



**Karisa & 290 others v Ramadhan & 4 others; Said & 4 others (Intended Interested Party)
(Environment & Land Case 65 of 2019) [2023] KEELC 17009 (KLR) (25 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 17009 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 65 OF 2019**

**MAO ODENY, J
APRIL 25, 2023**

BETWEEN

JUSTUS JEFWA KARISA & 290 OTHERS APPLICANT

AND

RAMADHAN IDDI RAMADHAN 1ST RESPONDENT

**SABURI SHAABAN (AS THE ADMINISTRATOR OF THE ESTATE OF
SHAABAN SABURI SHAABAN 2ND RESPONDENT**

MUSA HASSAN JUMA 3RD RESPONDENT

JUMA HASSAN JUMA 4TH RESPONDENT

**5. SALIM BIN KHALIFAN LIWALI (DECEASED) THROUGH HIS
ADMINISTRATOR TWAHIR SALIM SOUD 5TH RESPONDENT**

AND

SEIF SAID INTENDED INTERESTED PARTY

THELMA ANDREW LYALL INTENDED INTERESTED PARTY

SULEIMAN MOHAMED SAID INTENDED INTERESTED PARTY

TWAHIR SALIM SOUD INTENDED INTERESTED PARTY

**5. ABBAS SOUD ALI (THE LEGAL ADMINISTRATORS OF THE
ESTATE OF THE LATE SALIM BIN KHALIFAN LIWALI OF
MOMBASA) INTENDED INTERESTED PARTY**



RULING

1. This ruling is in respect of a Notice of Motion dated November 1, 2021 by the Intended Interested Parties seeking the following orders:
 - a. Spent.
 - b. That Seif Said Seif, Thelma Andrew Lyall, Suleiman Mohamed Said and Abbas Soud Ali (the legal administrators of the estate of the late Salim Bin Khalfan, Liwali of Mombasa) be granted leave to be enjoined in this suit as an interested party forthwith before the matter proceeds to hearing.
 - c. That costs of the application be provided for.
2. The application is based on the grounds on the face of the application and the supporting affidavit of Seif Said Seif who deponed that he is the son of the late Said Bin Seif Al-Bussaidy the last administrator of the estate of the late Salim Bin Khalfan and together with the other interested parties, they are the great grandchildren of the late Salim Khalfan.
3. The Applicant deponed that the 1st to 4th Respondents are fraudulently posing as the grandsons of the late Salim Khalfan and obtained letters of administration in respect of the estate of the late Salim Bin Khalfan which they have moved to revoke and thus it is important the interested parties be joined in the suit to protect the interest of the estate.
4. According to Seif, the Respondents did not have any relation with the late Salim Bin Khalfan, Liwali of Mombasa and had fraudulently obtained letters of administration in Mombasa Succession Cause No 94 of 2011 and caused the property in dispute in this matter to be registered in their names. He further deponed that he was the administrator of his late father's estate who was the last administrator of the estate of the said Salim Bin Khalfan.
5. The Applicant also deponed that the Intended Interested Parties are the great grandchildren of the said Salim Bin Khalfan who died on July 10, 1920, and were appointed administrators of his estate in Malindi Kadhi Succession Cause No 14 of 2015.
6. The 1st and 2nd Respondents opposed the application vide a Replying Affidavit sworn on January 24, 2022 by the 1st Respondent who deposed that the estate of the said Salim Bin Khalfan was distributed as per a grant delivered in Mombasa P&A No 114 of 1920 and that the Intended Interested Parties' claim to be grandchildren of the said Salim Bin Khalfan was questionable.
7. Similarly, the 3rd and 4th Respondents opposed the application vide a Replying Affidavit sworn on January 24, 2022 by Musa Hassan Juma, who reiterated the contents of what was deposed by the 1st Respondent.

Applicants' Submissions

8. Counsel for the Intended Interested Parties identified two issues for determination and submitted that the test is not whether the joinder of the person proposed to be added as an Interested Party would be according to or against the wishes of the petitioner or whether the joinder would involve an investigation into a question not arising on the cause of action averred by the petitioner. It is whether the intended interested party has an identifiable stake, or a legal interest or duty in the proceedings.



9. On the first issue whether the Interested Parties have an identifiable stake, legal interest and duty in the proceedings counsel relied on the cases of *Osugo Paul Makombi v Britam Genral Insurance Co Limited; Samuel Ondieki Momanyi (intended Interested Party)* [2021] eKLR; and in *Bomet Technical Institute Limited t/a Lomu Investments v Joel Maritim & 21 others; County Government of Bomet (Interested Party)* [2019] eKLR where the Court explained the principles on joinder of an interested party to proceedings.
10. Counsel submitted that the Intended Interested Parties have a genuine interest in the suit as they represent the rightful heirs and administrators of the estate of Salim Bin Khalfan and that the information they hold would be relevant in effectively determining the issues in this suit.
11. Counsel cited the case of *Francis Mwobobia V Invesco Insurance Co Limited; Mwirigi Muguna Nkoroi (Intended Interested Party/Applicant)* (2021) eKLR, where the court relied on the case of *Civicon Limited v Kivu Watt Limited & 2 Others, Civil Appeal No 45 of 2014* (2015) eKLR where Makdhandia, Ouko (as he then was) & M'Inoti JJA cited with approval the other case of *Gurtner vs Circuit* (1968) I ALL ER 328 on joinder of necessary parties to a suit.
12. Counsel therefore submitted that the 1st to 4th Respondents will not be prejudiced if the Intended Interested Parties are joined in the suit and urged the court to allow the application.

