



Benedicta Welfare Association v Ngei II Kugeria Co. Ltd & 2 others; Maiyo & 4 others (Intended Interested Party) (Environment and Land Case Civil Suit 373 of 2019) [2023] KEELC 18467 (KLR) (29 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18467 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 373 OF 2019
LN MBUGUA, J
JUNE 29, 2023

BETWEEN

BENEDICTA WELFARE ASSOCIATION PLAINTIFF

AND

NGEI II KUGERIA CO. LTD 1ST DEFENDANT

DAVID WAWERU KINYANJUI (THE ADMINISTRATOR OF THE ESTATE OF THE LATE WAIRIMU KINYANJUI) 2ND DEFENDANT

RUTH WAMBUI KINYANJUI 3RD DEFENDANT

AND

WILLIAM KIPKETER MAIYO INTENDED INTERESTED PARTY

PURITY MUTINDI MUENDO INTENDED INTERESTED PARTY

ELIJAH JOMO OCHARO INTENDED INTERESTED PARTY

JOSEPH RUTO INTENDED INTERESTED PARTY

DANIEL KIPKURUI RONO INTENDED INTERESTED PARTY

RULING

1. Before this court for determination is the intended Interested parties' application for joinder dated March 15, 2023. The same is premised on the grounds on its face and on the 3rd Interested Party's supporting affidavit sworn on March 15, 2023. Their case is that they entered into an agreement with the 1st Defendant to purchase a subdivided portion of parcel LR No.6845/138. However, the said transaction was not completed prompting them to institute legal proceedings in MCCC/1646/2018 against the 1st Defendant for specific performance. The said suit culminated in a judgment in their



- favour awarding them portions of parcel 6845/138 namely; plot Nos.8, 9, 10, A54, A55, A16, A17, A27, A56, A25, 26, A63, A14, A130, A33, A41 and A20. They contend that any relief granted by this court without their participation may greatly prejudice their proprietary rights guaranteed under the Constitution. They aver that they have been in occupation of the suit plots for a period of over 20 years.
2. The applicants further contend that they initially purchased their respective plots from the 1st Defendant when both directors were alive, but after the death of Mburu Huho who was one of the directors, the remaining director, one Wairimu Kinyanjui (now deceased) began to resell some of the plots to other parties who are the Plaintiffs in this suit.
 3. The application is opposed by the Defendants vide the 3rd Defendant's replying affidavit sworn on June 5, 2023. She avers that the application is defective as the 3rd Intended Interested Party has not attached the authority in which he purports to swear the affidavit in support of the application. She further avers that no agreements/share certificates have been attached herein by the Intended Interested Parties to prove that they bought the alleged parcels from the 1st Defendant.
 4. She avers that it is shocking that the Interested Parties allege that they filed Milimani CMCC 1646 of 2018 against Wairimu Kinyanjui yet that person passed away in 2015; thus lacked the capacity to be sued in year 2018. She also avers that the Intended Interested Parties have not shown any nexus of their claim against the Defendants herein, thus their application should be dismissed.
 5. In response to the Defendants' replying affidavit, the Intended Interested Parties filed a further affidavit sworn by the 3rd Interested Party on June 13, 2023. He annexed a copy of authorization letter from the other interested Parties dated March 14, 2023. He also annexed certificates of sale dated October 23, 1992 for various plots, as well as a Letter of allotment dated August 29, 2008 for the suit parcel.
 6. Regarding suing Wairimu Kinyanjui, the applicants claim that they instituted the suit in year 2014.
 7. The application was canvassed by way of written submissions. The Interested Parties filed their written submissions dated 5.5.2023 where they contend that they have a legitimate interest in this matter as the parties in the suit MCC/1646/2018 are also parties in the current suit, of which the former suit went to full trial and judgement was delivered. They rely on the cases of Parmet Ole Kiseet v Sylvia Moi & 3 others; Ndegwa Kabogo (Interested Party) [2021] eKLR, Hopf v Director of Survey & 2 others; Sakaja & 2 others (Interested Party) (Environment & Land Case 4 of 2021) [2022] KEELC 6 (KLR) as well as the case of Gladys Nduku Nthuki v Letshego Kenya Limited; Mueni Charles Maingi (Intended Plaintiff)[2022] e KLR.
 8. The Defendants filed written submissions dated 6.6.2023. They rely on the case of Research International East Africa Ltd v Julius Arisi & 213 others [2007] eKLR as well as the case of Ndungu Mugoya & 473 others v Stephen Wang'ombe & 9 others [2005] eKLR to submit that the application is incompetent and should be struck out as it offends Order 1 Rule 13 (1) & (2) of the Civil Procedure Rules 2010.
 9. It is also their submission that the Defendants in Milimani CMCC 1646 of 2018 lacked capacity to be sued. They add that the Intended Interested Parties have failed to establish nexus between the claim and the Defendants herein. They rely on the case of *Skov Estate Limited & 5 others v Agricultural Development Corpoartion & another* [2015] eKLR and the case of *Marigat Group Ranch & 3 others v Wesley Chepkoiment & 19 others* [2014] eKLR to reiterate that the Intended Interested Parties have not demonstrated their interest in the subject matter herein.
 10. This suit was commenced vide a plaint dated November 22, 2019, where the Plaintiffs are claiming ownership of unidentified plots excised from parcel LR 6845/138 Embakasi. The Intended Interested



Parties seek orders joining them to the suit as Interested Parties on the basis that they also purchased plots excised from the same parcel, and that their specific plots have already been awarded to them by the Court in case MC.CC/1646/2018. The validity of the aforementioned case and the ensuing judgment cannot be put into question in the platform of the current application.

11. In the case of *Zephir Holdings Ltd v Mimosa Plantations Ltd, Jeremiah Maztagaro and Ezekiel Misango Mutisya* (2014) eKLR, the Court stated that:

“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.”

12. I find that the applicants have demonstrated to the satisfaction of this court that they have an interest in the subject matter and that they are necessary parties. In the circumstances, their application dated March 15, 2023 is hereby allowed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF JUNE 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/s Rashid for Applicants

Kirimi for defendants

Muriuki for Plaintiff

Court assistant: June

