



Masinjila ((Suing as the legal representative of the Estate of Joshua Andala Masinjira (Deceased)) v Solmat Enterprises & 2 others; Kamau (Proposed Interested Party ((Suing on behalf of the Catholic Diocese of Kitale)) (Environment & Land Case 37 (E033) of 2021) [2023] KEELC 17006 (KLR) (25 April 2023) (Ruling)

Neutral citation: [2023] KEELC 17006 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 37 (E033) OF 2021**

FO NYAGAKA, J

APRIL 25, 2023

BETWEEN

**TOM ANDALA MASINJILA PLAINTIFF
(SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JOSHUA
ANDALA MASINJIRA (DECEASED)**

AND

**SOLMAT ENTERPRISES 1ST DEFENDANT
ISAAC MACHARIA 2ND DEFENDANT
COUNTY LAND REGISTRAR, TRANS NZOIA COUNTY 3RD DEFENDANT**

AND

**JOHN MUIYURO KAMAU PROPOSED INTERESTED PARTY
(SUING ON BEHALF OF THE CATHOLIC DIOCESE OF KITALE)**

RULING

1. The proposed interested party moved this court by way of an application dated 02/06/2022. He brought it under order 40 rules 1 and 2 and order 1 rule 10(2) of the *Civil Procedure Rules, 2010* and sections 1A, 1B, 3, 3A and 63(e) of the *Civil Procedure Act* and (what he called) all enabling provisions of law. He sought the following reliefs:-
 1. That the Catholic Diocese of Kitale, the proposed interested party, be enjoined in these proceedings in order for the real issue in controversy to be properly determined with finality.
 2. ...spent



3. ...spent
 4. That these proceedings be stayed pending the hearing and determination of Kitale ELC No. 71 of 2020.
 5. That costs of this Application be in the cause.
2. The Application was based on the following grounds. That the proposed interested party seeks the relief of adverse possession in Kitale ELC No. 71 of 2020 with respect to LR. Kitale Municipality Block 3/333. The proposed interested party had obtained orders of status quo ante the institution of the instant proceedings vide a ruling delivered on 22/09/2021 and the said orders still persist until the determination of the Originating Summons in Kitale ELC No. 71 of 2020. The subject matter in the two suits is the same. The outcome of Kitale ELC No. 71 of 2020 would affect the outcome of the instant case. That since there were interim orders in Kitale ELC No. 71 of 2020 it was prudent that they apply to the instant suit. There was need to preserve the suit land and the prevailing status quo pending the hearing of the main cause. This application would prevent duplicity of suits and the court from issuing diverse orders and thereby embarrassing itself. The Applicant would suffer substantial loss and damage if the orders sought were not granted. The Application was brought promptly in the best interest of justice and fairness. The other parties would not be prejudiced in any way if the orders sought were not granted.
 3. The Application was supported by the Affidavit of John Muiyuro Kamau sworn on 2/06/2022. He deponed that he had the authority of the Proposed Interested Party to institute and or defend cases over LR. Kitale Municipality Block 3/333 in that behalf. He annexed to the affidavit and marked as “A” a copy of a resolution to that effect. He stated further that the Proposed Interested Party instituted Kitale ELC No. 71 of 2020 in which it sought orders of adverse possession. He annexed and marked as “B” a copy of the Originating Summons of the said matter. He repeated as depositions the contents of the grounds in support of the application. Thus, this Court sees no need of rehashing them as depositions at this point but will consider them as such. He annexed to the Affidavit and marked as “C” a copy of the ruling delivered on 22/09/2021 in Kitale ELC No 71 of 2020. He deponed that the Court had unfettered discretion to grant the orders sought herein in the best interest of justice.
 4. The plaintiff opposed the application through grounds of opposition dated 7/06/2022 and filed on 20/06/2022. The grounds were that the application was vexatious, defective and an abuse of the due process of the court as the Applicant lacked *locus standi* to move the Court. The proposed interested party had not demonstrated that he was a proper party and the ultimate decree could not be enforced without his presence or that his presence is necessary to enable the effective and complete adjudication of the suit. That the orders sought were not obtainable since they were substantive ones and sought by one who was not yet enjoined in the suit. That the application was baseless, misconceived and an abuse of the process of the Court.
 5. The 1st defendant too opposed the application on a number of grounds, being that it was bad in law, a non-starter, poorly drafted and incurably defective. Also, that it was an abuse of the process of the Court and did not meet the provisions of the law it was brought under. The other ground was that the supporting Affidavit offended order 19 rule 3(1) of the *Civil Procedure Rules*. That the Application was drafted by a stranger and a “shot in the dark, dead on arrival.” Lastly, that the Application was frivolous, vexatious and untenable.
 6. The court directed the parties to file written submissions on the application. On his part, the Applicant began his submissions by summarizing the law he cited, the content and issues in the application. He summed it that he applied for joinder to the suit as an interested party and conservatory or preservative



