nd Defendants.

Mr Wachira H/B for Mr Kanyi for the Applicants/Intended 7th & 8th Defendants.

L. GACHERU

JUDGE

14/11/2024