Respondents' submissions

13. Counsel for the 1st and 2nd respondents submitted that the dispute before the court is between the Applicants in the Originating Summons who are the alleged squatters to the land parcel plot No 39 and the beneficial owners of the land, through a will that was authenticated, scrutinized and sanctioned by the Kadhi Court Malindi under Cause No. 107 of 2007 and which has never been challenged up to today.
14. Mr Muriuki further submitted that the Kadhi Court Cause No 107 of 2007, as per the Succession laws of Kenya *CAP 160*, was transmitted to the High Court of Kenya through the Malindi High Court Cause No 14 of 2008 which was subsequently transferred to Mombasa as High Court Succession Cause P&A 94 of 2011 and which grant was confirmed by Lady Justice Maureen Odero on September 11, 2012 and that the same has never been challenged in the High Court.
15. It was counsel's submission that the Applicants and the Bakhsweni family challenged the grant and were granted leave to appeal but did not do so after the hearing in HCC P&A 94 of 2011. Counsel further submitted that the proposed Interested Parties have not come to court with clean hands as they have a hidden agenda in their desire to join these proceedings.
16. Counsel also stated that the Intended Interested Parties have failed to demonstrate that they have a legal stake in these proceedings and relied on the cases of *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others* [2014] eKLR and *Francis Karioko Muruatetu & Another v Republic & 5 others* [2016] eKLR and urged the court to dismiss the application.
17. Counsel for the 3rd and 4th Respondents submitted that the Intended Interested Parties did not meet the threshold for joinder as outlined in the case of *Hamisi Yawa & 36,000 others v Tsangwa Ngala Chome & 19 others* [2018] eKLR where the court held that joinder of a party is not an automatic right, but one which is granted upon exercise of the discretion of the court concerned. Counsel further cited the case of *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others* (2017) eKLR.



18. Ms Aoko further submitted that the applicants have failed to demonstrate a legitimate and identifiable stake in these proceedings as they did to attach a grant identifying them as administrators of the estate of Salim Bin Khalfan, as such, non-joinder will not in any way prejudice them.
19. Counsel finally submitted that the issues being raised by the Intended Interested Parties would convolute the proceedings by introducing new issues not contemplated by the claim for adverse possession which is the basis of this suit and urged the court to dismiss the application with costs.

Analysis And Determination

20. The issue for determination is whether the Applicants have met the threshold for joinder as interested parties in these proceedings.
21. Although the *Civil Procedure Act* does not expressly provide for joinder of Interested parties to a suit, courts have used Order 1 Rule 10(2) of the Civil Procedure Rules and precedents set giving the essentials that must be met before a party is joined as an interested party.
22. 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 and settle all questions involved in the suit, be added.”

23. In the case of *Lucy Nungari Ngigi & 128 Others –v- National Bank Of Kenya Limited & Another* [2015] eKLR the Court stated as follows when considering whether to grant leave to join a party in proceedings: -

“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 persons brought separate suits, any common question of law of fact would arise. See also Order 7 Rule 9 of the *Civil Procedure Rules*. The court may even in its own motion add a party to the suit if such party is necessary for the determination of the real matter in dispute or whose presence is necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit. Therefore, joinder of parties is permitted by law and it can be done at any stage of the proceedings. But, 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; is unnecessary; or will just occasion unnecessary delay or costs on the parties in the suit. In other word, joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible to or totally different from existing cause of action or the relief. The determining factor in joinder of parties is that a common question of fact or law would arise between the existing and the intended parties.”



24. Similarly in the case of *Judicial Service Commission –v- Speaker of the National Assembly & another* [2013] eKLR, the High Court defined an interested party as follows:-
- “...a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to urge the Court to make a determination favourable to his stake in the proceedings.”
25. Further in the case of the case of Francis Kariuki Muruatetu & another v Republic & 5 others; Supreme Court Pet. 15 and 16 of 2015, [2016] eKLR (*supra*) where the Supreme Court (Rawal, DCJ & V-P; Ibrahim, Ojwang, Wanjala & Njoki, SCJJ) established the tests for joinder of interested parties as follows:
- “From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party:
- One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:
- i) The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
 - ii) The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
 - iii) Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.”
26. The Interested Parties herein sought to be joined to these proceedings on the grounds that they are the administrators of the estate of the late Salim Bin Khalfan, the owner of the suit land identified as Plot No 39 Ganda/Mgulureni, Malindi which they claim was fraudulently registered in the names of the 1st to 4th Respondents without their knowledge.
27. The court has the discretion to join or strike out parties in a suit. A party seeking to be joined must establish that it has a legal stake in the suit and that it is a necessary party to the suit. Once a party is joined they are still under a duty to prove this stake that they claim as it cannot be a walk in the park once joined.
28. The applicants have claimed many things including that they are the rightful heirs of the owner of the suit land, fraudulent transfer of the suit land and pending Successions causes.
29. The Plaintiff was not opposed to the joinder of the applicants. It is the respondents who were opposed to the joinder of the Applicants. The respondents will have a chance to interrogate all the issue that the applicants are raising and counter them though evidence. The joinder of the proposed interested parties will not prejudice the respondents. The court does not want these parties to go back and forth on the issue of who is the rightful owner of the suit land. Their joinder will not convolute the issues as submitted by counsel.



30. I have considered the application, submissions by counsel and the relevant judicial authorities and find that the application has merit hence allowed with costs in the cause.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 25TH DAY OF APRIL, 2023.

M A ODENY

JUDGE