- orders, and directions to the Land Registrar, Trans Nzoia County. His further submission was that the suit land was similar to the one in issue in ELC. No. 71 of 2020 and that in that suit interim orders were issued by the trial Court of concurrent jurisdiction and confirmed on 22/09/2022. He submitted that they were in place, had neither been reviewed nor appealed against.
7. He then submitted that order 1 rule 10(2) of the *Civil Procedure Rules* empowered this Court to add or strike out a name of a party either on its own motion or by application of a party as it may deem necessary to enable it to effectually and completely adjudicate and settle questions in a matter before it. He submitted that where there is a right to any relief arising from the same transaction or act or series of acts alleged to exist jointly or severally, joinder should be allowed as a matter of right. To him the point the court bears in mind is whether there is a common question of fact or law between the existing and interested parties. He then submitted that the ownership of land parcel LR. No. Kitale Municipality/Block 3/333 was a common question between the parties herein and the Proposed Interested Party hence allowing the instant application would avoid duplicity of suits.
 8. He relied on the case of *Aharub Ebrahim Khatiri v Nelso Marwa* [2017] eKLR wherein the High Court held that the proposed interest applicant needs only to demonstrate an interest in the subject suit matter. He also relied on the definition of an interested party in Black's Law Dictionary, 8th edition, and rule 2 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* on the definition of such a party. He also relied on the Supreme Court case of *Francis Kariuki Muruatetu & another v. Republic & 5 others* [2016] eKLR which cited with approval the one of *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others* [2014] eKLR. In the matter the Court defined who an interested party is. He also cited the case of *Meme v Republic* [2004] 1 E.A. 124 wherein the High Court was of the view that a party may be enjoined in a suit because his presence would result in the complete settlement of all questions involved in the matter, it would protect the rights of a party who would otherwise be adversely affected in law, and prevent a proliferation of litigation.
 9. The Applicant then turned to defining who a necessary party is. He relied on the *Black's Law Dictionary*, 9th Edition's definition, and the case of *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others* [2017] eKLR. In the matter, Mativo J (as he then was) explained when a person may be joined as an interested party. He said that in determining whether or not an applicant should be enjoined as an interested party, the test is not so much in the analysis of what constitutes his rights but rather in would be result on the subject matter of the action if the applicant's rights could be established. He repeated the clarion call that an applicant must always have an interest in the pending litigation but the interest must be legal, identifiable or demonstrate a duty by him.
 10. The Applicant finally submitted that prayer 4 of the application sought stay of proceedings pending the determination of Kitale ELC No. 71 of 2020 whose decision is likely to conflict with the instant one.
 11. On the issue of the opposition by the Plaintiff that the applicant lacked locus standi, the applicant submitted that the resolution passed by the meeting held on 20/11/2020 authorizing him to institute proceedings for and on behalf of the Catholic Diocese as evidenced in Annexure "A" was sufficient to enable him bring the application, and prayed that it be allowed.
 12. As for the Plaintiff he submitted on three issues he opined were for determination by the Court. The first one was whether the Applicant had locus standi to bring the Application; whether he could be enjoined in the proceedings; and whether the orders sought could be granted.



