



**Thindigua Company Limited v Njunge & 2 others; Kung’u & another
(Interested Parties) (Environment & Land Case 2163 of 2001)
[2023] KEELC 20376 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20376 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 2163 OF 2001
LN MBUGUA, J
SEPTEMBER 28, 2023**

BETWEEN

THINDIGUA COMPANY LIMITED PLAINTIFF

AND

FRANCIS P. GITAU NJUNGE 1ST DEFENDANT

JOSEPH KIMANI 2ND DEFENDANT

NDAGWATHA KIARIE 3RD DEFENDANT

AND

STEPHEN KARANJA KUNG’U INTERESTED PARTY

BERNARD KINYAJUI PETER INTERESTED PARTY

RULING

1. Before me is the Interested Parties’ Notice of Motion application dated April 19, 2023 seeking orders to arrest the ruling slated for April 27, 2023, to set aside the yet to be adopted settlement agreement arising from mediation cause LM/MED/094/2022 and in the alternative, there be an order for further mediation.
2. The applicants contend that the mediation proceedings were conducted in the cause MLM/MED/O94/2022 where they participated on various dates including July 13, 2022, July 20, 2022, July 27, 2022 and August 24, 2022, but the resultant settlement agreement was exclusively entered into by the plaintiff and the 1st and 3rd defendants.



3. They have now learnt through the 1st Defendant's counsel that the mediation settlement agreement which they did not execute has since been filed in cause No MLM/MED/094/2022 and the cause marked as settled.
4. The Applicants contend that the Interested Parties' position in this suit is that of a purchaser for value without notice from the 1st Defendant of the parcel of land known as LR No. 76/638 which has been brought to this suit by dint of the dispute between the Plaintiff and the 1st Defendant over LR No 76/395 and LR No 76/396.
5. The application is opposed by the Plaintiff vide the replying affidavit sworn on May 8, 2023 by Moses Gatitu Wango'o, Advocate in conduct of the matter on behalf of the Plaintiff. He avers that the application is defective as the Interested Parties failed to file their pleadings to enable the court and other parties know the nature of their interest and as such, they have no locus standi to participate in the mediation process.
6. The 1st Defendant too opposed the application via a replying affidavit dated May 9, 2023. He deposes that the Interested Parties never filed any pleadings herein thus they do not have locus in the matter.
7. I have considered all the issues raised herein including the rival submissions. The Interested Parties desire that the mediation settlement agreement arrived in the cause MLM/MED/O94/2022 be set aside or referred for further mediation.
8. I find that this court has already pronounced itself on the issues raised herein as well as on the status of the interested parties vide the rulings dated February 9, 2023 and April 27, 2022. In the latter ruling, the court held thus;

 ' ...there is no basis upon which the Interested Parties can set aside the mediation settlement agreement between the Plaintiff and the 3rd Defendant.'
9. Revisiting the status of the interested parties all over again would be tantamount to this court sitting on appeal in relation to its own rulings. I therefore decline to entertain the prayers sought in the current application which is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF SEPTEMBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Gatitu holding brief for Nguru for 1st Defendant

Njugi for Applicants

Court Assistant: Eddel

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