



**Chepkeitany v Nyahururu Chief Magistrate's Court & another;
Leitman (Intended Interested Party) (Miscellaneous Civil Application
E014 of 2021) [2022] KEHC 15522 (KLR) (18 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15522 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
MISCELLANEOUS CIVIL APPLICATION E014 OF 2021**

CM KARIUKI, J

NOVEMBER 18, 2022

**IN THE MATTER OF AN APPLICATION BY HARUN CHEMJOR CHEPKEITANY
FOR LEAVE TO APPLY FOR AN ORDER OF PROHIBITION AND CERTIORARI**

AND

**IN THE MATTER OF: NYAHURURU CHIEF
MAGISTRATE'S COURT CRIMINAL CASE NO 1722 OF 2016**

BETWEEN

HARUN CHEMJOR CHEPKEITANY APPLICANT

AND

NYAHURURU CHIEF MAGISTRATE'S COURT 1ST RESPONDENT

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS 2ND
RESPONDENT**

AND

LUCY WANJIKU LEITMAN INTENDED INTERESTED PARTY

*(In the matter of an application by Harun Chemjor Chepkeitany for leave
to apply for an order of prohibition and certiorari and in the matter of:
Nyahururu Chief Magistrate's Court Criminal Case No 1722 of 2016)*

RULING

1. By Application dated 11th May 2022, the Applicant Harun Chemjor Chepkeitany seeks Lucy Wanjiku Leitmann to be enjoined in the proceedings seeking prerogative orders which impugns CMCRC No. 1722 of 2016 Nyahururu by the grounds on the face of the notice of motion dated 11th May 2022



2. The proposed Interested party herein is the widow of Joseph Leitmann, who died on 3rd August 2001 and was, before his demise, the sole legal owner of the suit land LR 10762 (IR No. 18060 and LR 8437 (IR No 10710) in the matter Nyahururu Chief Magistrate's Court Criminal Case Number 1722 Of 2016.
3. That subsequently, a grant of letters of administration was made before the Honourable High Court at Nakuru through Succession Cause No. 501 of 2001 by the proposed interested party herein on 3rd August 2001, the same was confirmed on 11th May 2007.
4. It should be noted in this Court that there exists Environmental and land case No. 72 of 2017 Nakuru between Ukingoni Limited, Lucy Wanjiku Leitmann and Pius Mbugua Ngugi-vs- Harun Chemjor Chepkeitany and the Lands Registrar Nairobi.
5. That the said case seeks to unravel the registered proprietor of the Properties formerly known as LR No 8437 (Grant IR 10710) and LR NO 10762 (Grant No. 18060), hereinafter referred to as the property.
6. That the Applicant herein has gone ahead and fraudulently obtained provisional titles in respect to the suit properties aforementioned that is the subject matter of the proceedings in Nyahururu Chief Magistrate's Court Criminal Case Number 1722 of 2016.
7. That following the issuance of the provisional title that is the subject matter of the proceedings in Nyahururu Chief Magistrate's Court Criminal Case Number 1722 of 2016, the intended interested party risks losing the suit land with a value close that is close to a Billion Kenya Shillings.
8. Further to the above, the Applicant herein has gone ahead and illegally disposed of the suit properties aforementioned herein, despite a court order issued by Justice Sila Munyao in Environment and Land Court Case Number 72 of 2018 at Nakuru.
9. That the Applicant herein fails to disclose to this Honourable Court the existence of Several court cases instituted by himself in Nakuru High Court concerning the ownership of the suit properties herein. The cases are ELC 45B of 2020 and HCC No 31 of 2022.
10. The Applicant has instituted all the above cases to deprive the Intended Interested Party of her right of ownership to the suit property herein.
11. That is the foregoing, the intended interested party's right are affected in the above-stated suits as well as this matter which seeks orders concerning the above-stated Criminal Case Number 1722 of 2016.
12. That the intended interested party, the Complainant in the above-stated Criminal Case Number 1722 of 2016, has a right to be heard on this matter since it affects her right ownership in the above-stated suits.
13. That the intended interested party seeks to bring out information that may be important and relevant to assist this Honourable Court in arriving at a just disposition of this matter.
14. The intended interested party's participation in this matter as an interested party will not occasion any prejudice to any party herein; however, her lack of involvement will highly be prejudicial to the Applicant/Interested Party herein.
15. Therefore, the intended interested party seeks indulgence of this Honourable Court to have her enjoined as an interested party since this matter significantly affects her as the sole owner of the suit property in the above-stated criminal matter in which she is a key witness to the proceedings therein, being Complainant.



