



**Adventure Adrenaline Africa Limited v Hartley (Environment and Land
Appeal E001 of 2021) [2023] KEELC 17587 (KLR) (21 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 17587 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT AND LAND APPEAL E001 OF 2021**

**AE DENA, J
MARCH 21, 2023**

**BETWEEN
ADVENTURE ADRENALINE AFRICA LIMITED APPELLANT
AND
HELLEN KAY HARTLEY RESPONDENT**

(Appeal from a judgment of Yano J in Mombasa ELC 345 of 2017. On November 26, 2019)

RULING

1. I have read the application filed by the proposed interested party seeking to be joined as an interested party to these proceedings which to me is the first cause of business in the application having certified it urgent yesterday the 20/3/2023 for reasons that it was seeking to arrest my ruling that is scheduled for 21/3/2023 on the application for review. I will first render myself on the application for joinder as an interested party. The interested party seeks to be joined to these proceedings by dint of the judgement of the Court of Appeal No 39 of 2020 James Archer and Another Versus Inger Christine Archer, Hellen Hartley with the 2nd Respondent and Annalisa Acher Clark dated March 17, 2023 which declared the 1st Appellant James Acher and the 2nd Appellant Joanna and one Robert D Acher as holders of beneficiaries interest in properties that were subdivisions to the suit property in these proceedings. This was an appeal from a judgment of Yano J in Mombasa ELC 345 of 2017. On November 26, 2019 the suit properties that were subject of the appeal were registered in the names of Inger Christine Archer, Annalisa Acher Clark and Hellen Key Hartley (1st, 2nd, 3rd defendants in 347 of 2017). The Court of Appeal upon the aforesaid finding also made a declaration that properties the subject of the proceedings in 347 of 2017 which the suit property herein is a subdivision were held in trust by the said 3 Defendants/Respondents as constructive trustees for the plaintiffs/appellants in those proceedings and further that the 3rd defendant share is 25% jointly.



2. The applicant as beneficiary seeks to be included as a party to the present appeal where this court has already rendered judgment and is *functus officio*. Meanwhile I also note the dispute this court before landlord and tenant issues and not ownership of the suit property. I have keenly perused the orders that are sought and in my view they are orders that can only be addressed in Mombasa ELC 347 of 2017 where the Court of Appeal has already rendered itself on the issue of ownership. That is where the issue of ownership and protection of the trust are domiciled and can best be addressed. I see no merit in the application for joinder under these proceedings.
3. The properties are already protected under the judgment of the Court of Appeal where Hellen Hartley is a party. I equally do not see the justification for arresting my ruling. On the application for transfer of the file from Mombasa to Kwale that is Mombasa ELC 347 of 2017 the same should be made before the appropriate forum in Mombasa and thereafter the applicant can address before this court the issues once the file is properly before it.

DELIVERED AND DATED AT KWALE THIS 21ST DAY OF MARCH, 2023.

A.E. DENA

JUDGE

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Mr. Timothy I. A. Bryant for applicants/appellant

Ms Gitari holding brief for Mr. Muthama for the Respondent

Mr. Daniel Disii Court Assistant.

