



**Mwangi v Kamani & 2 others (Environment & Land Case
53 of 2017) [2023] KEELC 793 (KLR) (15 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 793 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 53 OF 2017
JO OLOLA, J
FEBRUARY 15, 2023**

BETWEEN

DANIEL MUCHIRI MWANGI PLAINTIFF

AND

SAMUEL MWANGI KAMANI 1ST DEFENDANT

WILLY KARUIRU KIMARU 2ND DEFENDANT

LAND REGISTRAR NYERI 3RD DEFENDANT

RULING

1. By the Notice of Motion dated April 12, 2022, Daniel Muchiri Mwangi (the Plaintiff) prays for leave to amend the Plaint to join one Mary Njeri Mwangi as the 2nd Plaintiff in the suit and that the annexed Amended Plaint be deemed as duly filed and served upon all the Parties hereto.
2. The application is supported by an Affidavit sworn by the Plaintiff and is premised on the grounds:
 - (a) That the intended 2nd Plaintiff is a necessary party to this suit as she is the 1st wife to the 1st Defendant and the suit property is matrimonial property;
 - (b) That the joinder of the intended 2nd Plaintiff will assist the Honourable Court to effectively adjudicate on the matter and determine all the questions in the case;
 - (c) That no prejudice will be occasioned to any of the Parties herein; and
 - (d) It is in the best interest for the ends of justice to be met.
3. Samuel Mwangi Kamami (the 1st Defendant) is opposed to the grant of the orders sought. In his Replying Affidavit sworn on May 4, 2022 as filed herein on May 12, 2022, the 1st Defendant avers that the Plaintiff is his biological son and that the intended 2nd Plaintiff is the Plaintiff's mother.



4. The 1st Defendant avers that the intended 2nd Plaintiff has filed another suit being Nyeri High Court Matrimonial Cause No 2 of 2018 seeking similar orders as those being sought herein. The 1st Defendant further avers that the Plaintiff has since May 30, 2017 been enjoying interim orders and that as such he has been filing a plethora of applications aimed at delaying this matter.
5. The 1st Defendant further avers that the issues being raised herein can be dealt with in the said matrimonial cause and that he continues to suffer as a result of the delay in concluding this matter.
6. I have carefully perused and considered the application as well as the response thereto. I have similarly perused and considered the written submissions and authorities placed before the Court by the Learned Advocates representing the Parties herein.
7. By this suit filed on March 22, 2017, the Plaintiff accuses his father - the 1st Defendant of colluding with the 2nd and 3rd Defendants to sub-divide the parcel of land originally known as LR No Iriaini/Kiaguthu/593 into various portions and causing a portion thereof to be registered in the name of the 2nd Defendant. Accordingly, the Plaintiff has sought an order to cancel the registration of the sub-divisions as well as a prohibitory order to issue stopping all dealings with the original parcel of land.
8. By this present application, the Plaintiff prays for an order to enjoin his mother as a co-Plaintiff with an additional prayer seeking to have LR No Iriaini/Kiaguthu/1407 one of the sub-divisions apparently transferred by his father to the 2nd Defendant, as Matrimonial Property.
9. The 1st Defendant is however opposed to the application for joinder of his wife as a co-Plaintiff herein terming the same as a delaying tactic and an abuse of the Court process.
10. 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 if such person brought separate suits, any common question of law or fact would arise.
11. As it were, the Court may even on its own motion add a party to the suit if such a party is necessary for the effectual determination of the real matter in dispute or if his presence is necessary in order to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit.
12. However, 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, or where it is unnecessary, or will just occasion unnecessary delay or costs on the Parties in the suit. Thus joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible to or totally different from the existing cause of action or the relief sought.
13. In the matter before me, it is apparent from a perusal of the 1st Defendant's Replying Affidavit that about one year after his son instituted this suit against him seeking cancellation of the sub-divisions of the original LR No Iria-ini/Kiaguthu/593, his 1st wife Mary Njeri Mwangi who is intended to be enjoined herein, did herself institute before the High Court at Nyeri Matrimonial Property Cause No 2 of 2018 wherein she has sought to have the suit property and others declared as their matrimonial home and property.



14. From a perusal of the Plaintiff's Supplementary Affidavit sworn and filed herein on May 24, 2022, the existence of the said suit before the High Court is not denied. At Paragraph 6 of the Affidavit, the Plaintiff deposes as follows:

“6.

That the issues raised herein cannot be effectively ventilated in the OS Nyeri HC Matrimonial Cause No 2 of 2018 because the Respondent has applied for stay of proceedings therein and joinder of the intended 2nd Plaintiff will rebound to the achievement of a just decision.”

15. While it may as well be true that some of the issues raised herein may not be effectively ventilated in the matter before the High Court, it was clear to me that that should also be the reason the intended 2nd Plaintiff should not be enjoined in these proceedings.

16. As it were, the intended co-Plaintiff has already invoked the jurisdiction of the High Court under Article 165 of the Constitution and she cannot be heard again coming to litigate the same issues raised before the High Court before the Environment and Land Court exercising its jurisdiction under Article 162(2) of the Constitution. The two Courts do not exercise similar jurisdiction and to allow the Plaintiff to proceed in the manner intended herein would be oppressive and prejudicial to other parties if not tantamount to an abuse of the Court process.

17. It follows that I am persuaded that joinder of the intended co-Plaintiff will unnecessarily complicate the matter herein and lead to unnecessary delay.

18. Accordingly I disallow the Motion dated April 17, 2022. The costs of the application shall be in the cause.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI THIS 16TH DAY OF FEBRUARY, 2023.

In the presence of:

Mr. Macharia holding brief for Makura for the Plaintiff

Mr. Wamahu holding brief for Mwaura for 1st and 2nd Defendant

Mr. Njoroge holding brief Mumbi for the 3rd Defendant

Court assistant - Kendi

J. O. Olola

JUDGE