16. The Application is supported by the affidavit of Lucy Wanjiku Leitmann, sworn on 11th May 2022, reiterating grounds in the motion.
17. The Application is opposed by the Ex Parte Applicant via a replying affidavit. Parties were given directions to canvass said Application via submissions which were filed and exchanged.

Whether the Applicant should be enjoined in these proceedings.

A. Whether the Applicant should be enjoined in these proceedings.

18. The Applicant is the widow to the late Joseph Leitman (deceased), who died on 3rd August 2001, and a co-administrator of the deceased's estate. A copy of the marriage certificate and the letters of grant of administration have duly been supplied to this Court and marked as LWL1 and LW3 in the supporting affidavit by the Applicant. Accordingly, the deceased was the bona fide legal owner of the property, known as LR 10762 (IR No 18060) and LR 8437 (IR No. 10710).
19. In addition to the deceased having owned the said property above, he was the sole remaining director of Ukingoni Farm Limited. Accordingly, the Applicant has duly annexed a copy of the Articles and Memorandum of Association to confirm the status of directorship the same is marked as LWL 2 in the Applicant's supporting affidavit.
20. The Applicant is the Complainant of the actions against the state allegedly committed by the accused in the suit Nyahururu Chief Magistrate's Court Criminal Case No. 1722 of 2016. The latter case is the subject of this matter.
21. There is another case, Nakuru Environment and Land Case No. 72 of 2017, between *UKingoni Farm Limited, Lucy Wanjiku Leitman (Applicant herein), and one Pius Mbugua Ngugi v Harun Chemjor Chepkeitany (the Ex parte Applicant herein) and the Land Registrar Nairobi*. The latter case concerns the issue of proprietorship of the property formerly known as LR No. 8437 (Grant IR 10710 and LR No. 10762 (Grant No. 18060) (hereinafter referred to as "the property").
22. The Nyahururu case herein involves fraudulent issuance and obtaining of the provisional title of the property by the Ex parte Applicant herein. Consequently, I risk losing the property with an estimated Kshs.1,000,000,000/= . Further, after fraudulently obtaining the title, the Ex parte Applicant went ahead to dispose of the property illegally. This was in breach and contempt of the court orders issued by Justice Sila Munyao in the Nakuru Environment and Land case stated hereinabove.
23. To frustrate the determination of the issues surrounding the property and deprive the Applicant of her legal right of ownership, the Ex parte Applicant has instituted various suits in Nakuru High Court. These are ELC 45B of 2020 and HCC No. 31 of 2022. The Pleadings of these suits have been duly supplied to this Court and marked as LWL 4 in the supporting affidavit of the Applicant.
24. It is clear that this suit herein has been added to the others instituted by the Ex parte Applicant. Thus, the same is intertwined with the property in which the Applicant is interested. Consequently, I have been left with no option but to seek to be allowed to join this suit, participate in it to protect my rights, and assist the Court in appreciating the history of the issues surrounding this misapplication implication has its roots under Order 1 Rule 10 (2) of the *Civil Procedure Rules*, 2010. The said the aw concerns Substitution and addition of parties; and states:

“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 enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added."

