



**Sprinter Real Estate Investment Limited v Diaspora Housing Management Limited; Njau & 27 others (Proposed Interested Parties) (Environment & Land Case E010 of 2022) [2023] KEELC 17709 (KLR) (23 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17709 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E010 OF 2022**

**JG KEMEL, J  
MAY 23, 2023**

**BETWEEN**

**SPRINTER REAL ESTATE INVESTMENT LIMITED ..... PLAINTIFF**

**AND**

**DIASPORA HOUSING MANAGEMENT LIMITED ..... DEFENDANT**

**AND**

**MORILLE NJAU ..... PROPOSED INTERESTED PARTY  
ONTARIO INC ..... PROPOSED INTERESTED PARTY  
ANNE NYAMBURA MWANGI ..... PROPOSED INTERESTED PARTY  
ANNAH WANJIRU KERETHI ..... PROPOSED INTERESTED PARTY  
ANNASTASIA NJERI MUNGA ..... PROPOSED INTERESTED PARTY  
ANTHONY NGATA KUNG’U ..... PROPOSED INTERESTED PARTY  
DENNIS ODHALO ..... PROPOSED INTERESTED PARTY  
EDWARD KINUTHIA MURUA ..... PROPOSED INTERESTED PARTY  
FLORENCE WARUGURU MUCHIRI ..... PROPOSED INTERESTED PARTY  
GEORGE KIINGATI KANGERE ..... PROPOSED INTERESTED PARTY  
GRACE MUTHONI KARANJA ..... PROPOSED INTERESTED PARTY  
GRACE NJERI NJAU ..... PROPOSED INTERESTED PARTY  
JACQUELINE OKWAYO ..... PROPOSED INTERESTED PARTY  
WELLINGTON TECHERA ..... PROPOSED INTERESTED PARTY  
JANE WAITHIRA KIGURU ..... PROPOSED INTERESTED PARTY**



**JESUS RESTORATION CENTRE ..... PROPOSED INTERESTED PARTY**  
**JOSEPH MUCHIRI NJIIRI ..... PROPOSED INTERESTED PARTY**  
**KARANJA WA MUIRURI ..... PROPOSED INTERESTED PARTY**  
**LOISE MUTHONI KINUTHIA ..... PROPOSED INTERESTED PARTY**  
**MARY NJAMI NJONJO ..... PROPOSED INTERESTED PARTY**  
**PETER NJIRI KIRUTHI ..... PROPOSED INTERESTED PARTY**  
**STEPHEN WAMBUA KASUVU ..... PROPOSED INTERESTED PARTY**  
**NAOMI MUTHEMBWA MBILI ..... PROPOSED INTERESTED PARTY**  
**TERESIAH MUTHONI NJUGUNA ..... PROPOSED INTERESTED PARTY**  
**TERESIAH WAMBUI KAMAU ..... PROPOSED INTERESTED PARTY**  
**TOBIAS MAHIRI ..... PROPOSED INTERESTED PARTY**  
**WILFRED KABURUNJE RUTH ..... PROPOSED INTERESTED PARTY**  
**ROSEMARY NJOKI KAGE ..... PROPOSED INTERESTED PARTY**

## **RULING**

1. This Ruling is in respect to the Application dated September 30, 2022 filed by the proposed Interested Parties.
2. The Proposed Interested Parties seek in the main an order to be joined in this suit as Interested Parties.
3. The Application is premised on the grounds that; the proposed Interested Parties are beneficial owners of land parcel No Kiambaa/Ruaka7048 (formerly Kiambu Ruaka/6495 and Kiambaa/Ruaka6496) (the suit land) having invested in the purchase of 69 units in the proposed off-plan Sectional properties being constructed on the suit land; they have paid a total sum of Kshs 166,438,452/= to Sprinter Real Estate Ltd and Diaspora Housing Management, the Plaintiff and Defendant herein; the construction of the Sectional properties has since stopped and the Interested Parties are apprehensive that the instant case is a choreographed scheme to defeat their interests thus putting their investment at risk of loss and wastage.
4. The Interested Parties aver that they are desirous of defending their collective interest in the suit properties thus making them necessary parties to be heard in the suit hence the Application. Further that the allegations of misrepresentation, fraud, misappropriation, embezzlement and theft of funds remitted by the Proposed Interested Parties which if proven will affect the interest of the Applicants occasioning them losses. That they are a necessary party in the suit to enable the Court adjudicate the common issues of fact and law in the suit in finality and that if the Application is denied they shall suffer irreparable damages as bonafide purchasers.
5. The Motion is further supported by the Affidavit sworn by Morille Njau, the 1<sup>st</sup> proposed Interested Party on 29/9/2022 with authority to depone on behalf of the rest of the Interested Parties annexed as MN (i). Reiterating the grounds in the Application, the deponent averred that on or around the year 2018 the Plaintiff/Respondent approached the Interested Parties through its United Kingdom agents to invest in the off plan project. The IPs paid down payments on their respective units to be constructed on the suit land leading to the total sum of Kshs 92,074,289 out of the total sum of Kshs



