



Kamau & another v Ngugi; Kahuthu (Proposed Interested Party) (Environment & Land Case E130 of 2021) [2023] KEELC 18126 (KLR) (8 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18126 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E130 OF 2021
EK WABWOTO, J
JUNE 8, 2023**

BETWEEN

ANTONY NGA'NGA KAMAU 1ST PLAINTIFF

GRACE WANGARI KAMAU 2ND PLAINTIFF

AND

HANNAH NDUTA NGUGI DEFENDANT

AND

ANTONY MAGERIA KAHUTHU PROPOSED INTERESTED PARTY

RULING

1. This ruling is in respect to the application dated 22nd February 2023, in which the Applicant sought for the following orders;
 - a) That this Honorable Court be pleased to order that the interested party referred to above as Antony Mageria Kahuttu be included as the 2nd defendant in this matter.
 - b) That leave be given to the Applicants/Plaintiffs to amend their pleadings after prayer No 1 is granted.
 - c) That the costs of this application be provided for.



2. The application was supported by the affidavit sworn by Antony Ng'ang'a Kamau and Grace Wangari Kamau on 22nd February 2023 under the following grounds:
 - i. That in the succession cause no 24 of 1988 “in the matter of estate of Gathuri Irungu the court confirmed the grant of letter of administration and issued a certificate of confirmation of grant to the true beneficiaries.
 - ii. That one of the beneficiaries namely Irungu Gathuri Irungu whose proceedings this matter related sold part of her share to Sammy Kamau Wokabi(now deceased)
 - iii. That the estate referred here in which Irungu is a benenficiaty of land parcel Dagoretti/Waithaka/156 measures $\frac{3}{4}$ of an acre and sub-division got into possession of his shares which were given new numbers being Dagoretti/Waithaka/1176, Dagoretti/Waithaka/1177 and Dagoretti/Waithaka/1178 where he occupied the same and built rental houses and settled with his family
 - iv. That the applicants herein has realized that the interested party herein is claiming to be a beneficiary purchaser of Dagoretti/Waithaka/1178 where upon he has filed an application in Succession Cause 24 of 1988 for amendment of confirmation of grant issued on the 12th April 2019.
 - v. The defendant has refused to take out grants of letter of administration for her late father’s estate but she is relying on the power of attorney signed by her father Irungu Gathiru Irungu in the presence of the Advocate who is on record and who has filed for ammendments for the grants issued and giving himself land parcel Dagoretti/Waithaka/1178 while the defendant is giving herself Plot No. Dagoretti/ Waithaka/1176 and Dagoretti/Waithaka/1177.
3. On 8th November 2022, the Court granted all parties leave to file any document they intended to rely on within 30 days after which a further mention date was set.
4. The Respondent filed a replying affidavit dated 22nd May 2023 sworn by Hannah Nduta Ngugi in which it was averred that Succession cause No 24 of 1988 was still pending in court, no title or search had been exhibited and also opposed the joining of Antony Mageria. The respondent also filed written submissions dated 24th May 2023 where it was submitted that the application was bad in law, malicious and scandalous. It was argued that the Plaintiffs had all reasons to join the party when they first filed the suit. Even so, the intended third party had no interests, therefore, the court should dismiss the application with costs
5. I have considered the application, written submissions and supporting documents filed and the main issues for determination in respect to the said applications are as follows: -
 - i) Whether the interested party should be included as the 2nd Defendant?
 - ii) Who should bear costs of this application?
6. On the issue of joinder, The Black’s Law Dictionary defines “interested party” as:-

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



7. Order 1 Rule 10, (2) of the [Civil Procedure Rules](#), outlines that:
- “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 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 and settle all questions involved in the suit, be added.”[Emphasis mine]
8. The principles for joinder are well outlined in in [Meme v Republic](#) (2004)1 124, eKLR which are:
- a) Joinder of a person because his presence will result in the complete settlement of all questions involved in the proceedings;
 - b) Joinder to provide a protection of a party who would otherwise be adversely affected in law;
 - c) Joinder to prevent a likely course of proliferated litigation
9. The land mark decision was echoed by the Supreme Court in [Communications Commission of Kenya & 4 Others v Royal Media Services Ltd. & 7 Others](#) [2014] eKLR where it was stated:
- “An Interested Party is one who has a stake in the proceedings, though he or she was not a party to the cause ab initio. He or she is the 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 interests will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. A party could be enjoined in a matter for the reason that;
- 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 provide protection of the rights of a party who would otherwise be adversely affected in law;
 - iii. Joinder to prevent a likely course of proliferated litigation.
10. On the threshold to be reached by a party seeking joinder, the holding by Muriithi J. in [Benjamin K Kipkulei v County Government of Mombasa & Another](#) [2015] eKLR is useful:-
- “....The applicant must show a stake or interest that must prevail in the suit, as that is not possible before the full hearing of the matter; the applicant should demonstrate a legal interest that calls for hearing before a decision on the dispute before the court is adjudicated.”
11. In essence, any natural person who may not be a party to proceedings and has an interest in the subject matter of such proceedings to the extent that they will undeniably be affected by court’s decisions, is for all intents and purposes an interested party, and would therefore be enjoined to the proceedings to protect his or her interests.
12. In the instant case, I have considered the Applicants averments that the interested party was claiming to protect his rights by virtue of purchasing Dagoretti/Waithaka/1178. Unfortunately, no documents have been placed before the court to bolster the said averments.



13. In view of the foregoing, I am not satisfied that it is necessary to join the Proposed Interested party as the 2nd Respondent/defendant. The evidence placed before this Court neither confirms Antony Mageria Kahuthu as a purchaser of the suit property nor does it portray an iota of Mr. Kahuthu's involvement in the ongoing suit in Succession Cause No 24 of 1988. For this reason, the claim that Antony Mageria Kahuthu is an interested party will equally fail.
14. Consequently, I find that the application dated 22th February 2023, is unmerited and hereby dismissed. Costs will abide determination of the main suit.
15. I also direct that the suit will proceed for hearing on 22nd June 2023 as had been set down prior to delivery of this ruling.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8TH JUNE 2023

E.K. WABWOTO

JUDGE

In the presence of:

N/A for the Plaintiffs.

N/A for the Defendant.

N/A for the Applicant.

Court Assistant – Caroline Nafuna.