25. Section 63 of the *Civil Procedure Act* (Cap 2) calls upon the Court to prevent the ends of justice from being defeated and grants it powers to make such other interlocutory orders as may appear to Court to be just and convenient. The Applicant humbly submits that the Ex parte applicant is hell-bent on preventing the ends of justice. Thus, the Applicant urges this honourable court to join her in these proceedings so that the Court may not be supplied with half-lies and half-truths for purposes of defeating justice; and further to protect her interest herein as the widow to and the administrator of the estate of the deceased; in addition to being a beneficiary of the estate of the deceased.

The case of *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others* [2014] eKLR, where an interested party was defined as:

"One has a stake in the proceedings, though they were not a party to the cause ab initio. They will be affected by the decision of the Court when it is made, either way. Such a person feels that their interest will not be well articulated unless they appear in the proceedings and champion their cause..."

26. Submissions that she runs the risk of losing her property stated herein as a beneficiary. The said property is intertwined with the matters in this suit. The person seeking to move this Court as an Ex parte Applicant is the genesis of the Applicant's suffering and inability to enjoy her property rights. Thus, the Applicant submits that it is pertinent for this honorable Court to allow her an audience by admitting her as an interested party to prevent a likely course of increased litigation.
27. Case of *Meme v Republic* [2004] 1 EA 1224 presented the reasons to be considered before joining a party in a matter. The reasons are:
- 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 protect the rights of a party who would otherwise be adversely affected in law;
 - iii. joinder to prevent a likely course of increased litigation."

Applicant/Interested parties Submissions

27. A company by the name Ukingoni Farm Ltd was incorporated on 14th January 1965. Before its incorporation, a group of 5 people (refer to Ex Parte Applicant annexure H.C./'2') had entered into a lease agreement with Joseph Leitman over LR 10762 60 and LR 8437. The parties obtained a letter of consent, which indicates that it was a lease to graze with an option of purchasing the parcels of land.
28. On 10th September 1965, the said Joseph Leitman transferred the said parcels of land to Ukingoni Farm Ltd for a consideration of Kshs. 240,000/-. The said transfers were successfully registered, and on 10th September 1965, each of the two titles was endorsed with an entry of the transfer. The two parcels of land thus changed hands on 10th September 1965, and that is the time when the said Joseph Leitman relinquished his interests over them.
29. The Ex Parte Applicant has contended in his replying affidavit that the registration of Ukingoni Farm Ltd as the proprietor of the said parcels of land has never been canceled or revoked. In addition, the Ex parte Applicant has deponed that Ukingoni Farm Ltd has never transferred the said parcels of land



back to Joseph Leitman. The Applicant did not challenge this state of facts despite having a chance to do so through a further/supplementary affidavit. Under such a state of facts, the undisputed fact is that Joseph Leitman relinquished all his ownership rights over the two parcels of land on 10th September 1965 and has never regained those rights.

30. Submissions that the said Joseph Leitman ceased to have any ownership interests over the said parcels of land on 10th September 1965. The Ex Parte Applicant's criminal charges in Nyahururu CMC Cr 1722 of 2016 indicate that they were committed on 17th September 1991 and 8th September 1992. It is thus evident that the said Joseph Leitman did not have any stake or interests over the two parcels of land when the alleged offences were committed, and as such, he could not agitate any cause of action. By extension, the legal representative of Joseph Leitman cannot also agitate any cause of action on behalf of the estate for offences committed on 17th September 1991 and 8th September 1992.
31. In view of the foregoing, the Applicant will not be of any relevance in the current suit as she will not be in a position to comment on issues that arose long after Joseph Leitman had relinquished interests over the said parcel of land.
32. In *Judicial Service Commission v Speaker of the National Assembly and another* [2013] eKLR, the Court defined an interested party as; -

“It is, however, a requirement that a person who intends to be joined to existing legal proceedings ought to show that he has “an identifiable stake or legal interest in the proceedings before the court.”
33. In *Raila Odinga & ano. v IEBC & 2 others & Michael Wainaina Mwaura* [2017] eKLR, the Supreme Court held; -

The personal interest or stake that the party has in the matter must be set out in the Application. The interest must be identifiable and proximate enough to stand apart from anything that is merely peripheral.
34. In the case of *Housing Finance Company of Kenya Ltd v Faith Kimelia and another*, Civil Appeal No. 214 of 1996, the Court held that; -

