



REPUBLIC OF KENYA



**PMI v CMK; FA (Intended Interested Party) (Civil Cause 65 of 2018)
[2022] KEHC 14314 (KLR) (Family) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14314 (KLR)

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

**FAMILY
CIVIL CAUSE 65 OF 2018**

AO MUCHELULE, J

OCTOBER 27, 2022

BETWEEN

PMI APPLICANT

AND

CMK RESPONDENT

AND

FA INTENDED INTERESTED PARTY

RULING

1. The applicant P.M.I. and the respondent C.M.K. got married on 10th December 2008 in Stavanger District Court in Norway and obtained a marriage certificate No. xxxx. The marriage was dissolved on 10th October 2017. The respondent came in the marriage with one issue, R.K.I.
2. In the originating summons filed on 25th October 2018, the applicant sought the declaration that the following properties were matrimonial properties acquired by their joint funds and efforts in equal share and therefore should be divided equally between them:-
 - a. matrimonial home house No. xxxx on title number Nairobi/Block xxxx;
 - b. L.R No. xxxx located in Runda in Nairobi;
 - c. L.R No. xxxx located in Runda in Nairobi;
 - d. Grant No. xxxx in Westlands in Nairobi.
3. The applicant's case was that the main source of the income that enabled the purchase of these properties was the proceeds from the sale of his house No. xxxx located in Jorpeland in Norway.



4. The respondent opposed the originating summons. She stated that she bought Grant No. xxxx in Westlands before the marriage; that after marriage the applicant gifted her house No. xxxx located in Jorpeland in Norway which she later sold owing to high maintenance costs, and then came to Kenya and bought house No. xxxx on Title No. Nairobi/Block xxxx; and she bought the two Runda properties using her own funds and loans sourced from her friend Farouk Abon on the understanding that she would be registered as their owner and refund the loans but that if she did not refund he would have an interest in the properties. She sought the dismissal of the suit with costs.
5. The applicant has testified and has called a witness A.A.O. who stated that she is his wife since July 2019. A.A.O. has not completed her testimony.
6. It is at this stage that Farouk Abon has applied to be joined in the proceedings as an interested party. His case is that he is the true owner of the two Runda properties which he bought from Rolf Erik Janony and paid for, but that because he was out of the country he got the respondent to be registered as the owner subject to his rights and she executed a declaration of trust in that regard. He annexed to his application an agreement of sale of the two properties (LR No. xxxx and LR No. xxxx) between him and the seller and the declaration of trust, dated 12th March 2012 and 6th November 2012, respectively.
7. A.A.O. (the applicant's wife who has a power of attorney) opposed the application, saying that the same was an afterthought being brought three years after the commencement of the suit. Her case was that FA had not proved that he was the owner of the two Runda properties, as the properties were matrimonial properties between the applicant and the respondent. She contended that the correspondence between the respondent and Farouk Abon over the properties was not definitive, and that the deed of declaration was not registered. Lastly, she stated that the case by FA was in total contradiction of the respondent's response to the originating summons.
8. Rolf Erik Janony swore an affidavit to support what FA had deponed.
9. FA seeks to be joined in these proceedings as an interested party to protect his stake in the two Runda properties. It is considered that, as early as 11th February 2019 when the respondent filed the response to the originating summons she mentioned that FA was the source of the funds to purchase the two properties and that there was an understanding that if she failed to refund the money he would have a stake in the properties. I mention this because of the contention by the applicant through his wife that the application is an afterthought. Of course, the truthfulness of the evidence of the parties, including the respondent and FA, will be weighed by the trial court against the rest of the evidence in the matter.
10. It is trite that, under Order 1 of the *Civil Procedure Rules* the court has wide discretion in an application for joinder of a party to an ongoing suit. Indeed, joinder should be permitted of all parties in whom any right to relief in respect of or arising out of the same transaction or series of acts or transactions is alleged to exist, whether jointly, severally, or in the alternative, where if such persons brought separate suits, any common question of law would arise (*Lucy Nungari Ngigi & 128 Others -v- National Bank of Kenya Ltd & Another* [2015]eKLR). All that the court will be looking for is whether the presence of the party seeking to be joined is necessary in order to enable the effective and complete adjudication of the dispute in order to settle all the questions in the matter.
11. In *Francis Kariuki Muruatetu & Another -v- Republic & Others* [2016]eKLR, the Supreme Court of Kenya stated that a party seeking to be joined in a cause as an interested party should have a personal interest or stake in the cause; an interest that must be clearly identifiable and proximate enough, not something that is peripheral.



12. I have considered the dispute and the rival affidavits and documents. I am of the considered view that FA has made a case that justifies his being introduced into the matter at this stage because he is interested in its outcome.
13. Consequently, I allow the application. FA is hereby joined as an interested party, and shall within 14 days file and serve his affidavit in response to the originating summons. Upon service, the applicant and the respondent shall be at liberty, within 21 days, to file and serve any further affidavit. The matter shall be mentioned on 9th March 2023 to take directions and a hearing date.
14. The interested party has been indulged. He will pay the costs of the application.

DATED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 27TH DAY OF OCTOBER 2022

A.O. MUCHELULE

JUDGE

