



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Keesi & 2 others (Suing as the Administrator of the Estate of Jonathan Keesi Ngunzi - Deceased) v Keesi & 9 others (Environment & Land Case 337 of 2017) [2025] KEELC 320 (KLR) (29 January 2025) (Ruling)

Neutral citation: [2025] KEELC 320 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE 337 OF 2017
TW MURIGI, J
JANUARY 29, 2025

BETWEEN

ALICE MBESA KEESI 1ST PLAINTIFF
JUSTUS KYALO KEESI 2ND PLAINTIFF
LILIAN NTHAMBI KEESI 3RD PLAINTIFF
SUING AS THE ADMINISTRATOR OF THE ESTATE OF JONATHAN KEESI
NGUNZI - DECEASED

AND

BENJAMIN MUTUA KEESI 1ST DEFENDANT
KINYAMBU KEESI 2ND DEFENDANT
KYAMA KEESI 3RD DEFENDANT
IGNATIUS KINYAMBU 4TH DEFENDANT
ROSE NGINA 5TH DEFENDANT
MUSAU MASOKA 6TH DEFENDANT
MUTUKU SILINGI 7TH DEFENDANT
PATRICK NZOMO 8TH DEFENDANT
JOHN KATO 9TH DEFENDANT
MBITHE SILINGI 10TH DEFENDANT



RULING

1. This ruling is in respect of two applications. The first application is a Notice of Motion dated 3rd May 2024 brought under Articles 19, 21 & 22 of *the Constitution*, Sections 3A and 3B of the *Civil Procedure Act* in which the Applicant seeks the following orders:
 1. Spent.
 2. Spent.
 3. That the conviction herein be set aside and/or vacated.
 4. That the Honourable court be pleased to certify that the ruling delivered herein on 6th March 2024 raises very serious and fundamental constitutional issues of great public importance.
 5. That in the alternative the Applicant be allowed 120 days to look for alternative settlement and surrender the subject land.
 6. That the costs of the application be provided for.
2. The application is premised on the grounds appearing on its face together with supporting affidavit of John Kato sworn on even date.

The Applicant's Case

3. The Applicant averred that the court vide its ruling delivered on 6th March 2024, found him guilty of contempt of the court order issued on 20/12/2018 by Hon Justice Mbogo. He deposed that the order was not extracted properly as it did not indicate that prayers 4 and 5 of the application dated 26/02/2014 were declined.
4. He further deposed that the Respondents filed another application dated 18/11/2020 citing him for contempt of the court order issued by Hon Justice Mbogo on 30th January 2019 despite the Learned Judge having noted in his ruling dated 20/12/2018 that the 5th and 9th Defendants were not served with the said order.
5. He asserted that the order issued on 30/01/2019 does not exist and denied having been served with the same. He contested the affidavit of service sworn on 16/09/2020 by Ramadhan Hassan Advocate terming it as fallacious.
6. The Applicant contended that the application that culminated to his conviction is statute barred as it was brought six months after the alleged contempt. He further contended that the orders that he is accused of disobeying were stayed by the court and the same have not been revived.
7. It was his contention that the impending sentencing raises serious constitutional issues that require consideration before the sentencing to wit:-
 - i. The sentencing will have the effect of determining the main suit without granting him an opportunity to be heard contrary to Articles 50 and 25(c) of *the Constitution*.
 - ii. That the sentencing will deprive him the right to acquire and own property under Article 40 of *the Constitution*.
 - iii. That his right to liberty under Article 29 of *the Constitution* will be violated if he is sentenced.



- iv. That the application that led to his conviction was filed outside the mandatory limitation period hence the proceedings and ultimate conviction were a nullity.
8. He went on to state that after the Respondents filed the suit herein together with an application and obtained interim orders that are still in place, they filed a similar application and obtained orders which led to his conviction.
9. The Applicant contended that the order that he is accused of disobeying is not clear as it does not state what he should refrain from doing.
10. He argued that an order for vacant possession cannot be granted at the interlocutory stage and hence, he cannot be accused of continuing to be in possession when he is already in possession.
11. The Applicant deposed that he is apprehensive that he will not be compensated if he is forced to vacate the suit property since the administrators who sold the suit property to him are deceased.
12. He stated that he is ready to purge the contempt by giving back the land to the estate if he is assured that he will be refunded his money and expenses. He further stated that even if such assurance was not forthcoming, he would still surrender the suit property and pursue his money through the traditional dispute resolution mechanism. In conclusion, the Applicant urged the court to allow the application as prayed.

