



REPUBLIC OF KENYA



Precepts Holding Limited v Johana; Ntutu (Proposed Interested Party) (Environment & Land Case 8 of 2021) [2023] KEELC 16858 (KLR) (19 April 2023) (Ruling)

Neutral citation: [2023] KEELC 16858 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE 8 OF 2021
EM WASHE, J
APRIL 19, 2023
FORMERLY NAROK NO. E003 OF 2020**

BETWEEN

PRECEPTS HOLDING LIMITED PLAINTIFF

AND

NGENO KIPYEGON JOHANA DEFENDANT

AND

TATIANA NAIYIANOI NTUTU PROPOSED INTERESTED PARTY

RULING

1. The Proposed Interested Party (hereinafter referred to as “the Applicant”) approached this Court through a Notice of Motion Application dated December 20, 2022 (hereinafter referred to as “the present application”) seeking for the following Orders; -
 - i. That the instant matter be certified urgent and service be dispensed with in the first instance. (spent)
 - ii. That pending the hearing and determination of this Application, this Honourable Court be pleased to grant a stay of execution of eviction orders issued by the Honourable Justice E M Washe in his judgement delivered on January 24, 2022 and the subsequent decree issued on March 25, 2022.(spent)
 - iii. That Tatiana Naiyianoi Ntutu be enjoined in these proceedings as an Interested Party.
 - iv. That the costs of the Application be provided for.
2. The grounds upon which the Applicant relied in the present Application are as follows; -



- a. The Applicant herein was the Defendant's wife.
 - b. The Applicant was not aware of the Judgement pronounced on January 24, 2022 in relation to the property known as L R No transmara/Kimintet "C"/65 until December 8, 2022 when she was served with an eviction notice thereof.
 - c. At the time of being served with the eviction Notice by the Plaintiff's agents, the Defendant was out of the Country.
 - d. Consequently, the Applicant herein sought to be joined as a party to this suit as she had an interested in the property known as L R No transmara/Kimintet "C"/65.
 - e. Further to that, the Applicant sought for a stay of execution of the eviction orders issued against the Defendant as an amicable solution is explored.
 - f. The Applicant further stated that the property known as L R No transmara/Kimintet "C"/65 was her matrimonial home with the Defendant and she would strive to liquidate whatever amount of balance was outstanding to avoid being evicted.
3. The grounds outlined hereinabove were further reiterated in the Applicant's supporting Affidavit sworn on December 8, 2022.
 4. The present Application was served on both the Plaintiff and Respondent herein being the Respondents thereof.
 5. The Plaintiff opposed the Application by filing a replying Affidavit sworn on January 17, 2023.
 6. The Plaintiff reasons for opposing the present Application can be summarised as follows; -
 - a. Indeed, the Applicant was the wife of the Defendant herein.
 - b. However, the Applicant was never a party to the Agreement For Sale between the Plaintiff and the Defendant herein.
 - c. Consequently thereof, there was no interest and/or right vested in the Applicant that would make her an interested party in this suit.
 - d. Further to that, the Plaintiff stated that there was cause of action and/or relief sought against the Applicant and therefore cannot be joined as an Interested Party.
 - e. The Plaintiff indicated that the present Application was a way of re-opening the case and should be denied.
 - f. Lastly, the Plaintiff pleaded that the present Application is an abuse of Court process and should be dismissed with costs.
 7. The Defendant who was the 2nd Respondent in the present Application did file any response thereof.
 8. In an effort to settle the matter amicably, the Court encouraged the parties to attempt Alternative Justice System by engaging elders to ensure compliance of the Order orders issued on January 24, 2022 without creating animosity between the two parties.
 9. Unfortunately, this attempt did not succeed and the parties requested the court to make its determination in the present Application.
 10. It is also important to note that the Applicant and the Plaintiff who is a Respondent in the present Application did not file their written submissions.



11. Be as it may, the Court shall rely on the pleadings filed by the parties and make its determination thereof.
12. The issue for determination in the present application is only one which is whether or not the Applicant is to be join as an Interested Party.
13. The Applicant's position is that as the wife of the Defendant, the suit property known as L R No transmara/Kimintet "C"/65 is their matrimonial home with the Defendant herein.
14. Consequently therefore, the eminent eviction orders issued by this Court would affect her directly.
15. Further to that, the Applicant makes a commitment to help liquidate the outstanding amount owed to the Plaintiff herein as provided in the Judgement pronounced on January 24, 2022.
16. In the case of *Jeremiah Maztagaro versus Ezekiel Misango Mutisya* (2014) eKLR, the Court made the following observation; -

“A proper party is one who is impleaded in the suit and qualifies the thresholds of a plaintiff or defendant under Order 1 rule 1 and 2 respectively, or as a third party or as an interested party and whose presence is necessary or relevant for the determination of the real matter in dispute or to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. And the court has a wide discretion to even order suo moto for a party to be impleaded whose presence may be necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. Accordingly, a suit cannot be defeated for mis-joinder or non-joinder of parties.”

17. In another case of *Kenya Medical Laboratory Technicians & Technologists Board & 6 Others versus The Attorney General & 4 Others* (2017) eKLR where it was held 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.

In determining whether or not an applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party the true test lies not so much in an analysis of what are the constituents of the applicant's rights, but rather in what would be the result on the subject-matter of the action if those rights could be established.

18. Being guided by the above decisions which this Court concurs with fully, a perusal of the grounds in the present Application do not provide the appropriate evidence to enable the Court make an order of joinder in favour of the Applicant.
19. The reason is that the Applicant apart from the fact that she is a wife to the Defendant has not pointed out any legal interest claims from the Plaintiff emanating from the Agreement For Sale dated July 14, 2020.
20. Similar, the Applicant has not placed before the Court any facts and/or evidence that she would possibly present to the Court that would assist and/or help in the determination of the dispute between the Plaintiff and the Defendant.



21. In other words, the Applicant herein in the Court's considered view cannot qualify to be join as a party or an interested party and her participation is not necessary thereof.
22. In addition to the above determination, this Court is further guided by the decision in the case of *OKiya Omtatab Okoiti-versus- Central Bank Of Kenya & 7 Others* (Application No.33 of 2018) (2019) eKLR where the Supreme Court stated as follows; -

“In addition, there is no substantive appeal before us to enable us decide on this application for stay of execution one way or the other. Orders cannot be granted in a vacuum or on a whim. It is the Petition of Appeal that indicates the substratum of a party's case and whether interim orders should be granted or not. Without it, no orders can ordinarily issue.”
23. The interpretation of the above decision by this Court is that before an order is issued pursuant to an Interlocutory application, there must be a pending suit or an Appeal.
24. In this present application, the suit in which the Applicant is seeking to join was determined way back on January 24, 2022.
25. So far, no party has appealed against the said judgement pronounced on January 24, 2022 and therefore there is no existing suit of which the Applicant can join and/or participate thereof as envisaged under Order 1 Rule 10 of the *Civil Procedure Rules, 2010*.
26. In conclusion therefore, the present application is not merited and the Court hereby makes the following Orders; -
 - A. The application dated December 20, 2022 be and is hereby dismissed with costs.
 - B. The orders of stay of the eviction exercise issued on December 20, 2022 be and are hereby set-aside and/or vacated forthwith.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 19TH APRIL, 2023.

EMMANUEL M WASHE

JUDGE

In The Presence Of:

Court Assistant: Ngeno/mempe

Advocate For The Applicant: Mr Ngaruiya

Advocate For The Respondent: Mr Mugumya

