



REPUBLIC OF KENYA



Wanjohi & 3 others v Muchira; Matu (Intended Interested Party) (Environment & Land Case E020 of 2022) [2025] KEELC 1433 (KLR) (20 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1433 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE E020 OF 2022**

JM MUTUNGI, J

MARCH 20, 2025

BETWEEN

**BEATRICE WANJIRU WANJOHI 1ST PLAINTIFF
NANCY WANJA WACHIRA 2ND PLAINTIFF
SEMARY NYAMBURA BORO 3RD PLAINTIFF
LUCY WANGUI GICHOHI 4TH PLAINTIFF**

AND

JOSIAH MATU MUCHIRA DEFENDANT

AND

JOHNSON KARINGA MATU INTENDED INTERESTED PARTY

RULING

1. The Applicant vide a Notice of Motion application dated 3rd March 2024 prays for the following orders:-
 1. Spent
 2. That this Honourable Court be pleased to grant leave to the firm of Gori, Ombongi & Co. Advocates to cease acting for the Defendant/Applicant herein.
 3. That this Honourable Court be pleased to join Johnson Karinga Matu as an Interested Party/Intended 2nd Defendant.
 4. That this Honourable Court be pleased to grant leave to the Firm of Gori, Ombangi & Co. Advocates to come on record for the Interested Party/Intended 2nd Defendant after entry of Judgment.



5. That this Honourable Court be pleased to set aside the ex parte Judgment delivered on 21st September 2023 and consequential orders, and the Interested Party/Intended 2nd Defendant be allowed to defend the suit on merits.
 6. That there be stay of execution of the judgment delivered on the 21st September 2023 and the consequential decree pending the hearing and determination of this application.
 7. That the Interested Party/Intended 2nd Defendant be granted leave to file his defence and counterclaim out of time and the annexed draft defence and counterclaim be deemed as filed and served upon payment of the requisite Court fees.
 8. That costs be provided for.
2. The application is supported on the grounds set out on the application and the Affidavit sworn in support by Johnson Karinga Matu. Principally, the Applicant seeks to have the Judgment entered on 21st September 2023 set aside and to be joined as a party in the suit to allow him to assert his interests. The Applicant states that after learning about the outcome of the case, he instructed the Firm of Gori, Ombongi & Co. Advocates to facilitate his joinder. This came after the Defendant's decision to withdraw his instructions from the Firm. He argues that the defendant lacks locus standi to be sued as the Legal Representative of the estate of the deceased Evans Muchira Matu, as the Defendant does not possess a Confirmed Grant of representation for the estate. He avers that the Grant of Letters of Administration ad litem that was produced was limited solely to the filing of ELC Case No. 28 of 2018 between Josiah Matu Muchira and himself, which the Defendant later withdrew. The Applicant asserts that he is a brother of the Plaintiffs and has been occupying the suit land since 1986. He claims that his occupation of the land for over 20 years entitles him to ownership through adverse possession. He contends that a stay of execution of the Judgment should be granted; otherwise, his defence and Counterclaim would be rendered ineffective. The Applicant avers he stands to suffer prejudice if he is not joined as a party to the suit while he asserts the Plaintiffs and the Defendants stands to suffer no prejudice if his prayers are granted.
 3. The 1st Plaintiff/Respondent swore a Replying Affidavit in opposition to the Applicant's application. The 1st Plaintiff stated that the Applicant had not acquired any rights to the disputed land through adverse possession. She emphasized that on the issue of trust, and the question of occupation of the land had not been addressed. Additionally, she asserted that the Defendant had legal standing because he was the registered owner of the land in question. The Plaintiff explained that the deceased had subdivided land parcel Mwea/Tebere/B/125 into three portions: land parcels Mwea/Tebere/B/1261 and B/1263 were allocated to her brothers, James Nguru Matu and the Interested Party, respectively, while parcel Mwea/Tebere/B/1262 was given to the Respondents. She further claimed that the withdrawal of MELC No. 28 of 2018 in Wang'uru against the Applicant was due to the fact that the fraud he had committed concerning the suit land had been rectified by the Land Registrar. The Plaintiff further stated that the execution process of the decree in this case had already been carried out. She contended that the Applicant had not shown any legitimate interest in the disputed land and noted that his claim appeared to be an afterthought, intended to disinherit the Respondents. Finally, in conclusion she averred that the application was an abuse of the Court's process and should be dismissed with costs.
 4. The Defendant filed a Replying Affidavit in opposition to the Applicant's application. He contended that he was the correct party to be sued because he had been issued a Limited Grant of Letters of Administration ad Litem for the estate of the deceased. He stated that he was aware of the ongoing proceedings related to the case. He stated that a family meeting took place, which the Applicant



