



Ngurukie (Substituted by Samuel Githua Ngurukie) v Wamboo & 3 others (Environment & Land Case 83 of 2015) [2024] KEELC 7516 (KLR) (14 November 2024) (Ruling)

Neutral citation: [2024] KEELC 7516 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 83 OF 2015
JO OLOLA, J
NOVEMBER 14, 2024**

BETWEEN

**MATEO GITHUA NGURUKIE PLAINTIFF
SUBSTITUTED BY SAMUEL GITHUA NGURUKIE**

AND

**SOLOMON MWANIKI WAMBOO 1ST DEFENDANT
JOYCE WANJIRU MWAURA 2ND DEFENDANT
STANDARD CHARTERED BANK KENYA LIMITED 3RD DEFENDANT
LAND REGISTRAR NYERI COUNTY 4TH DEFENDANT**

RULING

1. By the Chamber Summons application dated 26th April 2023, Samuel Githua Ngurukie (the substituted Plaintiff) prays for Orders:-
 1. That the Plaintiff/applicant be granted leave to enjoin Standard Chartered Bank Ltd and the Land Registrar Nyeri County;
 2. That the Draft Amended Plaintiff be deemed as duly filed and served; and
 3. That the costs of this application be provided for.
2. The application is supported by an affidavit sworn by the Plaintiff and is premised on the grounds:
 - i). That the two parties are necessary parties to this suit;
 - ii). That their joinder will assist the court in establishing all the necessary facts around this dispute to enable it to determine the matter effectively; and



- iii). That the said amendments shall not in any way prejudice the 1st and 2nd Defendants.
3. The Intended Third Defendant – the Standard Chartered Bank Kenya Ltd is opposed to the application. In a Replying Affidavit sworn on its behalf by its Nyeri Centre Manager Terrin Kinyua, the Bank avers that it has gone through its records and that there is nothing showing that the Plaintiff was ever its customer and that it has no records showing that the Plaintiff charged the suit property to itself.
 4. The Bank further avers that the Plaintiff has failed to produce a search over the suit property that shows that the property was charged to the Bank or any other correspondences between the Plaintiff and the Bank to demonstrate that the Plaintiff was its customer.
 5. The Bank avers further that it does not keep customers’ records beyond seven (7) years following the termination of an account or business relationship and it would therefore not be possible for it to find records relating to any such transactions.
 6. I have carefully perused the Plaintiff’s application as well as the response by the Intended Third Defendant. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties herein.
 7. By his application before the court, the Plaintiff urges the court to grant him leave to amend his Plaintiff in order to enjoin the Standard Chartered Bank Ltd as the 3rd Defendant and the Land Registrar as the 4th Defendant in these proceedings. It is the Plaintiff’s case that the two are necessary parties to this suit and that their being enjoined herein will enable the court to effectively determine the dispute.
 8. In respect of joinder of parties, Order 1 Rule 10 (2) of the [Civil Procedure Rules, 2010](#) provides as follows:

“The court may at any stage of the proceedings, either upon or without the application of either party, and upon 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 effectively and completely to adjudicate upon and settle all questions involved in the suit, be added.”
 9. As Nambuye J (as she then was) stated in [Joseph Njau Kingori –vs- Robert Maina Chege](#) [2002] 2 KLR 242, the guiding principles when an intending party is to be joined are as follows:-
 1. He must be a necessary party;
 2. He must be a proper party;
 3. In the case of the Defendant there must be a relief flowing from that Defendant to the Plaintiff;
 4. The ultimate order or decree cannot be enforced without his presence in the matter;
 5. His presence is necessary to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit.
 10. In [Departed Asians Property Custodian Board –vs- Jaffer Brothers Ltd](#) [1999] 1 EA 55, it was held that:

“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 effectively and completely adjudicate upon and settle all questions involved in the suit.”



11. In the matter before me, the Plaintiff initially filed the suit in 1995 against the 1st and 2nd Defendants. The basis for his quest to join the Intended 3rd Defendant can be discerned from Paragraphs 2 to 5 of the supporting Affidavit in which he asserts as follows:
- “2. That I filed this suit on 05/12/1995 claiming ownership of land parcel No. Othaya/Kihugiru/424 measuring approximately 24 acres where the 1st Defendant and the 2nd Defendant’s late husband- Patrick Mwaura Muthaa colluded through illegal means and fraud to evict and take possession from the Plaintiff/Applicant;
 3. That on 10/10/1963 the Plaintiff charged the suit land for Kshs. 1,500/= (One Thousand Five Hundred) with Standard Chartered Bank Ltd;
 4. That the 1st Defendant and the late Patrick Mwaura Muthaa jointly collaborated with the 3rd Defendant, Standard Chartered Bank Ltd and discharged the title without the Plaintiff’s knowledge and/or consent; and
 5. That Standard Chartered Bank Ltd then released the title documents over the suit land to the 1st Defendant without the Plaintiff’s consent and afterwards the suit land was mysteriously transferred from the Plaintiff’s ownership.”
12. It was telling that the Plaintiff does not tell the exact date when the Intended 3rd Defendant released the said title. From his own documents produced in court it was apparent that the suit property claimed by himself was sold at a public auction that took place in 1970. There is absolutely no explanation given why the Plaintiff had never brought the suit against the Intended 3rd Defendant for such a long period of time.
13. In law, such a claim could only be brought against the Intended 3rd Defendant within 12 years of the occurrence. The Plaintiff has not explained why when he filed this suit, he did not include the Intended 3rd Defendant and it was evident to me that to allow him to bring a suit against the Intended 3rd Defendant without seeking leave of the court would go against the express provisions of the *Limitation of Actions Act* Cap 22, Laws of Kenya.
14. As it were, the purpose of limitations of actions is to establish a time frame for when a party can bring a legal action in court. The rationale for limitation of actions is based on the equitable maxim that “delay defeats equity.” The concept of limitation of actions is based on the idea that legal actions should be barred after a certain period of time. It is meant to stop Plaintiffs from harassing would-be Defendants with stale cases where the Defendant may not clearly remember the facts or may have lost documentation in relation thereto.
15. In the matter herein, the Intended 3rd Defendant has clearly demonstrated that they do not keep records beyond 7 years following the termination of an account or business relationship in accordance with clause 5-17 of the Central Bank of Kenya Prudential Guidelines 2013. In this respect, it was evident to me that to expect the Intended 3rd Defendant to produce records of transactions that took place between 1963 and 1970 when nothing else had happened in-between to warrant their keeping of the records would be grossly unfair.
16. At any rate, from a perusal of the prayers made in the draft Amended Plaintiff, it is apparent that there is no relief flowing from the Intended 3rd Defendant to the Plaintiff. In his prayers in the draft plaintiff, the Plaintiff has not sought a single order or prayer against the Intended 3rd Defendants and I did not think that the joinder sought herein would serve any purpose.



17. In the premises, I was unable to find any basis for the Chamber Summons dated 26th April 2023 in so far as it relates to the Intended 3rd Defendant. The same is dismissed with costs to the Intended 3rd Defendant.

DATED, SIGNED AND DELIVERED AT NYERI THIS THURSDAY 14TH DAY OF NOVEMBER, 2024.

J. O. OLOLA

JUDGE

In the presence of:

Mr. Mshila for the Plaintiff.

Mr. Ondieki for the 3rd Respondent.

Court Assistant: Kendi.