The Plaintiff/Respondents Case

13. The Plaintiffs opposed the application through the replying affidavit of Justus Kyalo Keesi sworn on his own behalf and on behalf of the Plaintiffs.
14. He deposed that the 9th Defendant has no right of audience as he has not purged his contempt by vacating the suit property. He further averred that when this matter came up for sentencing on 07/05/2024, the court declined to give directions on the instant application until the Applicant purged his contempt. That the Applicant sought and was granted 14 days to purge his contempt by vacating the suit property.
15. That when the matter came up for mention on 30/05/2024 to confirm compliance, Counsel misled the court on instructions of the Applicant that he had vacated the suit property which is further contempt of court.
16. He deposed that the Applicant has not vacated the suit property and continues in his blatant and unabated contempt of the orders of this court. In this regard, he produced photographs and videos taken over the suit property on 03/06/2024 confirming occupation of the suit property by the Applicant.
17. He further averred that the Applicant failed to disclose to this court that he had filed an application dated 4/4/2024 at the Court of Appeal seeking to stay the decision of this court which is pending for hearing and determination. He argued that the filing of both applications amounts to forum shopping and is an abuse of the court process.
18. He further averred that in the ruling delivered on 20/12/2018 in respect of the Notice of Motion dated 26/2/2014, Hon Justice Mbogo allowed the prayer for injunction pending the hearing and determination of the suit but declined to grant the prayer to commit the Applicant to civil jail for disobedience of the order issued by Justice Mutungi on 26/7/2013. He argued that the order of injunction granted by Hon Justice Mbogo was not the subject matter in the application dated 18/11/2018 and added that no appeal has been filed against the ruling delivered on 20/12/2018.



- According to the deponent, the court did not issue an order for vacant possession but rather an order of injunction which is valid unless it is set aside or reviewed.
19. He deposed that the Applicant continued constructing a residential house on the suit property in blatant breach of the court orders despite having been served with the ruling and order.
 20. That consequently, they filed an application dated 18/11/2020 seeking to have the Applicant committed to civil jail for contempt of the court order made by Justice Mbogo on 20/12/2018 and issued on 30/01/2019.
 21. He asserted that the terms of the order were clear, unambiguous and were binding on the 5th Defendant and the Applicant. He further asserted that the Applicant had knowledge and proper notice of the terms of the order as he responded to the application for contempt through a replying affidavit dated 14/12/2020.
 22. He went on to state that when Covid 19 pandemic struck in the year 2020, the Applicant in blatant breach of the court order moved into the house that he had constructed on the suit property. He explained that on 4/2/2021, the court stayed the proceedings for a period of 90 days to enable the Plaintiffs to substitute Alice Mbesa Keesi as an administrator of the deceased estate following her demise and not the injunctive order.
 23. He contended that the application for contempt is not statute barred as the period of six months provided under the *Contempt of Court Act* No 46 of 2016 was declared unconstitutional by the High Court in the case of Kenya Human Rights Commission vs Attorney General & another (2018)eKLR.
 24. He further contended that the application herein does not raise constitutional issues that require consideration before the sentencing of the Applicant. He argued that civil contempt is not only punishable by way of committal to civil jail, but also by issuance of a writ of sequestration, a fine or an injunction against the contemnor.
 25. He averred that the Applicant's contention that his sentencing would have the effect of determining the main suit without giving him a fair hearing is false and misleading. He explained that the Applicant was granted an opportunity to respond to the application for contempt and even filed submissions therein. According to the deponent, the Applicant cannot claim to be indemnified from an illegal purchase of the suit property since the purported sale of the suit properties to the 4th, 5th, 6th, 7th, 8th and 9th Defendants is challenged.
 26. The deponent argued that Article 40 of *the Constitution* is not applicable to illegally acquired property. He asserted that the Applicant is not the absolute and indefeasible owner of the suit property as his alleged acquisition is marred with illegality. He maintained that the jurisdiction of the court to punish for contempt is meant to ensure that court decisions and directions are obeyed and enforced.
 27. In conclusion, the Respondents urged the court to dismiss the application with costs.