- 166,438,452/- invested with the Plaintiff and the Defendant respectively. That the substratum of the suit revolves around the construction and sale of off plan Sectional property units where the Interested Parties purchased around 69 units which have stopped.
6. That the Defendant/Respondent is the registered owner of the suit land as shown by title deed in its name annexed as MN (ii); and its Directors as evidenced by copy of the CR12 of the Defendant company as MN (iii). He also attached copies of Interested Parties contribution schedules and payments and urged the Court to allow the Application as prayed.
  7. The Application is opposed by the Plaintiff only.
  8. The Plaintiff's Director, Richard Mbugua Ng'ethe swore his Replying Affidavit on February 27, 2023. He avowed that the Applicant's Motion seeks prayers for joinder yet this Court on December 19, 2022 delivered a Ruling referring this suit to arbitration pursuant to an arbitration agreement between the Plaintiff and Defendant and granted status quo orders in the interim. That with the said Ruling still in force, the suit is set for Arbitration proceedings subject to its Application dated January 25, 2023. That since the proposed Interested Parties are not party to the Arbitral agreement prompting the arbitration proceedings, they cannot participate in the latter proceedings. Accordingly, the deponent urged that the Application be dismissed or be kept in abeyance pending the outcome of the arbitration proceedings.
  9. Directions were taken to prosecute the Application by way of written submissions.
  10. The proposed Interested Parties through the firm of Triple N W & Co. Advocates filed submissions dated March 13, 2023. They drew three issues for determination to wit; whether the 3<sup>rd</sup> to 30<sup>th</sup> proposed Interested Parties have sufficient interests in the suit properties to be enjoined as parties herein; whether the Plaintiff will suffer any prejudice if the Interested Parties are joined in the suit and who bears the costs of the Application.
  11. On the first issue, it was submitted that the Applicants are purchasers of off plan units which have now been halted by the Plaintiff/Respondent thus causing breach and loss to the proposed Interested Parties.
  12. It was submitted that for an Application for joinder to succeed one has to prove that the matter is pending before Court and they have interests therein. That they paid a colossal sum of Kshs 166,438,452/= to the Plaintiff and the Defendant respectively and any decision reached by this Hon Court or an arbitrator shall significantly affect them hence the need to have them joined as Interested Parties in this suit and the Arbitral proceedings.
  13. The Applicants have relied on a number of cases in support of their Application for joinder; *Hopf v Director of Survey & 2 Others*; *Sakaja & 2 Others (Interested Party)* ELC 4 of 2022; *Judicial Service Commission v Speaker of the National Assembly & Anor* [2013] eKLR ; *Mary Njeri Kabundi v Christine Mithiri Mbugua & 2 others* [2020] eKLR; *Communication Commission of Kenya & 4 Others v Royal Media Services Limited & 7 Others* Pet 15 of 2014) eKLR.
  14. They denied the Plaintiff's claims that the Interested Parties are not party to the Arbitral process arguing that the Arbitral process ought to recognize the validity of all the existing contracts between the parties concerned in order to arrive at a fair hearing and disposition of the matter.
  15. Secondly, that the Plaintiff has not demonstrated any prejudice it stands to suffer in its Replying Affidavit dated February 27, 2023. Hence it is in the interests of justice they be joined in the suit and arbitration proceedings. That to enable the Court and the arbitrator to efficaciously and completely



adjudicate upon all issues in conflict they should be joined in the suit. Last but not least allowing the Application will save judicial time from further litigation and unnecessary costs.

