



Farah v Arale & another; Arale (Applicant) (Civil Case E001 of 2022) [2023] KEELC 17704 (KLR) (25 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17704 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT GARISSA
CIVIL CASE E001 OF 2022
JM MUTUNGI, J
MAY 25, 2023**

BETWEEN

**NUR OLOW FARAH AKA OLOW FARAH AKA DIRIYE MOHAMED
OLOW PLAINTIFF**

AND

**MOHAMED MUDE ARALE 1ST DEFENDANT
MUSLIMA AHMED 2ND DEFENDANT**

AND

OMAR MUDA ARALE APPLICANT

RULING

1. Before me for determination is the Applicant’s application dated March 6, 2023. By the application the Applicant seeks to be joined as an interested party and to be allowed to participate in the suit. The Applicant’s application is premised on the grounds that the Applicant is the brother to the 1st Defendant and Brother in Law to the 2nd Defendant while Muda Arale Farah (now deceased) who had initially been named as the 3rd Defendant was the Applicant’s and 1st Defendant’s father. The Applicant averred that his deceased father was allocated plot No 2664 by the defunct County Council of Wajir and that the 1st and 2nd Defendants reside thereon.
2. The Applicant avers that he was granted an Ad litem Grant of Letters of Administration to his late father’s estate and he therefore has the legal mandate to represent the interest of his late father’s estate in the proceedings. The Applicant in his Affidavit in support of the application explained that his late father had sued the Plaintiff and Wajir County Government in Wajir Magistrate’s Court Civil Case No 17 of 2015 and obtained Judgment in his favour but the Plaintiff lodged an Appeal *vide* Garissa ELC Appeal No E002 of 2020 which Appeal was successful and the Judgment of the Lower Court was set aside. The Applicant’s deceased father being dissatisfied and aggrieved by the decision of the



ELC Court gave notice to appeal to the Court of Appeal but he died before he had lodged the Appeal which prompted the Applicant to apply for grant of Letters Ad Litem to be able to pursue the Appeal in the Court of Appeal and has now filed the Appeal in the Court of Appeal. In the suit before the Lower Court and the Appeal before the ELC Court and the Appeal before the Court of Appeal the subject matter is Plot No R2664 Wajir.

3. In the suit before this Court, the Plaintiff claims ownership of Plot No R2664 Bulla Jogoo Wajir and seeks an order that the Defendants do vacate the plot failing which they be evicted and damages for trespass. In the initial plaint dated January 10, 2022 the deceased Muda Arale Farah was named as the 1st Defendant but he was deleted as a party in the Amended Plaint dated May 11, 2022 filed in Court in the same date.
4. The Plaintiff/Respondent in opposing the Applicant's application dated March 16, 2023 filed grounds of opposition dated March 21, 2023. The parties canvassed the application by way of written submissions. The Applicants written submissions dated April 25, 2023 were filed on April 26, 2023 while the Plaintiff's submissions dated April 26, 2023 were filed on April 27, 2023.
5. The Applicant in his submissions maintained that he had a legal stake in the subject matter of the proceedings and consequently he was a necessary party in the proceedings as any decision the Court may make was likely to affect the estate of his late father who he represents. The Applicant placed reliance on the Supreme Court Case *Trusted Society of Human Rights Alliance vs Mumo Matemu & 5 Others*(2014) eKLR where the Court held thus:-

“ ---- an Interested Party is one who has a stake in the proceedings, though he or she was not party to the cause abinitio. 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 ----“

The Applicant also placed reliance on the case of *Communications Commission of Kenya & 4 Others vs Royal Media Services Ltd & 7 Others*(2014) eKLR where the Supreme Court held,

“ ---- A party could be joined in a matter for the reason that;

- i. Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
 - ii. Joinder to provide protection of the rights of a party who would otherwise be adversely affected in Law;
 - iii. Joinder to prevent a likely cause of proliferated litigation.”
6. The Plaintiff in his submissions contended the Applicant's application was premised on irrelevant provisions of the Law as the application had cited Articles 40 and 259 of the *Constitution* which had no application to an application for joinder.
 7. The Applicant however had cited Section 1A, 1B, 3 and 3A of the *Civil Procedure Act* and Order 1 Rule 10(2) and Order 51 Rule 1 of the *Civil Procedure Rules* which in my view left no doubt as to what the nature of the application was. It was an application where the Applicant sought to be joined to the proceedings on behalf of his late father's estate as he contended his father had an interest in the suit property and as the appointed Administrator he sought to be joined in the proceedings he was a necessary party.



8. The Respondent has taken issue with the orders sought by the Applicant in the application arguing that the Applicant has sought to be “enjoined” and not “joined” as an Interested Party in the proceedings. The Respondent avers that the word “enjoin” means to injunct or bar a party from doing something. With respect I think the Respondent is merely splitting hairs as from the application and the Supporting Affidavit it is patently clear that the Applicant seeks to be joined as a party so that he could safeguard the interest of his deceased father on behalf of his estate in the disputed plot No 2664 Wajir which his father was pursuing and in respect of which there is active litigation in the Court of Appeal.

Order 1 Rule 10(2) of the Civil Procedure Rules provides for joinder of parties at any stage of the proceedings and provides as follows:-

“10(2) 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.”

9. The criteria whether a party should be joined to any proceedings is whether such a party as any interest in the subject matter of the proceedings and whether he is a necessary party to enable, the Court to completely adjudicate all the issues arising in the suit. In the instant matter, it is a fact that the Plaintiff and the deceased father have been engaged in litigation involving Plot No R2664 Wajir which each of them lays claim to. As evidenced in the annexures, the Applicant’s deceased father won the first round before the Magistrates Court and the plot was decreed to him. In the second round on Appeal before this Court, the Plaintiff was successful and the Magistrates decision was set aside. Following the death of the Applicant’s father, the Applicant applied and was granted leave to file, an Appeal against the decision of this Court in the Court of Appeal on behalf of the estate.

10. On the basis of the foregoing I am satisfied that the Applicant as the duly appointed personal representative of the estate of Muda Arale Farah has a legal interest in the suit property. He is a necessary party and his presence and participation will enable the Court to adjudicate all the issues arising in the suit fully. I am therefore persuaded it is appropriate and necessary to have the Applicant joined in these proceedings as an Interested Party to safeguard and ventilate the interests of the estate of his late father. I consequently allow the Applicant’s application dated March 16, 2023 and direct that Omar Muda Arale as the personal representative of the Estate of Muda Arale Farah (deceased) be joined in the proceedings as an Interested Party. The Interested Party is granted leave of 21 days from the date of this Ruling to file and serve his pleadings.

11. The Cost of the application shall be in the cause.

Orders accordingly.

RULING DELIVERED VIRTUALLY AT GARISSA THIS 25TH DAY OF MAY, 2023.

J. M. MUTUNGI

E.L.C JUDGE

CIVIL CASE NO. E001 OF 2022	0
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