



**Kariuki v Mwananchi Credit Limited & 2 others; Synergy Industrial
Credit Limited (Proposed Interested Party) (Commercial Suit
2 of 2019) [2024] KEHC 10672 (KLR) (16 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10672 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
COMMERCIAL SUIT 2 OF 2019
DO CHEPKWONY, J
AUGUST 16, 2024**

BETWEEN

LYDIA WANJIRU KARIUKI PLAINTIFF

AND

MWANANCHI CREDIT LIMITED 1ST DEFENDANT

JOSEPH KARIUKI KANYUIGWA 2ND DEFENDANT

GEORGE OKOTH 3RD DEFENDANT

AND

**SYNERGY INDUSTRIAL CREDIT LIMITED PROPOSED INTERESTED
PARTY**

RULING

1. What is before the court for determination is the Notice of Motion Application dated November 16, 2023 which seeks the following orders:
 - a. That the Applicant herein, Synergy Industrial Credit Ltd be enjoined in this suit as Interested Party and henceforth be allowed to participate in this suit as proposed.
 - b. Pending the hearing and determination of this case, this Honourable court be pleased to order the 1st Defendant herein, Mwananchi Credit Ltd to deposit in this Honourable court a sum of Kshs 12,270,748/= being the surplus from the proceeds of sale of the charged Land Title No Ruiru/Kiu Block 3/912 registered in the name of Joseph Kariuki Kanyuigwa.
 - c. That costs of this application be provided for.



2. The Application is based on the grounds as set out on its face and the Supporting Affidavit of Jacob Mbae Meeme sworn on the instant date. It is the Applicant's case that the Plaintiff and the 2nd Defendant are indebted to it to the tune of Kshs 12,248,149.65 which is pursuant to the Decree issued on 21st August, 2020 in Milimani Commercial Magistrate's Court Civil Case No 2340 of 2017. The Applicant states that it has crystallised ascertainable legal interests in the personal interests of the Plaintiff and the 2nd Defendant and therefore seeks to be enjoined in the suit.
3. The Applicant further states that it found that the 1st Defendant, Mwananchi Credit Ltd had instructed Mistan Auctioneers to recover a sum of Kshs 9,814,946/= from the 2nd Defendant and his parcel of land Ruiru/Kiu Block 3/912 was sold in the sum of Kshs 22,800,000/=. It argues that the 1st Defendant is now holding a sum of Kshs 12,270,748/=: being the proceeds of sale of the land which it holds is capable of satisfying the Decree issued on 21st August, 2020 in Milimani Commercial Magistrate's Court Civil Case No 2340 of 2017.
4. The Applicant holds that no prejudice shall be occasioned to any of the parties should the application for joinder be allowed and thus urges the court to allow the application as prayed.
5. The application is opposed through the Grounds of Opposition filed by the Plaintiff dated 17th January, 2024, the Grounds of Opposition of the 2nd Defendant dated 22nd January, 2024, the Replying Affidavit of Dennis Mwangeka Mombo the Legal Secretary of the 1st Defendant sworn on 1st February, 2024.
6. In her Grounds of Opposition dated 17th January, 2024, the Plaintiff says that the application is incompetent as it does not demonstrate the stake the Applicant has in the issues raised in the matter and that it will not add value to the proceedings but will only divert the natural course of proceedings. She argues that the Applicant is seeking proceeds of the sale of the parcel of land yet the main issue in question in the matter is validity of the charge instrument and therefore contends that the application is incompetent and should be dismissed.
7. In its Replying Affidavit, the 1st Respondent holds that the application is an abuse of the court process since the present suit and the decree issued in the lower court suit as claimed by the applicant emanates from two different causes of action. The 1st Respondent holds that the nature of this suit was from an injunction over sale of the subject property while the one in Milimani Commercial Chief Magistrates Court Civil Case No 2340 of 2017 was based on instalment arrears based on a contract and therefore there is no nexus between the two to warrant joinder as the Proposed Interested Party has no legal interest in the matter.
8. Further, the 1st Respondent has disputed the claim that it is holding the excess of Kshs 12,270,748/= being the proceeds of the sale since there is no evidence to substantiate the said allegation. He argues that since the auction has already taken place and the subject property been sold, the applicant has no right to claim for the proceeds of sale since it emanated from a different subject matter.
9. In the Grounds of Opposition dated 22nd January, 2024, the 2nd Respondent holds that the Applicant has not demonstrated its stake or relevance in the proceedings and thus will not add any value and neither has it shown how it will suffer prejudice if the application is denied. The 2nd Respondent holds that the joinder will only lead to a delay in the proceedings and is only an attempt to muddle the proceedings. He thus argues that it is an abuse of the court process.
10. Further, the Applicant has accused the Plaintiff and the Respondents of material non-disclosure and concealment of facts for failing to disclose how the proceeds of the sale of the subject property were utilised. He argues that the said proceeds ought to be utilised to satisfy the decree and contends that the