The Response

28. The Applicant filed a further affidavit in response to the Plaintiffs replying affidavit.
29. He deposed that the court gave directions on the instant application after he purged his contempt following a consent recorded in court requiring him to vacate the suit property. He contended that the evidence of photographs and videos taken over the suit property is inadmissible and borders on espionage as it was obtained illegally and is meant to mislead and poison the mind of the court. He further contended that the illegal evidence should be expunged from the record as it does not show him within the home.



30. With regards to the application for stay filed in the Court of Appeal, the Applicant contended that there was nothing to disclose since the application was dismissed for non-attendance but has since been reinstated for hearing. He contended that the application before the Court of Appeal does not amount to an abuse of court process as the two courts are not of concurrent jurisdiction.

31. The application was canvassed by way of written submissions.

The Applicant's Submissions

32. The Applicant filed his submissions dated 19th September 2024.

33. In his submissions, Counsel reiterated the contents of the affidavit in support of the application. Counsel submitted that vide a ruling delivered on 29th May 2021, the proceedings herein were stayed for a period of 90 days to allow for substitution. Counsel contended that orders are part of the proceedings which were equally stayed and are thus incapable of being disobeyed.

34. Counsel cited Section 5(1) of the *Judicature Act* to submit that any kind of sentence imposed on the Applicant will result in determining the suit herein without a hearing.

35. Counsel further submitted that the terms of orders that the Applicant is accused of disobeying are not clear. Counsel contended that the contempt is no longer ascertainable as it is alleged to have been committed in the year 2013 or 2018.

36. In conclusion, the Counsel urged the court to find that the application raises both legal and constitutional issues of great public interest that require consideration before sentencing of the Applicant.

The Plaintiffs/respondents Submissions

37. The Plaintiffs' filed their submissions dated 25th October 2024. On their behalf, Counsel raised the following issues for the court's determination: -

- a. Whether the 9th Defendant/Contemnor has audience before this Honourable court.
- b. Whether the instant application is an abuse of the court process.
- c. Whether there was a valid order capable of being challenged.
- d. Whether the terms of the order for contempt were clear and unambiguous.
- e. Whether there was a violation of the 9th Defendant/Applicant's Constitutional rights.

38. On the first issue, Counsel relied on the contents of the replying affidavit to submit that the Applicant has no right of audience before this court as he has not purged his contempt.

39. With regards to the second issue, Counsel submitted that the application is an abuse of the court process as the Applicant failed to disclose to this court that he had filed an application in the Court of Appeal seeking to stay the decision of this court. Counsel argued that the filing of the present application while at the same time prosecuting the application for stay before the Court of Appeal amounts to an abuse of the court process and is meant to steal a match from the Respondents. Counsel submitted that the instant application is mischievous as it seeks to introduce new issues for litigation on appeal.



40. On the third issue, Counsel submitted that the court allowed the prayer for injunction pending the hearing and determination of the suit. Counsel further submitted that the order has not been set aside on appeal or review hence it is a valid order capable of being obeyed.
41. On the fourth issue, Counsel submitted that the terms of the order for which the Applicant was convicted were clear, unambiguous and binding on the Applicant. Counsel further submitted that the Applicant had knowledge or proper notice of the terms of the order as he Responded to the application for contempt through a replying affidavit dated 14th December 2020. Counsel argued that the Applicant did not approach the court to have the said order clarified if at all he deemed it to be unclear. That despite the order being in place, the Applicant in blatant breach of the order moved into the house that he had constructed on the suit property.
42. Counsel further submitted that the court stayed the proceedings on 4th February 2021 to enable the Plaintiffs substitute the deceased administrator and not the injunction order.
43. Counsel further submitted that vide a ruling delivered on 6th March 2024, the court found the Applicant in contempt of the orders made on 20th December 2018 and issued on 30th January 2019.
44. Counsel further submitted that the application for contempt is not time barred as the Contempt of Court Act No. 46 of 2016 was declared unconstitutional by the High Court in the case of Kenya Human Rights Commission vs Attorney General & another. Counsel asserted that court orders must be obeyed at all times in order to maintain the rule of law and good order.
45. On the fifth issue, Counsel submitted that the issue of sentencing for contempt is at the discretion of the court. Counsel submitted that civil contempt is not only punishable by committal to civil jail, but also by issuance of a writ of sequestration, a fine or an injunction against the contemnor.
46. Counsel argued that the Applicants contention that his right to liberty will be violated if he is sentenced is speculative as the court has not pronounced itself on the sentence to be meted out on the Applicant. Counsel submitted that the Applicant will be accorded an opportunity to mitigate before the sentence is meted out.
47. Counsel further submitted that the Applicant's contention that his sentencing will have the effect of determining the suit without giving him an opportunity to heard is false and misleading. Counsel submitted that the Applicant responded to the application for contempt through his replying affidavit dated 14/12/2020 and also filed submissions. Counsel further submitted that the Applicant's contention that the sentencing will deprive him of his right to acquire and own property is false and misleading. Counsel argued that the protection under Article 40 of the Constitution does not extended to property illegally acquired or occupied in contempt of a valid court order. It was submitted that the impending sentence is as a result of an undisturbed finding of this court.
48. Counsel submitted that the Applicants averment that he is willing to purge his contempt by giving back the suit property to the estate if he is assured that his money and expenses will be refunded demonstrates his contemptuous attitude towards the court by belligerently refusing to purge his contempt.
49. Counsel further submitted that the Applicant is at liberty to use whatever lawful means to recover his money from the 1st Defendant.
50. In conclusion Counsel urged the court to dismiss the application with costs. To buttress her submissions, Counsel relied on the list of authorities dated 25/10/2025.



