



**Kanambiu & another v Muriithi; Kanambiu (Proposed Interested Party) (Civil Appeal 029 of 2022) [2023] KEHC 21818 (KLR) (9 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21818 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CIVIL APPEAL 029 OF 2022  
LM NJUGUNA, J  
AUGUST 9, 2023**

**BETWEEN**

**EDITH GATURI KANAMBIU ..... APPELLANT**

**AND**

**FAITH WANJIRA K KABURI ..... APPLICANT**

**AND**

**KAREN WAWIRA MURIITHI ..... RESPONDENT**

**AND**

**DOROTHY KARIMIH KANAMBIU ..... PROPOSED INTERESTED PARTY**

**RULING**

1. The applicant filed a notice of motion dated 16<sup>th</sup> September 2022 seeking to be enjoined in the suit as an interested party and that she be allowed to plead and sign on behalf of the 1<sup>st</sup> respondent. It was also her prayer that costs abide the outcome of the appeal. The application was premised on the grounds on its face and in the affidavits deposited by Faith Wanjira K. Kaburi and the applicant.
2. The applicant is a beneficiary of the estate of Kanambiu Kaburi alias Silas Muriithi (deceased) through certificate of confirmation of grant issued on 25<sup>th</sup> January 2021. It was the applicant's case that she has been given consent to represent her siblings in the appeal and the outcome of the appeal will affect her. That her joinder in the appeal will assist in effectual determination of the appeal through disclosure of relevant facts. That she is also seeking to be allowed to plead and sign on behalf of the 1<sup>st</sup> respondent who is the applicant's mother and whose health is deteriorating fact. The 1<sup>st</sup> respondent also deposited stating that the proposed interested party can plead on her behalf.
3. The application was contested by way of a notice of preliminary objection dated 31<sup>st</sup> October 2022 wherein the appellant stated that the applicant cannot purport to be an interested party and also plead



on behalf of the 1<sup>st</sup> respondent. That moreover, the proposed interested party was not a party to the lower court cause and therefore, cannot substitute the 1<sup>st</sup> respondent in the appeal. The appellant further averred that the 1<sup>st</sup> respondent is still alive and healthy and has participated in the cause as the administrator of the estate of the deceased. She termed the application as fatally defective and an abuse of the process of the court.

4. The applicant filed a replying affidavit to the preliminary objection reiterating that she rightfully seeks to be enjoined in the appeal as an interested party and with authority to plead on behalf of the 1<sup>st</sup> respondent. It was her argument that the prayers sought sits well in this court as the 1<sup>st</sup> respondent is indeed in poor health and medical reports were produced in proof. That if she is enjoined as an interested party, she will make an impactful contribution to the appeal, whose subject is revocation of grant and more so regarding the interests of 1<sup>st</sup> respondent's house in the estate of the deceased.
5. The court directed that the application be canvassed by way of written submissions.
6. The 1<sup>st</sup> respondent and the proposed interested party/ applicant filed their submissions wherein they relied on the case of *Mukisa Biscuit Manufacturing Co. Ltd Vs. West End Distributors Ltd* (1969) EA 696 in their argument that the preliminary objection failed to highlight points of law as the case should be. That it cannot be raised where the facts need to be ascertained or if what is sought is within the discretion of the court. They also stated that if the orders prayed for are granted, the appellant will not suffer any harm. In support of the prayer for enjoinder of as interested party, they relied on the cases of *Communication Commission of Kenya & 4 others Vs. Royal Media Services Limited & 7 others* (2014) eKLR and *Meme Vs. Republic* (2004) 1 EA 124.
7. Upon perusal of the application, the responses and written submissions on record, I deduce that the issues for determination are:
  - a. Whether or not the applicant should be enjoined as an interested party to the appeal; and
  - b. Whether the applicant should be allowed to plead on behalf of the 1<sup>st</sup> respondent.
8. On the issue of joinder as an interested party, Rule 2 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 defines an interested party as:

“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.”

Similarly, in the case of *Trusted Society of Human Rights Alliance Vs Mumo Matemo & 5 others* [2015] eKLR it was held:

“...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.”



9. In the case of *Francis Kariuki Muruatetu & Another Vs Republic & 5 others* Petition 15 as consolidated with 16 of 2013 [2016] eKLR the court discussed the guiding principles of enjoining interested parties:

“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.”
1. In the present case, the proposed interested party is a beneficiary of the estate of the deceased vide certificate of confirmation of grant issued on 25<sup>th</sup> January 2021 culminating from grant of letters of administration issued on 08<sup>th</sup> December 2008 which is the subject of the appeal. The applicant has pleaded that she has the consent of other beneficiaries of the estate namely Tom Munene Kanambiu, Charles Mucangi Kanambiu and David Kariuki Kanambiu to act on their behalf in the appeal. I have perused the record of appeal and the lower court proceedings and in my view, the applicant should be enjoined as formally prayed, given that she is a beneficiary of the estate of the deceased, her participation in the cause will be useful in assisting the court to determine the matter before it.
  2. As to her prayer to be allowed to substitute the 1<sup>st</sup> respondent, the applicant has produced a consent and authority to plead, deposed on oath by the 1<sup>st</sup> respondent. I note that according to the response to replying affidavit, the 1<sup>st</sup> respondent is alive but of ill health. The nature of sickness relates to memory loss. This court is not able to grant this order as prayed by the applicant through this application. Rather, a formal petition ought to be filed under the Part XII of the *Mental Health Act* Cap. 248 of the Laws of Kenya, demonstrating that the incapacity of the 1<sup>st</sup> respondent is of a mental nature and that the orders be granted therein to the applicant to substitute her as respondent. As such, the court can only consider the prayer by the applicant to be enjoined as interested party. In the case of *Shiuling Supermarket Limited Vs Jimmy Ondicho Nyabuti And 2 Others* (2018) eKLR the court was faced with the issue of who should be enjoined as a party to a suit and opined as follows:

The test in applications for joinder is firstly, whether an applicant can demonstrate he has an identifiable interest in the subject matter in the litigation though the interest need not be such interest as must succeed at the end of the trial. Secondly, and in the alternative it must be shown that the applicant is a necessary party whose presence is necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. Has the applicant demonstrated he has sufficient interest in the subject matter of the suit or that he is



a necessary party whose presence is necessary to enable the court to effectually and completely adjudicate upon all the issues in the suit?

12. In the end, I do find that the best person to champion the interests of the applicant as a beneficiary to the estate of the deceased, is herself. Therefore, this application partially succeeds and I do make the following orders:

- a. That the preliminary objection dated 31<sup>st</sup> October 2022 hereby fails;
- b. That the applicant is hereby admitted to the appeal as an interested party; and
- c. Each party to bear their own costs

13. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 9<sup>TH</sup> DAY OF AUGUST, 2023.**

**L. NJUGUNA**

**JUDGE**

.....for the Appellant

.....for the Respondents

.....for the Proposed Interested Party/Applicant