“Order 1 Rule 10 of the *Civil Procedure Rules* provide for the addition of a party to a suit so that his presence before the Court may enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit to enable the Court to determine the real matters in dispute”. From the provisions of Order 1 Rule 10 (2) and the above-decided cases, it is clear that a party can be added to a suit on either Application by any party or the Court's motion if the presence of the said party is necessary for aiding the Court to wholly and effectually settle an issue in dispute and if the said party is bound by the result of the action and the question to be settled must question which cannot be wholly and effectively decided unless the said party is a party to the dispute.”
35. The Ex Parte Applicant has not been charged with any offense committed before 10th September 1965, when Joseph Leitman was the registered owner of the said parcels of land.
36. In her capacity and as legal representative of Joseph Leitman, the Applicant has not demonstrated an identifiable stake over any of the said parcels of land.



37. The Applicant has not demonstrated the submission or input that we should expect from her on events after 10th September 1965. In *Raila Ondinga & ano v IEBC & 2 others & Michael Wainaina Mwaura* [2017] eKLR, (*supra*) the Supreme Court held;
- “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 replicating what the other parties will be made before the Court.
38. The charge sheet in Nyahururu CMC Cr 1722 of 2016 has specifically given the identity of the complainants, that is, Ukingoni Farm Ltd and African Registrars. The Applicant herein has not been listed as a complainant because when the alleged offences were committed, neither she nor Joseph Leitman had any stake or interests over the said parcels of land. She thus does not know what happened on the alleged dates.
39. The Ex Parte Applicant is answering charges of having procured provisional certificates of titles when he knew that the original certificates were not lost. The key issue for determination before the criminal Court is whether there was justification on the part of the Ex Parte Applicant to obtain provisional certificates of titles.
40. In *Raila Ondinga & ano v IEBC & 2 others & Michael Ainaina Mwaura* [2017] eKLR, (*supra*) the Supreme Court held;
- “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.”

Issues, Analysis, and Determination

41. After going through pleadings and parties' submissions, I find the issues are whether the Applicant's Application meets the threshold for joinder of Applicant as a party and the order's costs.
42. Order 1 Rule 10 of the *Civil Procedure Rules* provides for the addition of a party to a suit so that his presence before the Court may enable the Court to effectually and completely adjudicate upon and settle all questions involved in the lawsuit to allow the Court to determine the real matters in dispute. From the provisions of Order 1 Rule 10 (2) and the decided cases, it is clear that a party can be added to a suit on either Application by any party or the Court's motion if the presence of the said party is necessary for aiding the Court to wholly and effectually settle an issue in dispute and if the said party is bound by the result of the action and the question to be settled must question which cannot be wholly and effectively settled unless the said party is a party to the dispute. See *Housing Finance Company of Kenya Ltd v Faith Kimelia and another* *supra*.
43. A company by the name Ukingoni Farm Ltd was incorporated on 14th January 1965. Before its incorporation, a group of 5 people (refer to Ex Parte Applicant annexure H.C./'2') had entered into a lease agreement with Joseph Leitman over LR 10762 60 and LR 8437. The parties obtained a letter of consent, which indicates that it was a lease to graze with an option of purchasing the parcels of land.
44. On 10th September 1965, the said Joseph Leitman transferred the said parcels of land to Ukingoni Farm Ltd for a consideration of Kshs. 240,000/-. The said transfers were successfully registered, and on 10th September 1965, each of the two titles was endorsed with an entry of the transfer. The two



parcels of land thus changed hands on 10th September 1965, and that is the time when the said Joseph Leitman relinquished his interests over them.

