



REPUBLIC OF KENYA



**KENYA LAW**  
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**JWK v KW (Civil Suit E017 of 2022)  
[2022] KEHC 12856 (KLR) (Family) (5 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12856 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY  
CIVIL SUIT E017 OF 2022**

**MA ODERO, J  
AUGUST 5, 2022**

**BETWEEN**

**JWK ..... APPLICANT**

**AND**

**KW ..... RESPONDENT**

**RULING**

1. Before this Court for determination is the Notice of Motion application dated April 12, 2022 by which the proposed Interested Parties RWM and JKW seek the following orders:-
  - “ 1. That the applicants herein RWM and JKW being interested and necessary parties be enjoined in this proceedings as Interested Parties.
  2. That on grant of Prayer 1 above, the Plaintiff do amend the Originating Summons application dated March 9, 2022 to include the Applicants as 1<sup>st</sup> and 2<sup>nd</sup> Interested parties and the same be served upon all the parties within 14 days of the order and the applicants be granted leave to file their response/ statements of defence and counter claim and another necessary documents within 14 days of service.
  3. That this Honourable court be pleased to grant such or other orders as it may deem fit in the interest of justice; and
  4. That the costs of this application be provided for.”
3. The application was premised upon Articles 40, 50 and 159 of *the Constitution* of Kenya 2010. Sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 1 Rule 1 & 2 and (4) and Order 51 Rule 1 of the



Civil Procedure Rules 2010, and was supported by the Affidavit of even date sworn by the Proposed Interested Parties.

4. The Plaintiff in this suit JWK opposed the application through her Replying Affidavit dated May 12, 2022. The Application was canvassed by way of written submissions. The Proposed Interested parties filed their submissions dated May 11, the Plaintiff relied upon her written submissions dated May 27, 2022.

## **Background**

5. The Plaintiff herein filed in the High Court the Notice of Motion application dated March 9, 2022 seeking orders against her husband KW (the Respondent) in respect of the property known as LR No. XXX/XXX/XX in the City of Nairobi (hereinafter the 'suit Property').
6. The Plaintiff alleged that she was the legal wife of the Defendant having been married to him for the past sixty-four (64) years. She avers that during the subsistence of their marriage the couple through joint effort acquired a variety of properties including L.R. No. XXX/XXX/XX in Nairobi. That the Defendant is in the process of disposing said matrimonial property without the consent of the Plaintiff. The Plaintiff avers that the Defendant has entered into a sale Agreement with third parties and has received an amount of Kshs 10,000,000 as advance payment (deposit) for the suit property.
7. The Plaintiff claims that she filed a caution against the suit property but alleges that the Defendant managed to vacate said caution. She now prays that the court make preservative orders to protect the suit property pending the determination of the suit.
8. The Defendant opposed the Plaintiff Application through her Replying Affidavit dated March 29, 2022.
9. At this point the Proposed Interested Parties filed their application dated April 12, 2022 seeking to be enjoined in the suit. The Proposed Interested parties allege that they are parties to the Sale Agreement dated 4<sup>th</sup> November 2021 made with the Defendant for the sale of LR No. XXX/XXXX/XXX at a consideration of Kshs 130,000,000/. That they have already paid a deposit of Kshs 10,000,000 for the suit property.
10. The Proposed Interested Parties contend that they have an identifiable legal interest in the suit property being a purchasers interest. That they stand to be affected in one way or another by the decision of this court and as such ought to be allowed an opportunity to participate and to articulate their interests in the suit.
11. The Proposed Interested Parties state that their participation is necessary as they have an identifiable claim against the parties in this cause. They urge that in the interest of justice they ought to be included as Interested Parties in this matter.
12. As stated earlier the application for joinder has been opposed by the Plaintiff who avers that the claim by the Proposed Interested Parties is contractual in nature as it relates to a perceived breach of Contract by the Defendant. That this cause relates to a dispute between husband and wife over matrimonial property and the Proposed Interested Parties have no familial ties/relationship with the Plaintiff or the Defendant.
13. It is urged that the Proposed Interested parties have no locus standi in this matter. That the current application is frivolous, vexatious and abuse of the court process. The Plaintiff prays that the application be dismissed in its entirety with costs.



## Analysis and Determination

14. I have carefully considered the application the Reply filed thereto as well as the written submissions filed by the parties. The only issue for determination is whether the Proposed Interested parties have met the threshold to be enjoined in this suit.
15. The suit before this court is a Matrimonial Cause. The issue requiring determination in the suit is whether the suit property comprises Matrimonial property.
16. The Proposed Interested Parties are persons who were intending to purchase the suit property. It is not in dispute that the Proposed Interested Parties entered into a Sale Agreement dated November 4, 2021 with the Defendant for the purchase of the suit property for a consideration of Kshs 130,000,000. A copy of the Sale Agreement duly executed by both parties appears as Annexure PWM '1' to the Supporting Affidavit dated April 12, 2022.
17. Similarly it is not in dispute that the Proposed Interested Parties paid a deposit of Kshs 10,000,000 towards the purchase of the suit property. Annexure RWM '1' are copies of various correspondence between the Advocates of the two parties in which the Purchasers authorized the release of Kshs 10,000,000 to the Vendor. After the advance payment had been made a transfer was prepared for execution by the parties. A copy of the undated and unexecuted transfer is annexed to this application.
18. However, the Defendant Advocate wrote to the Proposed Interested Parties the letter dated 25<sup>th</sup> March 2021 alerting the latter of the existence of a temporary injunction issued by the Family Division of the High Court restraining the Defendant from selling, transferring the suit property. They effectively stalled the sale process. The Proposed Interested Parties now pray to be enjoined in this suit on grounds that they have a stake in the/on the suit property.
19. The Plaintiff opposed the application arguing that the Proposed Interest Parties have no locus standi in this matter. The Proposed Interested Parties counter that they have a purchasers interest in the suit property, that their joinder was necessary in order for the issues before this court be fully settled.
20. *Black's Law Dictionary 10<sup>th</sup> Edition* defines the word 'Joinder' as  
"The inviting of parties or claims in a single law suit."
21. The Dictionary goes on to define 'compulsory joinder' as follows: -  
"The necessary joinder of a party if either of the following is true
  - (1) In that party's absence those already involved in the law suit cannot receive complete relief.
  - (2) The absent party claims an interest in the subject of an action so that the party's absence might either impair the protection of that interest or leave some other party subject to multiple or inconsistent obligations."
22. Generally courts have in their discretion permitted parties who demonstrate a sufficient interest in a matter to be enjoined as interested parties. Order 1 Rule 102 of the *Civil Procedure Rules* 2010 provides as follows:-  
"the court may at any stage of the proceedings, either upon or without application of either party and on such terms as may appear to the court to be just order the name of any party improperly joined, whether as a plaintiff or defendant, be struck out and the name of any