16. The firm of F N Njanja & Co Advocates filed submissions dated February 27, 2023 on behalf of the Plaintiff.
17. It was submitted that the Application is unmerited. The Plaintiff highlighted on the reference of this suit to arbitration proceedings pursuant to a sale agreement dated February 11, 2021 between the rival parties herein. Further that the Arbitral clause empowered this Court to grant preservatory orders to preserve the subject matter of the suit and there is no basis for the Interested Parties to participate in the arbitration they are not party to. That the Interested Parties can seek joinder after the conclusion of the arbitration proceedings. The Court was urged to dismiss the Application or leave it in abeyance pending the finalization of the arbitration process.

### **Analysis and determination**

18. The sole issue for determination is whether the Application is merited.
19. The *Black's Law Dictionary*, 9th Edition at page 1232 defines an Interested Party as a party who has a recognizable stake (and therefore standing) in the matter.
20. Whereas the *Civil Procedure Act*, Cap 21 is silent on the concept of "Interested Party", Order 1 Rule 10(2) of the *Civil Procedure Rules* (CPR) provides that;

“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”.
21. Additionally Rule 7 of the *Constitution of Kenya (Protection of Rights & Fundamental Freedoms) Practice & Procedure Rules, 2013* provides that an Interested Party can apply to be enjoined or the Court can move suo moto and enjoin a party to proceedings before it. Rule 2 thereof 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.
22. The principles for joinder of an Interested Party in a suit are now well settled. The Supreme Court in the case of *Francis Kariuki Muruatetu & Another v Republic & 5 Others* as consolidated with 16 of 2013; [2016] eKLR which set down the principles of joinder that;

“(37) From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an Interested Party:

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:

  - a. 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.

- b. 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.
- c. 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. Earlier on the apex Court in the case of *Communications Commission of Kenya & 4 Others v Royal Media Services Limited & 7 Others* [2014] eKLR affirmed that;

“

“(22) In determining whether the Applicant should be admitted into these proceedings as an Interested Party we are guided by this Court’s Ruling in the Mumo Matemo case where the Court (at paragraphs 14 and 18) held:

“[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...”

(23) 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 questions 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.”

24. The Supreme Court, in *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 Others* [2015] eKLR stated basically the same principles that is to say the Applicant has to have a stake in the subject matter before the Court, he has to show that he will be affected by the decision of the Court, and that his interests will not be articulated well in his absence from the proceedings. Additionally, in *Skov Estate Limited & 5 others v Agricultural Development Corporation and Another* [2015] eKLR, the Court emphasized the point that the Applicant in an Application of this nature must demonstrate that it is necessary that he/she be enjoined in the suit. That becomes important if he has to show that the issues before the Court cannot be effectively adjudicated upon in his absence. Being affected by the order of the Court is not enough. The Applicant must show that in addition to being affected the reliefs which will be granted will not be fully decided upon because an important element of fact, which he has, shall miss if he is not added to the proceedings.

25. I will now examine the case of the Applicants’ viz a viz the case of the Plaintiff and the Defendant in this matter.



26. In the existing suit the Plaintiff has sued the Defendant for breach of contract arising from the agreement for sale dated February 11, 2021. In the said agreement the Plaintiff agreed to sell the suit land (comprising of property development which consist of 90 residential units with related amenities) in which a substantial portion of the foundation for the apartments had already been constructed on the property including the pillars, ground floor slab and perimeter wall. The purchase price was agreed at Kshs 30 Million out of which a sum of Kshs 3.0 M being the deposit was payable at the execution of the agreement and the balance of the purchase piece would be paid upon the delivery of the completion documents. It was the Plaintiffs case that despite transferring the property to the Defendant, the Defendant failed to pay the deposit and to complete the agreement. The Plaintiff sought orders interalia; declaration that the Defendant is in breach of the agreement, revocation of the title in the name of the Defendant, Defendants continued possession and occupation of the suit land is illegal and unlawful.
27. The Applicants' case interalia as can be gleaned from the Application is that of a purchaser's interest. That they purchased 69 units from the Defendant and paid colossal sums of monies to both the Plaintiff and the Defendant. They have attached schedules and statements of various payments claimed to have been paid by the Applicants.
28. It is important to note that the Applicants have not annexed any agreements with the Defendants for the Court to appreciate the terms and conditions of the contractual transactions between the Applicants and the rival parties herein. Inter alia, whether their agreements included an Arbitral clause in form of dispute resolution. This evidence was not laid before the Court.
29. It is equally noted that the Defendant has not refuted the claim of the Interested Parties in the property. A perusal of paragraphs 2.1.41;2.1.4.3 and 2.1.4.3 of the agreement recognizes that some sales of the units have taken place.
30. In the Plaint one of the particulars of breach of contract is stated at Clause V as follows;

