



**Muvevi v National Land Commission & 2 others; William (Intended Interested Party)  
(Environment & Land Case E094 of 2021) [2023] KEELC 16448 (KLR) (20 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16448 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE E094 OF 2021**

**CA OCHIENG, J**

**MARCH 20, 2023**

**BETWEEN**

**GREGORY KAVIVYA MUVEVI ..... PLAINTIFF**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**ESTATE OF THE LATE GEDION MULI MUSEMBI ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**ONESMUS WILLIAM ..... INTENDED INTERESTED PARTY**

**RULING**

1. Through a Notice of Motion Application dated the August 31, 2022, the intended interested party/ applicant moved the court for the following orders:
  1. Spent
  2. That the honourable court be pleased to issue an order enjoining the applicant herein Onesmus William As an interested party in this matter.
  3. That upon granting prayer No. 2, the applicant herein be granted leave to file a replying affidavit, Defence and all other compliance documents within thirty (30) days.
  4. Costs be provided for.
2. The Application is premised on grounds on the face of it and supported by the affidavit of one Onesmus William where he deposes that there have been other suits determined between the late Gedion Muli Musembi and the Plaintiff wherein the Plaintiff has failed to prove his cases and the said



suits have been dismissed. He avers that the deceased beneficiaries have innocently inherited the land either by sale or by being survivors. He states that he purchased the suit land from the deceased during his lifetime and even started developing it. He contends that he needs to be joined to this suit to shed light into the matter and that his constitutional rights would be infringed upon, if the orders sought are not granted.

3. The plaintiff opposed the instant Application and alleged that he filed a replying affidavit which however was not on record. The defendants did not oppose the instant Application.
4. The Application was canvassed by way of written submissions.

### **Submission by the Applicant**

5. The applicant, in his written submissions alleges that the replying affidavit which was sent to him via WhatsApp did not bear a court Stamp. He explains that he was a former employee of the late Gideon Muli Musembi but later left for Nairobi to work as a driver. He claims at some point, the late Gideon had some financial difficulties and to solve his family issues and pay for legal services to his then advocates Mutinda Kimeu, contacted him and he agreed to offer him financial assistance in exchange for the suit land wherein they did a gentleman's agreement which was attested to, by witnesses who are still alive. He reiterates that the transfer plans were still pending when the deceased passed on. He also submitted that he had a right to purchase the suit land from the deceased. Further, that they are neighbours with the plaintiff and their village is aware of the dispute herein. He denies ever being served with any restraining orders, save for the first page of the Plaintiff which was shown to him by the local chief. He challenges the alleged replying affidavit for being improperly filed without a court stamp.

### **Submissions by the Plaintiff/Respondent**

6. The plaintiff submitted that the land parcel allegedly purchased by the applicant was Mwala/Kibao/117 and not Mwala/Kibao/888. He argued that in the documents attached by the Applicant, none referred to either Mwala/Kibao/117 nor Mwala/Kibao/888. He insisted that the Applicant had not met the threshold for joinder in this suit. He further submitted that a search on Mwala/Kibao/888 does not indicate whether there was a sale thereon. He reiterated that the land in issue and the land claimed by the applicant are two different parcels. To support his arguments, he relied on the following decisions: *Raila Amolo Odinga & another v IEBC & 2 others* [2017] eKLR and *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others* [2015] eKLR.

### **Analysis and Determination**

7. Upon consideration of the instant Notice of Motion Application including the respective affidavits, annexures as well as rivaling submissions, the only issue for determination is whether the applicant should be joined in this suit as an Interested Party.
8. As to whether the applicant should be joined as an interested party in this suit.
9. *Black's Law Dictionary*, 9<sup>th</sup> Edition defines an Interested Party as follows:

A party who has a recognizable stake (and therefore standing) in a matter.”
10. On joinder, Order 1 Rule 10(2) of the *Civil Procedure Rules* stipulates inter alia:

(2) 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 and settle all questions involved in the suit, be added.”

11. The Supreme Court in defining an interested party in the case of *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others* [2015] eKLR had this to say:

Consequently, 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.”

12. See also the case of *Communications Commission of Kenya and 4 others v Royal Media Services Limited & 7 others* [2014] eKLR.

13. In the current scenario, the applicant claims to be the beneficial owner of the parcel of land known as MWALA/KIBAO/888 and has annexed various documents including Acknowledgement of payments between the deceased and himself which are witnessed by different parties. On perusal of the Plaintiff under paragraph 7 it indicates that the defendants in 1973 demarcated the Plaintiff's land into two, being Mwala/Kibao/117 and Mwala/Kibao/888. It is further stated at paragraph 10 of the Plaintiff that the plaintiff did appeal against the injustice over the demarcation to the Minister of Land and the 3<sup>rd</sup> defendant was ordered to compensate the plaintiff for the same, but parcel number Mwala/Kibao/888 would remain in the 3<sup>rd</sup> defendant's name. From these averments alone, it emerges that the 3<sup>rd</sup> defendant took ownership of the suit land which both the plaintiff and the Applicant are claiming. I note it is only the plaintiff that has vehemently opposed the applicant's joinder in these proceedings. However, in relying on the legal provisions cited above as well as associating myself with the quoted decisions which have set out the principles for joinder of an Interested Party, it is my considered view that the Applicant indeed meets the criteria for joinder as it also purchased the disputed land from the deceased. I opine that the applicant's involvement in these proceedings is necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the dispute herein. Further, it will be affected by any decision from this suit and no prejudice will be suffered by the plaintiff if the applicant is joined in these proceedings as an interested party.

14. It is against the foregoing that I find the Notice of Motion Application dated the August 31, 2021 merited and will allow it.

15. The interested party granted leave of twenty one (21) days to file and serve his Pleadings.

Costs shall abide the outcome of the suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 20<sup>TH</sup> DAY OF MARCH, 2023**

**CHRISTINE OCHIENG**

**JUDGE**