person who ought to have been joined, whether as a plaintiff or as a defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely adjudicate and settle all questions involved in the suit, be added.”

23. In the case of *Trusted Society of Human Rights Alliance – vs – Mumo Matemu & 5 others* [2014] eKLR the Supreme Court of Kenya stated as follows:-

“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 herself appears in the proceedings, and champions his or her cause.”

24. Likewise in *Francis Kariuki Muruatetu & another vs Republic & others* [2016] eKLR the Supreme Court set out the conditions a party must meet in order to be enjoined as an Interested party as follows:-

- 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.

25. This is a Matrimonial Cause. The dispute is between the parties to the marriage who are the Plaintiff and the Defendant. The Proposed Interested Parties are not parties to the marriage and as such would not be deemed to be the necessary parties in the suit.

26. The Proposed Interested Parties claim that their interest in the matter is the suit property, which they are in the process of purchasing. As at now the sale transaction in respect of the suit property has not been concluded. The purchasers have only paid a deposit of Kshs 10,000,000. The balance of the purchase price being Kshs 120,000,000 is yet to be paid and no transfer of the suit property has as yet been effected in favour of the Proposed Interested Parties.

27. Accordingly, the only real stake which the Proposed Interested Parties have in the matter is the Kshs 10 million deposit which they have paid. Although the Proposed Interested Parties allege that they have a claim against the parties in this suit the fact of the matter is that their Agreement was with the Defendant alone. They had no dealings whatsoever with the Plaintiff. In view of the fact that all that has been paid so far is a deposit. I find that the Proposed Interested Parties cannot claim an interest in the suit property as they have not paid the full purchase price. They are not as they claim Purchasers of the suit property but merely persons who have an interest in purchasing the same.

28. The transfer annexed to this application at pages 52-55 has not been executed. Therefore, the intended sale of the suit property is not complete. In any event, the Sale Agreement dated 4<sup>th</sup> November 2021 did make provision for the steps to be taken in event that a breach of contract occurred. Clause 10 of the Sale Agreement under the heading Failure to Complete provides for the steps which may be taken by the Purchasers in the event the Vendor (Respondent) fails to comply with the Agreement. The matter between the Defendant and the Proposed Interested parties is purely contractual. It is separate



and distinct from the dispute between the Plaintiff and the Defendant in this Matrimonial Cause. The remedy available to the Proposed Interested parties is to sue the Defendant in the Commercial Division of the High Court in order to recover the deposit paid rather than seeking to be enjoined in this matrimonial cause.

29. The Proposed Interested Parties have not demonstrated what, if any prejudice they are likely to suffer, if they are not enjoined in this Matrimonial Cause. The real issue for determination in this cause is whether the suit property constitutes matrimonial property. I do not believe that the Proposed Interested Parties can provide material evidence one way or another in respect of this question. Joinder of the Proposed Interested Parties will in my view serve only to prolong and cloud issues. The Proposed Interested Parties are seeking to drag this court into determining the question of breach of contract which is not the issue for determination in this Matrimonial Cause.

30. The Supreme Court in the case of *Communications Commissions of Kenya & 4 others v Royal Media Services Ltd* in declining a similar application for joinder of interested party held:-

“The applicant now seeks to be enjoined in this matter, even though it was neither a party at the High Court nor at the Court of Appeal. The applicant has not demonstrated how the ends of justice would better be served by enjoining it in the appeal. We cannot exercise our discretion to enjoin a party that disguises itself as an Interested Party, while in actual fact merely seeking to institute fresh cause. (Own emphasis)

31. The Proposed Interested Parties are trying to insinuate themselves into this Matrimonial Cause disguised as Interested parties when in fact they are actually seeking to institute a fresh cause of action against the Defendant herein. This, the court will not countenance

32. I find that the claim which the Proposed Interested Parties have is against the Defendant and not the Plaintiff. The proper venue for them to seek relief is the Commercial Division of the High Court. Their joinder in this matter is not necessary at all, as they have no locus standi in this matter. The participation of the Proposed Interested Parties is not necessary to assist the court determine the question in issue in this suit. Moreover, I find that there would be no prejudice to the Proposed Interested Parties if this application for joinder is denied. They are at liberty to file suit to recover the deposit paid to the Defendant. Accordingly, I find no merit in the application dated April 12, 2022. The same is dismissed in its entirety and costs are awarded to the Plaintiff.

**DATED IN NAIROBI THIS 5<sup>TH</sup> DAY OF AUGUST 2022.**

**MAUREEN A. ODERO**

**JUDGE**