“Engaging the unit purchasers directly demanding payments from them yet it has not paid for the suit property. The Plaintiff has prayed that the title in the name of the Defendant be revoked, an action that will undoubtedly affect adversely the interests of the IPs as the substratum of the purchase will have changed hands.”
31. Both parties acknowledge that the Interested Parties have purchased units and made certain payments to either the Plaintiff and or the Defendant in furtherance of their purchases. It is commonly accepted that the construction has stalled and therefore their legitimate expectation of the final product may be affected.
32. Given the background as set out above the question is whether the Applicants have established that it is a necessary for joinder; that the issues before the Court cannot be effectively adjudicated upon in their absence; reliefs which will be granted will not be fully decided upon because of their absence. Having set out the case of the rival parties in the suit against the case of the Applicants, it is the holding of the Court that the cause of action of the rival parties in this suit is that of breach of contract while that of the Applicants is that of a purchaser's interest. The Interested Parties are not party to the arbitration agreement and therefore the issues in my view between the Plaintiff and the Defendant can be adjudicated effectively.
33. Further I find that the Interested Parties appear to be advancing a case that might require substantive prayers to be determined for its effective settlement of their grievances.



34. The Applicants have strongly urged the Court for joinder so that they can participate in this suit and the arbitration proceedings. The Applicants are not party to the agreement between the Plaintiff and the Defendant and therefore there is no privity of contract between the two. It is doubtful if they can participate in the Arbitral proceedings in the absence of an arbitration agreement.
35. In the end I find that another reason that militates against the granting of the Application for joinder is the subsistence of the orders of stay of proceedings. The question is whether there are any live proceedings in this suit to warrant the Court to entertain an Application for joinder
36. I rely on the decision of the Court in the case of *HOPF v Director of Survey & 2 others; Sakaja & 2 others (Interested Party)* [2022] EKLK where it was held that;
- “It is instructive to note that before a party is enjoined in a matter, the Court ought to satisfy itself that the proceedings are alive. That means that the suit must still be pending before the Court. Therefore, the Applicant must move the Court during the pendency of the proceedings in that matter. Again, besides the proceedings being pending there should be not bar to them going on, so much so that if there are orders staying the proceedings then the party cannot move the Court since the proceedings are ‘frozen’ until the orders are lifted, vacated or set aside.”
37. The *Black’s Law Dictionary* defines stay of proceedings as:-
- “The postponement or holding of a proceeding judgement or the like. An order to suspend all or part of a judicial proceeding or a judgment resulting from that proceeding.”
38. Section 6 of the *Arbitration Act* states as follows;
- “A Court before which proceedings are brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than the time when that party enters appearance or otherwise acknowledges the claim against which the stay of proceedings is sought, stay the proceedings and refer the parties to arbitration unless it finds-
- (a) That the arbitration agreement is null and void, inoperative or incapable of being performed; or
- (b) That there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration.”
39. The wording of Section 6 (2) are expressed in form of a command and therefore no room for exercise of discretion by the Court.
40. In this case this, the Court vide its Ruling delivered on December 19, 2022 pronounced itself inter alia; referred the suit for arbitration and stayed the suit pending the hearing and the determination of the arbitration. Consequently the holding of the Court is that there are no live or active proceedings in this matter. The suit is frozen, halted or is in dormancy pending the conclusion of the Arbitral proceedings. There is a bar to the suit proceedings until an eventuality is actualized. The orders of the Court have not been set aside, vacated and or appealed.
41. Given the scenario above joining the Applicants into a case that is frozen/halted creates a likelihood of conflict of decisions between that of the Court and the Arbitral body. Such a scenario must be discouraged as it is recipe for confusion leading to the erosion of the reputation of the Court.



42. I have perused the list of authorities in support of the Applicants Application and I must with respect state that they are distinguishable in that the Application for joinder was made in a live suit and not one that is stayed as is the case here.
43. All in all I must state that it is not lost on the part of the Interested Parties as not all the avenues to litigate their dispute are closed.
44. In the end I find the Application has no merit. It is dismissed with no orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 23RD DAY OF MAY, 2023  
VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

**Delivered online in the presence of**

**Njanja for Plaintiff**

**Mwendwa holding brief for Kithinji for Defendant**

**3<sup>rd</sup> – 27<sup>th</sup> Interested Parties – Absent**

**Court Assistants – Kevin & Lilian**

