



Joshi & 2 others v Kirui; Kirui & another (Intended Interested Party) (Environment & Land Case 6 of 2014) [2023] KEELC 21089 (KLR) (26 October 2023) (Ruling)

Neutral citation: [2023] KEELC 21089 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE 6 OF 2014
MC OUNDO, J
OCTOBER 26, 2023**

BETWEEN

CHRISTINE ANDREE JOSHI 1ST PLAINTIFF

STEPHEN ELKINGTON 2ND PLAINTIFF

BARRY JAMES JOSHI 3RD PLAINTIFF

AND

SALLY CHEPWOGEN KIRUI DEFENDANT

AND

JOSEPH KIRUI INTENDED INTERESTED PARTY

EMILY CHEROP KIRUI INTENDED INTERESTED PARTY

RULING

1. Pursuant to setting aside of an ex-parte Judgment in this matter vide a ruling dated the January 22, 2019, the intended Interested Parties have now filed an Application by way of Notice of Motion dated March 3, 2023 brought under the provisions of Order 1 Rule 10 of the *Civil Procedure Rules*, Sections 3 and 3A of the *Civil Procedure Act*, and all enabling provisions of the law, where they have sought for the following orders;
 - i. Spent
 - ii. That pending the hearing and determination of the main suit, the honorable court be pleased to order that the Intended Interested Parties/Applicants be enjoined in the instant suit as Interested Parties.



- iii. That the honorable court be pleased to grant leave to the Intended Interested Parties/Applicants to fully participate in the proceedings in the instant suit and file such pleadings, affidavits, submissions and other documents subsequent to the joinder.
 - iv. That costs of the application be in cause.
2. The Application is supported by the grounds set on its face as well as on the sworn affidavit of the Intended Interested Parties, sworn on the March 3, 2023 who deponed that they were informed on the March 27, 2023 by their clan members that a suit had been filed by the Plaintiffs herein against their mother, the Defendant herein. That the Plaintiffs had sought among other things an order directing the Defendant to hand over vacant possession of parcel of land known as Title No Kericho/Chemagel/1401 or in the alternative, an order that the Defendant be evicted from the suit property. That the suit property was their only home and if the suit proceeded without joining them to the same, they stood to be evicted unheard. That they had an identifiable stake and legal interest in the proceedings before court hence the need to be joined as Interested Parties.
 3. The said Application was opposed vide the Plaintiffs' Replying Affidavit sworn on the April 5, 2023 by Christine Andree Joshi, the 1st Plaintiff herein on behalf of the 2nd and the 3rd Plaintiffs in which the Plaintiffs/Respondents deponed that if the Interested Parties were truly residing on the suit land, then it was not true that they could have not known of the existence of the eviction and the instant suit. That they had failed to show a proximate claim or an identifiable stake. That no prejudice had been shown by the intended Interested Parties that warranted their entry into the instant suit. Further, that no documentation had been tendered to demonstrate that the Intended Interested Parties/Applicants had been residing on the suit property and this fact had not been mentioned by the Defendant in any of her previous pleadings.
 4. The Plaintiffs/Respondents further deponed that the intended Interested Parties were mere proxies of the Defendants and the instant application was only intended to further delay the instant suit. That the Intended Interested Parties/Applicants had not demonstrated the relevance of joinder to the existing suit. The Respondents thus sought for the Intended Interested Parties' Application dated March 3, 2023 to be dismissed for being unmeritorious.
 5. On June 20, 2023 directions were taken that the said application be canvassed by way of written submissions whereby both parties complied and I shall proceed to summarize the submissions as follows:

Intended Interested Parties/Applicants' Submissions.

