



**Josiah v Bank of Africa & another; Ngangi (Intended Interested Party)
(Commercial Case 1 of 2021) [2023] KEHC 23565 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 23565 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
COMMERCIAL CASE 1 OF 2021
DO CHEPKWONY, J
JULY 27, 2023**

BETWEEN

WILLIAM KURIA JOSIAH PLAINTIFF

AND

BANK OF AFRICA 1ST DEFENDANT

REGENT AUCTIONEERS 2ND DEFENDANT

AND

PETER NJUGUNA NGANGI INTENDED INTERESTED PARTY

RULING

1. For determination before this Court is an Amended Notice of Motion Application dated 23rd January, 2023, which seeks the following orders:
 - a. This Honourable Court be pleased to grant leave to the Applicant to be joined in the proceedings herein as Interested Party.
 - b. This Honourable Court be pleased to declare that the Applicant herein being the highest bidder of all that piece of land known as Limuru/Bibirioni/T909 vide a public auction held on 24th November, 2020 at ksh 10,500,000.00 is the *bona fide*, legal and rightful owner of that piece of land.
 - c. This Honourable Court be pleased to declare that the sale by way of public auction held on 24th November, 2020 by the 2nd Defendant was lawful and therefore the Plaintiff/Respondent herein has no legal title whatsoever over all that piece of land known as Limuru/Bibirioni/T909.



- d. That upon granting prayer no (2) and (3) above this Honourable court be pleased to order the Plaintiff to remove himself and/or any other person that he may have placed on Limuru/Bibirioni/T909 forthwith and in default the Plaintiff and/or such persons be forcibly removed from the land and vacant possession be given to the Applicant herein.
 - e. That costs of and incidental to this application be provided for.
2. The Application is based on the grounds on its face and the Supporting Affidavit of Peter Njuguna Ngangi sworn on 23rd January, 2023 wherein the Applicant avers that he purchased the suit properties at the public auction of 24th November, 2020 for which he paid ksh 10,500,000.00 and was issued with the original title deed and the transfer documents so that he could transfer it to his name. According to the Applicant, despite paying the full purchase price and effecting the transfer of ownership to his name, the Plaintiff refused to give him vacant possession of the land and has continued occupying the land illegally. The Applicant further contends that the transfer and change of ownership was effected at the Kiambu Lands Registry and he was issued with title deed in his name over the land.
 3. The Applicant states that in the event the Plaintiff is not evicted from the land he stands to suffer irreparable loss as he invested a colossal amount to secure the property rights and should be allowed to participate in these proceedings.
 4. The application has been opposed *vide* a Replying Affidavit sworn on 18th April, 2023 in which the Plaintiff states that the Applicant does not only seek enjoinder into the suit but a declaration that he was the highest bidder and for eviction orders to issue, which can only issue upon hearing the case on its merits. He states that the public auction was marred with irregularities or illegalities since the Applicant was connected to the 2nd Defendant hence was not an innocent purchaser for value but one who orchestrated the sale.
 5. The Plaintiff holds that at the time the public auction was being conducted, there was a case pending in court and orders prohibiting the said auction. The Plaintiff also states that the transfer of the land into the Plaintiff's name was illegal since it emanated from an illegal transaction and therefore the application should not be allowed as it is a ploy aimed at misleading the court to issue illegal orders.
 6. Pursuant to the court's directions issued on 15th March, 2023, the Application was disposed off by way of written submissions. The Applicant's Submissions dated 29th March, 2023 raised one issue for determination whether the Applicant should be enjoined in the proceedings. The Plaintiff's submissions dated 14th April, 2023 raised two issues whether the Applicant should be enjoined in the proceedings and whether prayers no 2, 3 and 4 are tenable at this stage.

Analysis and Determination

7. Upon considering the application, the affidavit is supported in opposition thereof together with the submission filed by either party, the main issues for determination are:-
 - a. Whether the Applicant should be enjoined in the proceedings; and,
 - b. Whether the court should grant the orders sought.
8. With regard to the issue of joinder of parties, the first port of call is Order 1 Rule 10(2) of the [Civil Procedure Rules](#) which 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.”

9. An Interested Party is defined under Rule 2 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, 2013 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 Supreme Court of Kenya in the case of *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 in the Mumo Matemo where it defines who an Interested Party is, and held as follows:

“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?”
11. In this case, the Interested Party claims that he purchased the suit properties in a public auction at a sum of ksh 10,500,000.00 and was issued the title deed and duly completed transfer forms with which he registered the property in his name. The Plaintiff/Respondent on the other hand, while not denying the sale of the suit property to the Applicant/Intended Interested Party, claims that the sale by public auction was irregular, illegal and marred with fraud sine it was conducted when there was a pending case in court with orders prohibiting the same. The Plaintiff also claims that the Applicant orchestrated the sale and is therefore not an innocent purchaser for value. In view of this who contesting positions, it is clear that the Applicant has a stake in these proceedings and any orders issued will affect him either positively or negatively. For that reason, the Applicant is a necessary party to the suit and he is therefore granted leave to be enjoined in the proceedings herein.
12. The next issue is whether the Applicant is entitled to the orders that there be a Declaration that the Interested Party is the lawful owner of the subject properties; that the public auction conducted on 24th November, 2020 is lawful and that there be an order for the eviction of the Plaintiff from the suit. Clearly, the orders being sought are about proprietary rights, process and eviction being, which cannot



issue without parties being heard on merit at full trial. The same cannot issue at such interlocutory stage.

13. In that regard, the Notice of Motion Application dated 23rd January, 2023 be and is hereby partially allowed in the following terms:-
- a. The Applicant(Intended Interested Party) be and is hereby granted leave to join the suit herein as an Interested Party.
 - b. Prayers no 2, 3 and 4 of the application are hereby struck out.
 - c. Having agreed to compromise the applications dated 20th March, 2023 and 3rd June, 2023, the Plaintiff is granted leave to file and serve an Amended Plaintiff within twenty-one (21) days from the date hereof and the other parties to equally file and sere their Amended Defence and or Defence with twenty-one (21) days of being served with the Plaintiff's Amended Plaintiff.
 - d. Costs shall be in the cause of the main trial.
 - e. Mention on 4th September, 2023 before the Deputy Registrar for parties to confirm pre-trial conference.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 27TH DAY OF JULY, 2023.

D.O CHEPKWONY

JUDGE

In the presence of:

Mr. Onchiri counsel for Plaintiff/Respondent

Mr. Mbatha holding brief for Wathuti for Interested Party

M/S Kale holding brief for Mr. Mugishe, counsel for 1st Defendant

Court Assistant – Martin