attended, where it was decided that the Respondents would inherit the suit land. He further asserted that this decision was reiterated in the presence of the Chief though the Applicant refused to sign the minutes, arguing that married women were not entitled to inherit land under Kikuyu customs. The Defendant further stated that the Applicant had inherited land parcel No. Mwea/Tebere/B/1263, which he subdivided into Mwea/Tebere/B/5669, and Mwea/Tebere/B/5670. He averred that the Applicant had not demonstrated valid cause of action against the Respondents. The Defendant affirmed that MELC No. 28 of 2018 at Wang'uru was withdrawn after the Land Registrar removed the Applicant's name from the register, having discovered that the Applicant had fraudulently transferred the property into his name.

5. The Applicant filed a Supplementary Affidavit, reiterating that the Defendant lacked locus standi because the Letters ad litem granted to him were limited to filing a Civil suit and did not extend to defending one. He argued that the Defendant also lacked standing, as he, the Interested Party, was the one who had been issued a Certificate of Confirmation of Grant concerning the deceased estate. He noted that although he was registered as the proprietor of land parcel Mwea/Tebere/B/1263, the claim that a meeting had been held to allocate land parcels Mwea/Tebere/B/1262 and Mwea/Tebere/B/1261 to his Sisters, and Jane Ngina Nathan who was a stranger to him, was false. He denied that there was ever a meeting where an agreement was made to transfer the suit land to his sisters, especially one that included the Area Chief. He insisted that his claim had merit, which he intended to substantiate upon his joinder. He maintained that he had acquired the suit land through adverse possession and asserted that there was no meeting on 20/08/2016. He described the minutes produced by the Respondents as a forgery. He further asserted that this case primarily concerns succession matters, and he contended that this Court lacked jurisdiction to address it. He contended that he had already completed the succession process for the estate of the deceased and a Confirmation Certificate had been issued.
6. The Applicant's application was canvassed through written submissions. The Applicant filed his submissions on 21st November 2020, while the Plaintiffs filed their submissions on 22nd July 2024.
7. I have reviewed the parties' pleadings, evidence, and written submissions. The key questions for determination are whether the Intended Interested Party should be joined in this suit and whether the Judgment dated 21st September 2023 should be set aside.
8. *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedures Rules, 2013 defines an interested party as "a person or entity that has an identifiable or legal interest or duty in the proceedings before the Court but is not a party to the proceedings or may not be directly involved in the litigation."
9. Order 1 Rule 10(2) of the Civil Procedure Rules states as follows: -

“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 be necessary in order to enable the Court effectually and completely to adjudicate upon or settle all questions involved in the suit, be added.”
10. The Black's Law Dictionary 8th Edition defines an Interested Party as:-

“a party who has a recognizable stake (and therefore standing) in the matter.”



11. The Supreme Court of Kenya in *Communications Commission of Kenya and 4 Others ...Vs... Royal Media Services Limited & 7 Others* Petition No. 15 OF [2014] eKLR relied on its earlier decision in the *Mumo Matemo Case* where the Court defined who an Interested Party is, and held as follows:

“ 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 she herself appears in the proceedings, and champions his or her cause. Similarly, in the case of *Meme v. Republic*, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- (i) Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;
- (ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) Joinder to prevent a likely course of proliferated litigation.