13. On the First issue, he submitted that the Catholic Diocese of Kitale was an entity registered under the [Societies Act](#). His view was that an entity registered as such could only sue through its Chairman, Secretary and Treasurer, or through individuals named in the constitution of the entity. He submitted that the Applicant was neither a trustee of the Catholic Diocese of Kitale nor the Bishop or such other official. He stated that the Applicant did not annex the constitution of the proposed interested party. His argument was that the authorization by way of Minutes of a meeting of the entity was not known in law and lacked a legal basis. He summed it that the application was fatally defective.
14. On the second ground, he submitted that the Applicant had not met the threshold of admission as an interested party. He submitted that the applicant did not establish the nexus between himself and the issues in the suit. Further, that he did not demonstrate that he was a proper party and that the decree could not be enforced without his presence or that his presence could effectively adjudicate the issues in this suit. He relied on the case of [Shioling Supermarket vs. Jimmy Ondicho Nyabuti & 2 others](#) [2018] eKLR. In the authority, the judge held that the test in applications for joinder is, whether the applicant has an identifiable interest in the subject matter, even though the interest may not succeed, whether the applicant is a necessary party whose presence must be made in order to effectually and completely adjudicate the issue at hand. For that reason, the Plaintiff submitted that the applicant had no identifiable or tangible interest in the sui land.
15. About the third issue, which is whether the Court could grant the orders sought, the Plaintiff submitted that besides the prayer for joinder, the Applicant sought substantive orders which could not be granted to a proposed interest party. He stated that such orders could only be available to substantive or parties to a suit. He repeated the orders sought by the applicant, being the one of injunction. His view was that order 40 rules 1 & 2 of the [Civil Procedure Rules](#) is available to a party who can show that he has a *prima facie* case, and that as of necessity means that the applicant ought to be a main party to a suit.
16. On the submission, he relied on the case of [Mukoma wa Njiri v. National Land Commission & another; Jimna Njuguna Kimunya & another \(Interested Party\)](#) [2021] eKLR. In the case, the Court held that the prayer for an injunction could only be given to a party who had filed suit or to a defendant or respondent who had filed a Counter-claim, and the party seeking the order must demonstrate that he has a *prima facie* case. The judge in that matter relied on the Court of Appeal case of [Mrao Ltd v. First American Bank of Kenya Ltd & 2 others](#) [2003] eKLR.

Issues, Analysis and Determination

17. I have considered the Application, the submissions made thereon, the law and the case law. I am of the view that the following issues lie before me for determination.
 - a. Whether the prayer for stay of proceedings is premature.
 - b. Whether the Supporting Affidavit offends order 19 rule 3(1) of the [Civil Procedure Rules](#).
 - c. Whether the Applicant has locus standi to bring this Application
 - d. Whether the Application for joinder is merited.
 - e. Who to bear the costs of the Application.
18. The Application before me contained two substantive prayers, namely, one for joinder as an interested party, and the other for stay of proceedings in the present suit pending the hearing and determination of Kitale ELC No. 71 of 2020. It would be important to determine the issues outlined above since the merits or otherwise of one leads to making a finding on the subsequent one.



19. I start with considering the issue raised by the 1st Defendant that Order 19 Rule 3(1) was breached by the Applicant through the supporting affidavit to the application. Order 19 rule 3(1) of the [Civil Procedure Rules](#) provides that
- “Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove:
- Provided that in interlocutory proceedings, or by leave of the court, an affidavit may contain statements of information and belief showing the sources and grounds thereof.”
20. The 1st Defendant did not submit before the Court how the supporting Affidavit of the Applicant fell short of the requirements of the sub-rule or the consequences of the breach thereof. He did not specify which of the paragraphs of the impugned affidavit went contrary to the provision. Suffice it to say that the supporting affidavit sworn by John Muiyuro Kamau on 2/06/2023 and I find that it contains facts, and those facts are within the knowledge of the Applicant. Thus, the ground fails.
21. The next issue is whether the prayer in the instant application for stay of proceedings is premature or not or capable of being granted. The Applicant who moved this Court for the prayer of stay of proceedings in the instant Application is a Proposed Interested Party. An Interested Party is defined, under Rule 2 of The [Constitution of Kenya \(Protection of Rights and Fundamental Freedoms\) Practice and Procedure Rules, 2013](#) (referred to herein as the Mutunga Rules, 2013), Gazetted on 28/06/2013, as “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.” In other words, there has to be a nexus between who the person is and the existing proceedings by way of a stake or legal duty.
22. In the case of [Francis Kariuki Muruatetu & another v Republic & 5 others](#), Petition 15 as consolidated with 16 of 2013 [2016] eKLR, the Supreme Court of Kenya set out guidance on the requirements for successful application for joinder as an Interested Party. At paragraph 37 it gave three principles to be followed, by stating that the Applicant(s) must show:
- (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.
23. Rule 7(1) of the same Rules, being the [Mutunga Rules, 2013](#) provides that “A person, with leave of the Court, may make an oral or written application to be joined as an interested party.” This means that anyone wishing to be enjoined as an interested party has to seek the leave of the Court to do so. What then is the position of a person who has not been granted leave of the Court to be enjoined as such. He/she is a stranger to the proceedings. He is neither a party nor participant. In such circumstances he does not enjoy the position of a party to the proceedings. It means further that he does not have the rights and duties of a party to the suit or proceedings. Parties to the suits are the only ones who have



the capacity to move the Court substantively unless leave is granted to them to do so, for instance, as *amicus curiae*.