Analysis and Determination

51. Having considered the application, the respective affidavits and the rival submissions, the main issue for determination is whether the court should vacate or set aside the orders dated 06/03/2024.
52. The Applicant is seeking to set aside and or vacate the orders dated 06/03/2024. The record shows that vide a ruling delivered on 06/03/2024, this court found the Applicant guilty of contempt of the court order made on 20/12/2018. The ruling was in respect of the application dated 18/11/2020 in which the Plaintiffs sought the following orders: -
 1. Spent.
 2. That the 9th Defendant/Respondent be committed to civil jail for a period of six months for wilful disobedience and contempt of the court order issued by the Honourable Justice Mbogo on 30th January 2019.
 3. That the Honourable Court do issue an order compelling the 9th Defendant/Respondent to demolish the residential houses erected on the suit property in contempt of the court order issued on 30th January 2019.
 4. That the Honourable court be pleased to order the Officer Commanding Station (OCS) Wote to enforce the orders issued against the 9th Defendant/Respondent.
 5. That the costs of this application be in the cause.
53. The Applicant deposed that to the best of his knowledge, the order issued on 30/01/2019 does not exist and denied having been served with the same. He challenged the Respondents to supply him with a copy of the ruling from which the order was extracted.
54. The record shows that vide an application dated 26/02/2014, the Plaintiffs sought the following orders:
 1. Spent
 2. Spent
 3. That the 5th and 9th Respondents be restrained whether by themselves, their agents, servants, employees or whosoever, from continuing to trespass onto, constructing, cultivating, selling, invading, wasting or in any way dealing or any way interfering with the suit property known as Kilala/Kaumoni/836 and Kilala/Kaumoni/323 respectively pending the hearing and determination of this suit.
 4. That the 5th and 9th Defendants be committed to civil jail for a period of six(6) months for wilful disobedience and contempt of the court order issued by Honourable Justice Mutungi on 26th July 2013.
 5. That the 1st, 2nd, 3rd and 4th Defendants/Respondents be committed to civil jail for a period of six(6) months for aiding and abetting the continued disobedience of the court order issued by Honourable Justice Mutungi on 26th July 2013 by the 5th and 9th Respondents.
 6. That the costs of the application be provided for.
55. In its ruling delivered 20/12/2018, the court allowed the application in terms of prayers 3 and 6 of the application and declined to issue prayers 4 and 5.



