



Kwanza Estates Limited v Ewins & 3 others; Dubai Bank Kenya Limited (In Liquidation) & another (Interested Parties); Vae & 2 others (Intended Interested Party) (Environment & Land Case E050 of 2023) [2025] KEELC 3007 (KLR) (25 March 2025) (Ruling)

Neutral citation: [2025] KEELC 3007 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E050 OF 2023
FM NJOROGE, J
MARCH 25, 2025**

BETWEEN

KWANZA ESTATES LIMITED APPLICANT

AND

ELIZABETH MUENI EWINS 1ST RESPONDENT

MARAGRET SIDI MATHAYO 2ND RESPONDENT

NANCY WANJIRU MUTURA 3RD RESPONDENT

LIONS BEACH LIMITED 4TH RESPONDENT

AND

DUBAI BANK KENYA LIMITED (IN LIQUIDATION) INTERESTED PARTY

**KENYA DEPOSIT INSURANCE CORPORATION
(LIQUIDATOR INTERESTED PARTY**

AND

ALI SALIM VAE INTENDED INTERESTED PARTY

SHUMI SALIM VAE INTENDED INTERESTED PARTY

LAILATU SALIM VAE INTENDED INTERESTED PARTY

RULING

1. The 3rd -5th Intended Interested Parties moved the court vide a Notice of Motion dated 16/10/2024 seeking inter alia, orders that they be joined to this suit as interested parties and the necessary



amendment be made to the plaint, and that costs of the application be provided for. The basis of the application were the grounds that: -

- a. That the present suit involves land known as Plot No. 49 Watamu (suit property) and the Applicants have interest in the said land;
 - b. That the proposed interested parties together with their families have been in continuous, uninterrupted occupation of all that parcel of land known as Plot No. 49 Watamu, CR No. 12531, for a period exceeding 100 years;
 - c. That the proposed interested parties, their fathers and forefathers have occupied the said land openly, peacefully and without interruption or contestation from any person;
 - d. That the Applicants were not aware of the present suit and only learnt of its existence recently and are apprehensive that if their application is not allowed, they stand to suffer irreparably as their interest in the suit property will not be addressed;
 - e. That it is therefore prudent that the applicants are joined in the suit to allow them participate in the proceedings and ventilate their interests;
 - f. That the presence of the Applicants in court would be necessary in order to enable the court to effectively and/or conclusively and/or completely adjudicate and settle all issues between all parties interested in the suit property;
 - g. That the orders sought herein, if granted would occasion no prejudice to the Defendants and/or Plaintiff herein.
2. The application, which was brought under Sections 1A, 1B and 3A of the *Civil Procedure Act* and Order 51 of the Civil Procedure Rules, was supported by an affidavit sworn by the 3rd Intended Interested Party on an even date. The application was opposed by the Plaintiff who filed a replying affidavit sworn by Geoffrey Asanyo on 14/12/2024, wherein he deposed that the intended interested parties have failed to disclose their interest in the suit property as they are neither registered or in occupation thereof. The deponent urged the court to dismiss the application for lack of merit. The application was canvassed by way of written submissions.

Intended Interested Parties' Submissions Dated 17/2/2025

3. The intended interested parties' submissions were brief. Their Counsel submitted that the provisions that provide for joinder under the Civil Procedure Rules are Order 1 Rule 3 and Order 10 (2). She argued that having demonstrated that the intended interested parties have been in occupation of the suit property for a period exceeding 100 years, they were entitled to the orders sought.

Plaintiff's Submissions Dated 13/2/2025

4. Counsel for the Plaintiff submitted that the law providing for joinder of parties is Order 1 Rule 10 (2) of the Civil Procedure Rules. He added that the requirements to be considered in an application for joinder were set out by the Supreme Court in Francis Kariuki Muruatetu and Another v Republic and 5 Others [2016] eKLR; that the personal interest or stake must be clearly stated, the prejudice to be suffered if joinder is not allowed must also be demonstrated and an applicant must also set out the submissions it intends to make and they must not be a replication of what any of the other parties will be making.
5. To counsel, the intended interested parties have failed to demonstrate any identifiable stake in the suit property, and have equally failed to demonstrate that their presence in the suit will be necessary to



enable the court adjudicate all issues effectively. Counsel asserted that it is trite law that he who alleges must prove, as is the law under Section 107 (1) of the *Evidence Act*. To further support this proposition, counsel relied on the case of *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & another* [2005] 1 EA 334.

Analysis And Determination

6. I am of the considered opinion that the sole issue for determination arising therefrom is as follows: -
 - i. Whether the Intended Interested Parties should be joined as Interested Parties in the proceedings herein.
 - ii. Who should bear the costs of the application.
7. Order 1 Rule 10(2) of the Civil Procedure Rules 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.”
8. The Applicants herein have sought to be joined as interested parties for the alleged reason that they have been, together with their forefathers, in occupation of the suit property for over 100 years. They alleged that they were born and raised within the suit property.
9. Rule 2 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 defines an interested party 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;
10. The Black’s Law Dictionary defines an Interested Party as

“a party who has a recognizable stake (and therefore standing) in the matter.”
11. The Supreme Court of Kenya in *Communications Commission of Kenya and 4 Others -v- Royal Media Services Limited & 7 Others* Petition No. 15 of [2014] eKLR relied on its earlier decision and reiterated the following definition: -

“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?"

12. With the above, the question that follows therefore is whether the Applicants herein satisfy the criteria to be joined as interested parties. The law on joinder of interested parties to suits has been settled by the Supreme Court of Kenya in the case of Francis K. Muruatetu and another -v- Republic & 5 others [supra] cited to me by counsel for the Plaintiff. Similarly, in Skov Estate Limited & 5 others -v- Agricultural Development Corporation & another [2015] eKLR Justice Munyao Sila in dealing with the issue of an Interested Party seeking to be joined in a suit stated as follows: -

“In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party.

In other words, there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.”

13. The Applicants averred that they have been in occupation of the suit property for over 100 years. I have keenly perused the supporting affidavit, I see no document evidencing that allegation, not even photographs to show their occupation. The Plaintiff contested that it purchased the suit property in 2012, and that as at that time, the same was vacant and unoccupied, until sometime in the year 2014 when the 1st-4th Defendants trespassed thereon. I am therefore not convinced that the Applicants have established an identifiable stake over the suit property. For this reason, I find no merit in their application.



14. The upshot is that the Notice of Motion dated 16/10/2024 is hereby dismissed with costs. This matter shall be listed for mention on 30th April 2025 for issuance of a hearing date.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 25TH DAY OF MARCH 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