24. The above analysis means that a person who intends to move or moves the Court to be enjoined as an interested party is only a proposed interested party in so far as the proceedings are concerned. Whatever prayers he makes before being enjoined, other than the one for leave to be enjoined are made by a stranger and cannot be allowed before the party is enjoined in the proceedings. The rationale behind that is that it is possible that the Court may make an order for a party to be enjoined to the proceedings. Supposing it does so while granting other orders that are substantive and the joinder is not made? It would have amounted to an abuse of the process of the Court. In the circumstances this Court finds prayer 4 of the instant application incompetent and premature hence incapable of being granted. Does the applicant meet the requirements set out in the *Muruatetu case* (supra)? This Court can only answer the question better by looking at the next issue.

25. I now turn to the issue which if the answer thereto is affirmative shall dispose of the instant application. The Plaintiff argued that the Applicant did not have *locus standi* to bring the instant application. In the case of *Law Society of Kenya v Commissioner of Lands & others*, Nakuru High Court Civil Case No.464 of 2000, the Court held that:

“Locus Standi signifies a right to be heard, A person must have sufficiency of interest to sustain his standing to sue in Court of Law”. Further in the case of *Alfred Njau and Others v City Council of Nairobi* (1982) KAR 229, the Court also held that:-

“the term locus standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”.

26. Locus standi is defined in Bryan Garner’s (2019) *Black’s Law Dictionary*, 11th Edition, Thompson Reuters, p. 1128 as “the right to bring an action or to be heard in a given forum”. On the same page, the said Dictionary states that the phrase denotes a Latin term meaning “place of standing.” It merely means that the party in relation to whom the issue is raised has what it takes to bring the claim or be before the Court. Once it is determined to be lacking the party has no basis of being in Court hence the issue he has brought to could should not be entertained by the Court. The matter he brought before the Court goes out with him/her.

27. In *Joseph Muriuki Kitbinji v Peterson Ileri Mwaniki & 3 others* [2021] eKLR, the learned Judge held as follows:

“A claim that one has no locus standi therefore challenges a party’s right to be heard before a court and if a determination is made in the affirmative then this issue has the capability of disposing of the suit. A claim that a party lacks locus standi therefore is a pure point of law and one that needs to be raised and determined at the earliest.”

28. The basis for the claim that the Applicant has no locus standi is that he had filed an application seeking to enjoin him to act for and on behalf of an entity that, under the *Societies Act*, should be represented by other persons other than him. The reason for this claim is that the entity, which is the Catholic Diocese of Kitale, which the applicant seeks to represent in Court is religious body registered under the Act. That being the case, by virtue of the Act, such a party cannot represent it: it cannot also be enjoined to the instant suit as it is purported to be done through the orders sought.



29. In *Peter Ngugi Geoffrey and 3 others vs Muthini SDA Church* (2019) eKLR, the judge held as follows:

“In the plaint the Defendant is described as a church registered under the *Societies Act*. The plaint has not exhibited any form of registration in respect to the Defendant’s entity. It is trite that a nonjuristic person is incapable of suing or being sued in its name. If indeed the Defendant is registered under the *Societies Act*, then the right thing was to have it sued through its officials. None has been disclosed.

In the instant matter, the suit was filed against a religious organization. It is not a corporate body which would then mean it would be sued as a legal personality. That being so it lacks the capacity to be sued in its own name? A society can only sue or be sued through its officials. This is the law. Having failed to sue the officials or trustees of the Defendant or the specific members of the defendant find that the preliminary objection as raised is a pure point of law.”

30. In the instant case, the applicant moved the Court for him to be enjoined in his individual capacity as a representative of the Catholic Diocese of Kitale. He claims to have had the authority being donated to him vide a resolution of the church, given through Min. 2/20 Nov. 2020 - Nomination of Mr. John Muiyori Kamau - A Representative. It was part of the annexure JMK 1.

31. I have considered the nomination vis-à-vis the law on representation of a religious organization or indeed a body duly registered under the *Societies Act*. I find no provision in the law that authorizes an organization of the sort to delegate the authority to sue or be sued to persons other than and acting in the capacity of its officials. To permit this applicant herein to purport to be enjoined for and on behalf of the entity herein named as the Catholic Diocese of Kitale would be permitting an illegality. I therefore politely decline to grant the prayer for joinder.

32. The upshot is that the application dated 02/06/2022 is hereby refused. It is dismissed with costs to the respondents.

33. The matter shall be mentioned virtually on 26/04/2023 at 8.30 am for further directions.

RULING DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL THIS 25TH DAY OF APRIL, 2023.

HON. DR. IUR FRED NYAGAKA

JUDGE, ELC KITALE