56. Following the ruling delivered on 20/12/2018, an order was extracted and issued on 30/01/2019. From the foregoing it is crystal clear that the order issued on 30/01/2019 emanates from the ruling delivered on 20/12/2018. The order issued on 30/01/2019 is therefore a valid order.
57. The Applicant contended that the order was not extracted properly as it left out prayers 4 and 5 of the application. In its ruling delivered on 20/12/2018, the court allowed the application in terms of prayers 3 and 6. The order issued on 30/01/2019 was extracted from what was captured in the final orders of the court. The fact that the order did not indicate that prayers 4 and 5 of the application were declined does not invalidate the order or prejudice the Applicant in any way.
58. The Applicant alleged that he was not served with the order. He contended that the letter dated 3/7/2020 confirms that he was not served. He contested the affidavit of service sworn on 16/09/2020 by Ramadhan Hassan Advocate. More importantly, the Applicant asserted that in the ruling delivered on 20/12/2018, that the Hon Judge found that he was not served.
59. At paragraph 35 of the ruling dated 20/12/2018, Hon Justice Mbogo stated as follows in part: -
- “...it is clear that the 1st, 2nd, 3rd, 4th, 7th and 8th Respondents were served with the order dated 26th February 2013, there is no indication that the 5th and the 9th Respondents were ever served. It is my considered view that the two cannot be said to have disobeyed a court order that was never served upon them.....”
60. From the foregoing it is clear that the 5th and 9th Defendants were not served with the order dated 26th February 2013. The issue of non-service of the order is in respect of the order dated 26th February 2013 and not the order dated 20/12/2018. Be that as it may, the court in its ruling delivered on 6/03/2024 found that the Applicant had knowledge or proper notice of the said order.
61. The Applicant contended that the terms of the order were not clear as it did not state what he should refrain from doing. The order dated 20/12/2018 restrained 5th and 9th Respondents whether by themselves, their agents, servants, employees or whosoever from continuing to trespass onto, constructing, cultivating, selling, invading, wasting or in any way dealing with the suit property known as Kilala/Kaumoni/386 and Kilala/Kaumoni/323 pending the hearing and determination of the suit. The order was clear and unambiguous in terms of what the Applicant and the 5th Defendant were restrained from doing and in terms of the parcels numbers.
62. The Applicant contended that the order that he is accused of disobeying was stayed and has never been revived.
63. The Black’s Law Dictionary defines stay of proceedings as follows: -
- “The temporary suspension of the regular order of proceedings in a cause by direction or order of the court usually to await the action of one of the parties in regard to some omitted step or act which the court has required him to perform as incidental to the suit; as where a non resident Plaintiff has been ruled to give security for costs. It is similar to an injunction with which a court freezes its proceedings at a particular point. It can be used to stop the prosecution altogether or to hold some phase of it such as an execution about to be levied on a judgment.”
64. In the matter at hand, the record shows that vide a ruling delivered on 29th May 2021 the proceedings were stayed for a period of 90 days to enable the Plaintiffs sort out the issue of representation of the estate of the late Johnathan Keesi Ngonzi in Machakos High court Succession Cause No. 119 of



2004. The order of injunction dated 20/12/2018 is operative and effective pending the hearing and determination of the suit. The effect of stay of proceedings is to suspend them. From the foregoing, it is clear that stay of proceedings does not nullify what was done prior to the order of stay and therefore the injunction cannot be said to have lapsed.
65. The Applicant contended that the application that culminated to his conviction is statute barred as it was brought after six months of the alleged contempt. He asserted that the proceedings and conviction were a nullity. The Respondent on the other hand argued that the application is not time barred as the Contempt of Court Act was declared unconstitutional by the High court in Kenya Human Rights Commission vs Attorney General & another. The Contempt of Court Act is no longer operative from the date of judgment declaring it unconstitutional. From the foregoing, I find that the application is not statute barred.
66. The Applicant contended that the impending sentence raises serious constitutional issues that require consideration before the sentencing of the Applicant.
67. Counsel submitted that the sentencing of the Applicant will in effect determine the suit without a hearing. The right to a fair hearing is anchored under Articles 25(c) and 50 of the Constitution. The record shows that vide a ruling delivered on 06/03/2024, this court found the Applicant guilty of contempt of court. There is no prescribed punishment for contempt of court. Punishment for contempt is at the discretion of the court and it can be in different forms. This suit is yet to be heard and determined. The impending sentence will not affect the Applicant's right to a fair trial as he will be granted an opportunity to be heard, to call and cross examine witnesses.
68. On whether the impending sentence will deprive the Applicant his right to acquire and own property, the Applicant has not adduced any evidence in support of his allegations.
69. The Applicant is apprehensive that his right to liberty will be violated if he is sentenced. As earlier stated, the court has power to punish contempt of court. As correctly submitted by the Respondents sentencing may take other forms apart from committal to civil jail.
70. From the foregoing, I find that the impending sentencing does not raise any constitutional issues that require consideration before the sentencing of the Applicant. In the end I find that the application dated 3rd May, 2024 is devoid of merit and the same is hereby dismissed with costs.
71. The second application is a Notice of Motion dated 20th May 2024 brought under Order 1 Rule 10(2) of the Civil Procedure Rules, in which the Applicant seeks the following orders: -
1. Spent.
 2. That the Applicant be enjoined in these proceedings as an Interested Party.
 3. That pending the hearing of this instant application the orders issued on 7th May 2024 be suspended.
 4. That the costs of the application be provided for.
72. The application is premised on the grounds appearing on its face together with supporting affidavit of Jennifer Mumo Philip sworn on even date.