We ask ourselves the following questions:

- a) what is the Intended Party’s state and relevance in the proceedings and
- b) will the Intended Interested Party suffer any prejudice if denied joinder.?”

12. The Law on joinder of Interested Parties to suits has been settled by the Supreme Court of Kenya in the case of *Francis K. Muruatetu and Another v. Republic & 5 others* (2016) eKLR, the Court set out key factors for consideration in an application for joinder as an Interested Party as follows: -

- “ a). 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.
- b). 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.
- c). Lastly, a party must, in its application, set out the case and/or submission 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.”

13. The Applicant seeks to be joined in the instant suit on the grounds that the Defendant lacks locus standi to be sued for two reasons: (a) the Limited Grant of Letters of Administration ad litem does not authorize the Defendant to prosecute this case on behalf of the estate of the deceased, and (b) he, the Intended Interested Party, is the correct person who ought to be sued as he possesses confirmed Letters of Administration for the deceased's estate. Additionally, he claims that he has been living on the suit land for over 20 years and contends he should own the land by virtue of adverse possession.

14. So, who is the appropriate party that should have been sued? The Applicant argues that the defendant lacked locus standi to defend this case. On the other hand, the Respondents and the Defendant hold the view that the Defendant had locus standi. The Respondents argue that this is so because the Defendant was the one that was registered as the proprietor of the suit land, while the Defendant



maintains he was the correct person to be sued by virtue of the Limited Grant ad litem issued to him on 26th July 2018.

15. All the parties herein attached the copy of the Limited Grant of Letters of Administration ad litem issued on 26th July 2018. The Limited grant of Letters of Administration Ad Litem is limited to the purpose only of “Filing a Civil suit.” The Applicant states that the Defendant had sued him in the Principal Magistrate’s Court at Wang’uru ELC Case No. 28 of 2018, which the Defendant later withdrew. In support to this claim, the Applicant annexed a Notice of Withdrawal of the suit, drawn and filed by the Defendant. The Defendant in his sworn Affidavit admitted the existence of the suit and stated that he withdrew it “after the Land Registrar removed the Applicant’s name from the register after discovering that the Applicant had fraudulently had the suit transferred in his favour and the title was accordingly cancelled.”

16. In the case of Lydia Ntembi Kairanya & Another – vs – The Hon A. G [2009] eKLR the Learned Judge stated as follows:

“From what I have been saying therefore there is no dispute that the plaintiffs filed and have prosecuted this suit on the strength of a Limited Grant of Letters of Administration Ad Litem issued to them jointly by this High Court..... it is not disputed that the grant authorized the Plaintiffs to file this suit. But that is as far as that Limited Grant of Letters of Administration Ad Litem can go. That grant does not contain authority of power to prosecute a filed suit. It did not contain the power to collect or receive proceeds of the suit should the Plaintiffs be successful. There should have been included in the Limited Grant. ... Though the Plaintiffs prosecuted this suit therefore, they did it without legal power to do so and they lack legal power to collect or receive proceeds from, Prosecution of this suit in the event of success...”

17. The Court further held that:

Such an Applicant should, however, realise that power to file suit, strictly speaking in law, is not power to Prosecute the suit or power to receive proceeds of the suit when successful (power for collection and preservation of assets). If the Applicant who wants power to file suit is also desirous of getting any of the other powers mentioned above, the Applicant should specifically, in his application, mention all the powers he wants so that the same or any of them are specifically spelled out in the Limited Grant he subsequently gets when successful in his application for a Limited Grant under Grants for Special Purposes within the Fifth Schedule of section 54 of the [Law of Succession Act](#).