45. The Ex Parte Applicant has contended in his replying affidavit that the registration of Ukingoni Farm Ltd as the proprietor of the said parcels of land has never been canceled or revoked. In addition, the Ex parte Applicant has deponed that Ukingoni Farm Ltd has never transferred the said parcels of land back to Joseph Leitman.
46. The Applicant did not challenge this state of facts despite having a chance to do so through a further/ supplementary affidavit. Accordingly, under such a state of facts, the undisputed fact is that Joseph Leitman relinquished all his ownership rights over the two parcels of land on 10th September 1965 and has never regained those rights.
47. Joseph Leitman ceased to have any ownership interests over the said parcels of land on 10th September 1965. However, the criminal charges that the Ex Parte Applicant is facing in Nyahururu CMC Cr. 1722 of 2016 indicate that they were committed on 17th September 1991 and 8th September 1992. It is thus evident that the said Joseph Leitman did not have any stake or interests over the two parcels of land when the alleged offences were committed, and as such, he could not agitate any cause of action. By extension, the legal representative of Joseph Leitman cannot also agitate any cause of action on behalf of the estate for offences committed on 17th September 1991 and 8th September 1992.
48. In view of the foregoing, the Applicant will not be of any relevance in the current suit as she will not be in a position to comment on issues that arose long after Joseph Leitman had relinquished interests over the said parcel of land.
49. In, the Court defined an interested party as; -

“Judicial Service Commission v Speaker of the National Assembly and another [2013] eKLR

“It is, however, a requirement that a person who intends to be joined to existing legal proceedings ought to show that he has “an identifiable stake or legal interest in the proceedings before the court.”

50. In *Raila Odinga & ano. v IEBC & 2 others & Michael Wainaina Mwaura* [2017] eKLR, the Supreme Court held; -

“The party's interest or stake in the matter must be set out in the Application. The interest must be identifiable and proximate enough to stand apart from anything that is merely peripheral.”

51. In *Amon v Raphael Tuck & Sons Ltd* (1956) 1 All ER 273 relied upon by Havelock, J (as he was then) in HCCC. No 436 of 2010 *Elisheba Muthoni Mbae v Nicholas Karani Gichohi & 2 Others*; (2013) eKLR, it was reiterated at pg. 286-287 thus;

“What makes a person a necessary party?. It is not, merely that he has an interest in the correct solution to the question involved and has thought of relevant arguments to advance, and is afraid that the existing parties may not advance them adequately...the Court might often think it convenient or desirable that some of such persons should be heard so that the Court could be sure that it had found the complete answer, but, Still, no one would suggest that it would be necessary to hear them for that purpose. The only reason which makes it necessary to make a person a party to an action is so that the result of the action should bind him,



and the question to be settled, therefore, must be a question in the action that cannot be effectually and completely settled unless he is a party."

52. In *Halsbury's Laws of England* Fourth Edition, Vol. 37 at para 216, it reads;

"A person cannot be a Plaintiff unless he has a vested interest in the subject matter of the action. For example, in an action founded on contract, the proper Plaintiff is the person in with whom or on whose behalf the contract was made or in whom the rights under the contract are vested."

53. The charge sheet in Nyahururu CMC Cr. 1722 of 2016 has specifically given the identity of the complainants, that is, Ukingoni Farm Ltd and African Registrars. However, the Applicant herein has not been listed as a complainant because when the alleged offences were committed, neither she nor Joseph Leitman had any stake or interest in the said parcels of land. She thus does not know what happened on the alleged dates.

54. The Ex Parte Applicant is answering charges of having procured provisional certificates of titles when he knew that the original certificates of titles were not lost. The key issue for determination before the criminal Court is whether there was justification on the part of the Ex Parte Applicant to obtain provisional certificates of titles.

55. In *Raila Odinga & ano. v IEBC & 2 others & Michael Wainaina Mwaura* [2017] eKLR, (*supra*) the Supreme Court held;

"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."

56. In sum, the Court finds no merit in the Application and, thus, makes the orders;

i. The Application is dismissed with no orders as to costs.

DATED, SIGNED, AND DELIVERED AT NYAHURURU ON THIS 18TH DAY OF NOVEMBER 2022.

CHARLES KARIUKI

JUDGE