The Applicant's Case

73. The Applicant averred that she is the wife of the 9th Defendant herein. She further averred that on 16th May 2024, the 9th Defendant went home very dejected due a court order requiring him to vacate his home within 14 days.
74. The Applicant deposed that she became aware of this matter on that date. She averred that their matrimonial home is situated within the suit property where she resides with her family and added that their children attend nearby schools.
75. She further deposed that she has an equitable interest in the suit property as their matrimonial home is jointly owned. She contended that her occupational rights in the family home cannot be taken away without first being accorded an opportunity to be heard. She further contended that as a joint owner, she has a right to be heard before any order is made. It was her contention that occupational right is an overriding interest even if it is not registered against the title.
76. The Applicant asserted that the order issued on 06/03/2024 is contrary to all known conventions rights and sought to be suspended. In conclusion, she urged the court to allow the application as prayed.

The Respondents Case

77. The Respondents opposed the application through the replying affidavit of Julius Kyalo Keesi sworn on 19/07/2024.
78. The deponent averred that as at the time of his death, the deceased was the registered proprietor of the suit properties namely, Kilala/Kaumoni/323, Kilala/Kaumoni/386, Kilala/Kaumoni/365 and Kilala/Kaumoni/422.
79. He deposed that the certificate of grant issued in Machakos Succession Cause No. 119 of 2004 vested the suit properties in Alice Mbesa Keesi to hold in trust for all the beneficiaries. He asserted that Alice Mbesa Keesi has not leased, transferred or alienated any of the suit properties.
80. He further averred that the 9th Defendant unlawfully trespassed on land parcel No. Kilala/Kaumoni/323 while claiming ownership following the purported purchase from the 1st Defendant. That by a letter dated 14/1/2011, the Senior Assistant Chief Kaumoni Location directed the 1st and 9th Defendant to suspend the sale and stop further development on the said portion of land.
81. That by a letter dated 18/1/2011 and copied to the 9th Defendant the DLASO advised the 1st Defendant to stop the sale of any portion of the suit property as he lacked capacity to do so. That by a letter dated 11/3/2011, the DLASO wrote to the 7th, 8th and 9th Defendants informing them that the suit properties purportedly purchased were not owned by the 1st, 2nd and 3rd Defendants.
82. That they were further advised that the administrator of the estate of Jonathan Keesi Ngunzi was the only one authorized to sell the properties hence the Ministry of Lands could not recognise the sale of the properties to the 7th, 8th and 9th Defendants.
83. That from the foregoing, the husband of the proposed Interested Party had knowledge or actual notice that the 1st Defendant lacked capacity sell the suit property to him. He contended that the proposed Interested Party cannot therefore claim beneficial interest on the suit property as the wife of a mala fides purchaser.



84. He argued that the claim of joint ownership is curious as the Defendant in his affidavit sworn on 14/12/2020 stated that he purchased the suit property from the 1st Defendant and did not mention any contribution by the Interested Party.
85. That other than the marriage certificate, the Proposed Interested Party has not produced any evidence that demonstrates her stake in the proceedings herein. In addition, he contended that the proposed Interested Party has not demonstrated the prejudice she stands to suffer in the case of non joinder should the case proceed without her. The deponent contended that the Applicant has not set out the case she intends to advance and demonstrate that it is different from that of the 9th Defendant. He maintained that the Applicant has all along been aware of this case. In conclusion, he deposed that the application is an abuse of the court process and urged the court to dismiss the same with costs.
86. The application was canvassed by way of written submissions.

The Applicant's Submissions

87. The Applicant filed her submissions dated 20th September 2024.
88. On her behalf, Counsel submitted that the proposed Interested Party being a spouse to the party being punished for contempt by being ordered to vacate the family home will be affected directly by the decision.
89. Counsel further submitted that occupational rights are overriding interests and are binding on the land whether or not they are registered. Counsel submitted that occupational rights in the suit property give rise to a constructive trust of the home in her favour. Counsel further submitted that the proposed Interested Party being a spouse to the 9th Defendant, has the right to enjoy occupational rights in the family home together with the children of the family. Counsel submitted that it is fair and just that the Interested Party is enjoined in the proceedings herein so as to articulate her case as she will be directly affected by the determination of this matter.