same should be deposited in this court pending the hearing and determination of this suit as security and for the benefit of all parties.

11. In rejoinder, the Applicant filed a Supplementary Affidavit sworn by Jacob Mbae Meeme on 5th February, 2024 wherein it has stated that the Plaintiff and the Respondents are colluding against it by employing all tricks to defeat its application. It has also stated that the Plaintiff and 2nd Respondents only filed grounds of opposition and not affidavits in response to the application which amount to mere details. It is in the Applicant's contention that it has a clear stake and interest in the personal properties of the Plaintiff and the 2nd Respondent since the court order amounted to a general lien over the said properties.
12. Further, the Applicant has accord the Plaintiff and Respondent of material non – disclosure and concealment of facts for failing to disclose how the proceeds of the sale of property were utilized. It argues that the said proceeds ought to have been utilized to satisfy the decree and contends that the same should be deposited in court pending the hearing and determination of this suit as security and for the benefit of all parties.
13. The court directed the parties to canvass the application by way of written submissions. The Applicant's Submissions are dated 12th February, 2024, the 1st Respondent's Submissions are dated 28th February, 2024 while the 2nd Respondent's Submissions are dated 14th March, 2024 and the court has read through all of them in consideration of the application.

Analysis And Determination.

14. Having read through the grounds upon which the application is premised, the grounds which the Respondents have advanced in opposing the application and considered the arguments by the parties in their respective set of submissions, this court finds that the main issue to be determined is whether the applicant should be enjoined in this suit.
15. In considering this application, the first port of call on the issue of joinder of parties is underpinned under Order 1 Rule 10(2) of the *Civil Procedure Rules* which states as follows:

“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 or settle all questions involved in the suit, be added.”

16. The next question that begs an answer is “Who/What is an Interested Party?” Under Rule 2 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*, an Interested Party is defined as follows,

“Interested party” means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation”



17. In the case of *Communications Commission of Kenya and 4 others v Royal Media Services Limited & 7 others* Petition No 15 of [2014] eKLR while relying on its earlier decision in the Mumo Matemo case where the Court in defining who an Interested Party is, the Supreme Court of Kenya held as follows:

“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. Similarly, in the case of *Meme v Republic*, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- (i) Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;
- (ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) Joinder to prevent a likely course of proliferated litigation.

We ask ourselves the following questions:

- a) what is the intended party’s state and relevance in the proceedings and
- b) will the intended interested party suffer any prejudice if denied joinder.?”

18. In regard to this particular case, this court has considered the application, the grounds of Oppositions, the Replying Affidavits, the Supplementary Affidavit and the Submissions in terms of the above cited case law and finds that the cause of action herein is distinct from the cause of action in the Milimani Commercial Chief Magistrates Court Civil Case No 2340 of 2017, hence the Applicant has no interest or stake in this case at all. That being the case, its joinder in this case cannot result in the complete settlement of the questions involved in the proceedings to its benefit, so that, even if it is not enjoined in the suit, its rights will not be adversely affected by the determination herein.

19. In the circumstances, the court finds that the Applicant has not demonstrated any relevance in this case and therefore will not suffer any prejudice if it is denied joinder. For those reasons, the court finds that the Notice of Motion Application dated November 16, 2023 lacks merit and the same is hereby dismissed with costs to the other parties.

It is so ordered.

RULING DELIVERED, DATED AND SIGNED AT KIAMBU THIS 16TH DAY OF AUGUST, 2024

D.O CHEPKWONY

JUDGE

In the presence of

Martin – Court Assistant

Mr. Meme Counsel for Applicant

Mr. Charana holding brief for Ms. Wanjiku and holding brief for Mr. Kuloba for 3rd Defendant

Mr. Waithaka for 2nd Defendant

