



Ngungi (Suing on behalf of the Estate of Njugu Itonya alias Njugu Ngemi - Deceased) v Land Registrar, Mbeere North District & 3 others; Mwandike & another (Intended Interested Party) (Environment & Land Case 23B of 2021) [2023] KEELC 18908 (KLR) (15 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18908 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT & LAND CASE 23B OF 2021**

**A KANIARU, J
JUNE 15, 2023**

BETWEEN

**DAVID GITONGA NGUNGI (SUING ON BEHALF OF THE ESTATE OF NJUGU
ITONYA ALIAS NJUGU NGEMI - DECEASED) PLAINTIFF**

AND

**LAND REGISTRAR, MBEERE NORTH DISTRICT 1ST DEFENDANT
EMBU COUNTY GOVERNMENT 2ND DEFENDANT
MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN
DEVELOPMENT & PUBLIC WORKS 3RD DEFENDANT
ATTORNEY GENERAL 4TH DEFENDANT**

AND

**FRANCIS IRERI MWANDIKE INTENDED INTERESTED PARTY
DAVID NJOKA MWANDIKE INTENDED INTERESTED PARTY**

RULING

1. By a Notice of motion filed here on 17/3/2022 and dated 16/3/2022 (also said to be dated 11/3/2022 by the parties seeking joinder) Francis Ileri Mwandike And David Njoka Mwandike seek to join this suit as interested parties because they have an interest in Land parcel No. Evurore/Evurore/1054. The suit as filed does not include them. In the suit, the plaintiff – David Gitonga Ngungi – has impleaded four (4) defendants – The Land Registrar, Mbeere North District (1st defendant), The Embu County Government (2nd defendant), The Ministry Of Transport, Infrastructure, Housing, Urban Development & Public Works (3rd defendant) and The Hon. Attorney General (4th defendant) – claiming that they ensured, or took part in, illegal change of ownership from one Njugu Itonya Alias



Njugu Ngemi to 2nd defendant. The plaintiff is claiming the land. The intended interested parties are also claiming a portion of the same land and that is why they seek joinder.

2. The application is expressed to be brought under Sections 1A, 1B, and 3A of the *Civil Procedure Act* and all other enabling law. It came with two prayers as follows:
 1. That the intended interested parties be joined to the proceedings herein as interested parties.
 2. Costs in the cause.
3. According to the intended interested parties, their father Njue Karugeria alias Mwandike Karugeria, was allocated Land parcel No. Evurore/Evurore/554 and part of Evurore/Evurore/1054 during Land adjudication and demarcation in the early days of independence. The rest of the portion of parcel No. 1054 was allocated to the plaintiff. Their father then leased the land to the Ministry of Road and Public works to put up some structures during construction of a road. This was done on the understanding that the land would be surrendered back to the father after completion of the construction of the road. That never happened however and the land instead became registered in the name of the 2nd defendant's predecessor – Embu County Council.
4. The intended interested parties are of the firm view that the plaintiff can not claim the entire parcel No. 1054 for himself. They too have a stake in it, hence the need for joinder.
5. The plaintiff on the other hand views the application as “vexatious, frivolous and aimed at delaying” the matter. The intended parties were said to have “no legal business in being made interested parties to this suit”. Their claims were said to be unfounded, with documents made available by them said to be incorrect. The plaintiff averred that the intended parties have never lived on the land and have never occupied it.
6. The application was canvassed through written submissions. It appears clear to me that the defendants are not opposing it. They did not respond to the application and have not filed submissions. The intended parties submissions were filed on 3/2/2023. They faulted the plaintiff for alleging that they have no stake in the proceedings. They submitted that their joinder will not make the plaintiff suffer loss and that the plaintiff is aware that the land he is claiming belongs both to his family and the family of the intended parties as well. The plaintiff was accused of opposing joinder because his aim “is to circumvent the law by unjustly enriching himself, through using this court and locking the applicants out of the proceedings hence, denying the Applicants their rightful share.”
7. The case of *Trusted Society of Human Rights Alliance Vs Mumo Matemu* [2014] eKLR was cited to define an interested party. It was emphasized that the intended parties are claiming half of the disputed land while the plaintiff is claiming the whole of it for himself. To the intended parties, that is why the plaintiff is opposed to their joinder. They submitted that their joinder is necessary “for the effectual and complete adjudication and settlement of all the questions involved in the dispute”. They also averred that they are actually using part of the land.
8. The plaintiff's submissions were filed on 10/2/2023. According to the plaintiff, the proposed interested parties have no stake in the proceedings. They were said to have failed to offer “viable documentary evidence” justifying why they should become parties in the suit. The plaintiff averred that the intended parties “have absolutely no legal interest in the subject matter of the suit since its institution in the year 2020”.
9. I have considered the application, the response made to it by the plaintiff, and the rival submissions. It is clear to me that the plaintiff is claiming Land parcel No. 1054 from the defendants as he believes



that it belonged to one Njugu Itonya alias Njugu Ngemi. The intended parties on the other hand are saying that the plaintiff is wrong. Part of the land belonged to their late father – Njue Karugeria alias Mwandike Karugeria – and they would therefore like to be joined in the suit in order to agitate for their entitlement.

10. At this stage, it is hard to tell who owns what. It is not even clear whether the plaintiff or the intended parties are entitled to the land at all. What is clear to me though is that all those claiming the land should be allowed to ventilate their claim in court. If the plaintiff feels that he is justified to ventilate his claim against the defendants, it beats reason why the intended interested parties who equally feel that they have a claim should be locked out of the proceedings. The intended parties also have a right to be heard. My understanding is that they have a claim not only against the defendants but possibly also against the plaintiff. They should be allowed to pursue their claim. It would be wrong to treat their claim as farfetched at this stage. For now, they are only seeking joinder. I don't think they have brought all the evidence. Infact they can't because they are not yet parties.
11. It is necessary to appreciate that if the intended parties are locked out of the proceedings, nothing prevents them from filing their own case against the defendant or the plaintiff. No one can deny them that right. It saves time and costs to allow joinder. It also helps to avoid multiplicity of suits. Further, it helps to address all issues relating to the subject matter at once.
12. It is in light of the foregoing that I make a finding that the application before me has merits. I hereby allow it but I make no order as to costs.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 15TH DAY OF JUNE, 2023.

In the presence of M/s Mutegi for Intended interested party and M/s Murigi N. for M/s Maina for plaintiff/respondent. Wanjeri for Ngaiywa for 2nd defendant and Akotsi for Kiongo for 1st & 4th defendants.

Court assistant: Leadys

A.K. KANIARU

JUDGE

15.06.2023