The Plaintiffs/Respondents Submissions

90. The Plaintiffs filed their submissions dated 25th October 2024.
91. On their behalf, Counsel submitted that the only issue for determination is whether the proposed Interested Party should be enjoined in the proceedings herein. In their submissions, Counsel reiterated the contents of the replying affidavit.
92. In addition, Counsel submitted that occupational rights are not overriding interest in land. Counsel argued that the occupational rights alluded by the Interested Party were previously provided for under Section 30(g) of the Registered [Land Act](#)(now repealed) and are no longer considered as an overriding interest in land.
93. Counsel further submitted that the proposed Interested Party's contention that occupational rights give rise to a constructive trust of the home in her favour is misguided. Counsel relied on the definition of a constructive trust set out in Black's Law Dictionary and in the Supreme Court case of Arvind Shah & 7 others v Mombasa Bricks & Tiles Limited & 5 others.
94. Counsel contended that a constructive trust is established when one has acquired legal title to property takes advantage of his position for his own benefit with the effect of denying another party a beneficial interest in the property acquired.



95. Counsel submitted that it is trite that he who comes to equity must come to court with clean hands. It was argued that the proposed Interested Party cannot come to court while residing on the suit property in blatant and continued contempt of the court orders.
96. Counsel submitted protection of property under Article 40 of *the Constitution* does not extend to property that has been unlawfully acquired as in the present case.
97. In conclusion, Counsel urged the court to dismiss the application with costs.

Analysis and Determination

98. Having considered the application, the respective affidavits and the rival submissions, the only issue that arises for determination is whether the application for joinder is merited.
99. The law governing the joinder of parties is grounded on Order 1 Rule 10(2) of the Civil Procedure Rules which provides 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 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 to effectually and completely to adjudicate upon or settle all questions involved in the suit, be added.”

100. The Black’s Law Dictionary (8th Edition) page 3548 defines an Interested Party as follows;

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

101. In the case of *Trusted Society of Human Rights Alliance Vs Mumo Matemo & 5 Others* (2015) eKLR the Court held that;

“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 interest will not be well articulated unless he himself or she herself appears in the proceedings and champions his or her cause.”

102. The Supreme Court of Kenya in the case of *Francis Karoki Muruatetu & Another Vs Republic & 5 Others* (2010)eKLR set out the key elements for consideration in an application for joinder of 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 participation, 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 a replication of what the other parties will be making before the court.



103. Going by the above decisions, an Interested Party must therefore demonstrate that it is necessary for him/her being enjoined in the suit so that the Court may settle all the questions involved. The intended Interested Party must make a good case to be enjoined in the suit. The intended Interested Party must demonstrate that it has an identifiable stake in the proceedings.
104. On the first requirement, the Applicant must demonstrate that she has an identifiable stake in the proceedings. The Applicant deposed that she is the wife of the 9th Defendant and added that their matrimonial home is situated within the suit property and is jointly owned. In this regard, the Applicant produced a marriage certificate showing that she is married to the 9th Defendant. She asserted her occupational rights cannot be taken away without being granted an opportunity to be heard. Apart from stating that she the wife of the 9th Respondent, the Applicant has not demonstrated that she has an identifiable stake in the proceedings or stated how her presence will determine the dispute herein.
105. The Applicant claims that she will be directly affected by the outcome of this case. She did not set out the case and or submissions that she intends to make before the court and the relevance of those submissions. Having confirmed that she is a spouse to the 9th Defendant, her case will be a replication of the 9th Defendant's case.
106. The Applicant must demonstrate the prejudice she will suffer in case of non-joinder. The prejudice must be clearly outlined and not something remote. In the matter at hand, the Applicant has not demonstrated the prejudice she will suffer in case of non-joinder.
107. The Applicant has not offered any explanation for the inordinate delay in filing the present application.
108. In the end, I find that the application dated 20th of May, 2024 is devoid of merit and the same is hereby dismissed with costs the Plaintiffs/Respondents.

.....
HON. T. MURIGI
JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 29TH DAY OF JANUARY, 2025.

In the Presence of: --

Court assistant – Ahmed

Mrs. Ahomo for the Plaintiffs/Respondents

Nduli for the Intended Interested Party and holding brief

for Muinde for the Applicant.

Muthiani for the 1st -8th Respondents.