18. The Limited Grant ad litem was intended solely for the purpose of initiating a Civil suit. It is important to note that the Limited Grant issued on 26th July 2018 did not authorise the Defendant to defend this suit on behalf of the estate of the deceased. The grant was specifically for filing a Civil suit, not for defending any other suit.

19. The Defendant utilised the Limited Grant that he obtained on 26th July 2018 to file Wang’uru ELC No. 28 of 2019 which he admittedly withdrew. The life span of the ad Litem Grant, that the Defendant had obtained ended with the withdrawal of the suit that he had filed against the Applicant. It is noteworthy that the Applicant asserts that he holds the full grant in respect of the estate of Evans Muchira Josiah Matu (deceased) issued to him on 31st May 2019 which he exhibited vide the Supplementary Affidavit (JKM-1). Neither the Defendant nor the Plaintiff/Respondents dispute that the Applicant was issued such grant. The holder of a full Grant in respect of a deceased estate would be the person who is generally authorised to act on behalf of the estate in all matters affecting the deceased estate.



20. The Limited Grant of Letters ad Litem issued on 26th July 2018 the Defendant was limited to him filing a suit which he did vide Wang'uru ELC No. 28 of 2018. The adlitem grant was not general but was for the sole purpose of filing the suit and could not be applied for any other purpose. In the premises it is my determination that the Defendant was not the Administrator of the estate of Evans Muchira Matu (deceased) and consequently did not have capacity to be sued on behalf of the deceased estate. Indeed, as demonstrated by the Applicant, he is the person who had been appointed Administrator of the deceased estate vide Embu CM Succession Cause No. 85 of 2018 and a Certificate of Confirmation of Grant in respect of the estate of Evans Muchira Josiah Matu (deceased). There cannot be two distinct Administrators in respect of the estate of a deceased person?
21. On the basis of my determination that the Defendant lacked capacity to be sued on behalf of the deceased estate and having regard to the fact that the Applicant held a confirmed Grant of Letters of Administration to the estate of Evans Muchira Josiah Matu, which the Plaintiff/Respondents and the Defendant have not shown to have been set aside or revoked, it follows that the suit filed by the Plaintiffs was against a party who lacked locus standi and/or capacity to be sued. For that reason, the suit was null and void ab initio. The suit was incompetent and filed in abuse of the Court process. The Applicant was the appropriate party that the Plaintiffs could have sued as he was the appointed Administrator of the deceased estate. The Plaintiffs/Respondents if they had any issues relating to the appointment of the Applicant as Administrator, they ought to have raised their objections before the Succession Court that issued the Grant.
22. The Court at the time it heard the suit *ex parte*, and rendered Judgment in favour of the Plaintiffs, acted on the basis that the proper parties were before it. As I have held, the Defendant was not the appropriate party to be sued on behalf of the deceased estate and that the Applicant ought to have been the appropriate Defendant as he had been appointed as Administrator of the deceased estate, I in exercise of my discretion under Order 1 rule 10(2) that the name of Josiah Matu Muchira be struck out as Defendant and the name of Johnson Karinga Matu be substituted as Defendant.
23. Quite evidently the Judgment given by the Court in this matter was irregular as it was given against a party who lacked capacity. The Judgment delivered on 21st September 2023 together with all the consequential orders is set aside. The execution of the Judgment that has taken place was pursuant to an irregular and invalid Judgment and is hereby set aside. The Land Registrar Kirinyaga is ordered to cancel the resultant subdivisions of land parcel Mwea/Tebere/B/1262 and the subtitles thereof and revert the original title Mwea/Tebere/B/1262 to the names of Evans Muchira Josiah Matu(deceased).
24. In consequence the Applicants application dated March 3, 2024 is allowed on the foregoing terms. The Applicant (now Defendant) has leave within 21 days from the date of this Ruling to file and serve his defence and Counterclaim.
25. The costs of the application shall be in the cause.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 20TH DAY OF MARCH 2025.

J. M. MUTUNGI

ELC - JUDGE