6. The Intended Interested Parties/Applicants summed up the factual background of the matter before framing the issues for determination as follows:
 - i. Whether the Applicants/Intended Interested Parties have a clear and proximate interest in the matter.
 - ii. Whether the Applicants/Intended Interested Parties will suffer prejudice in case of non-joinder.
 - iii. Who should bear the cost of the suit.
7. On the first issue for determination, Applicants/Intended Interested Parties relied on the definition of an interested party in the Black's Law Dictionary, 8th edition and Rule 2 of the *Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 as well as the decided case in *Francis Kariuki Muruatetu & Another v Republic & 5 Others [2016] eKLR* to submit



that being the Defendant's children, they had inherent and vested interest in the affairs of their parents. That as the children of Mr Philip Kirui (Deceased) who owned the suit land prior to his demise, their legal standing as rightful heirs granted them an undeniable state in the suit land hence they ought to be enjoined as interested parties. To buttress the above assertion, reliance was placed on the decided case in *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others [2017] eKLR.*

8. On the second issue for determination as to whether the Applicants/Intended Interested Parties will suffer prejudice in case of non-joinder, Applicants/Intended Interested Parties submitted that non-joinder would deprive them of a day in court, a fundamental aspect of justice as well as an opportunity to exercise their legal rights and protection. That they had a unique perspective and knowledge regarding the suit land and the circumstances surrounding its acquisition. Further that non-joinder would leave them vulnerable to the adverse consequences of a judgement rendered in their absence and that the consequences of such outcome were not only material but also deeply personal and emotional, as they risked losing the land that held significant sentimental value. Reliance was placed on the decided case in *Civicon Limited vs Kivuwatt Limited and 2 Others [2015] eKLR.*
9. They thus urged the court to allow them to be joined in the instant suit as the said joinder would not only protect their rights but also contribute to a comprehensive and just resolution of the matter.
10. On costs, the Applicants/Intended Interested Parties submitted that the court should exercise its discretion in accordance with the provisions of Section 27 (1) of the *Civil Procedure Act.*

The 1st, 2nd and 3rd Plaintiffs/Respondents' Submissions

11. The Plaintiffs also summarized the factual background of the matter before framing their issues for determination as follows:
 - i. Whether the Interested Parties have demonstrated a personal interest that is proximate enough.
 - ii. Whether the Interested Parties have demonstrated the prejudice to be suffered if not joined in the suit.
 - iii. Whether the Interested Parties have demonstrated relevance of any submissions they intend to make in court.
12. On the first issue for determination, the Plaintiffs/Respondents submitted that the intended Interested Parties had not demonstrated proof of their interest on the suit property, the said suit property having been sold to them where a court of competent jurisdiction had since delivered its decision in their favour. That consequently, the Intended Interested parties had no personal interest or stake in the suit property and the application was without merits.
13. That the instant suit was about the Defendant's surrender of vacant possession of the suit property to the Plaintiffs, the issue of possession having been heard and decided in favour of the Plaintiff in Civil suit No 1150 of 2002. That the Intended Interested parties were seeking to re-open the issue on possession which was res judicata as ruled by the court on the December 8, 2022. Reliance was placed on the Francis Kariuki Muruatetu case (supra). The Respondents thus submitted that the Intended Interested Parties had not established any legal and personal interest at all hence their Application should fail on this ground.
14. On the second issue for determination as to whether the Interested Parties had demonstrated the prejudice to be suffered if not joined in the suit, the Respondents submitted was in the negative. That



there had not been any demonstration of any legal prejudice they would suffer if they were not admitted to the instant suit as interested parties.

15. On the third issue for determination, Respondents submitted that the Intended Interested parties had nothing useful to submit to the court and urged the court to dismiss the Application dated March 3, 2023 with costs for lack of merit so that the main suit could be set down for hearing.

Determination.

16. I have considered the Application, the affidavits in support and in opposition. The submissions by the rival parties, the law and authorities herein cited. The genesis of the instant matter was expounded at length in *Christine Andree Joshi & 2 others vs. Sally Chebwogen Kirui [2019] eKLR* by my brother, Justice Kaniaru which summary I respectively adopted in my ruling dated December 8, 2022.
17. It must be noted, that the court in *Christine Andree Joshi & 2 others (Supra)* found that the Defendant/Applicant's counter-claim was Res judicata and dismissed it with costs since the matter was substantially in issue in former suits between the parties herein being HCC No 3154 of 1989 and HCC No 3 of 2009 (Formerly Civil Suit No 1550 of 2002) which suits had been heard and finally determined by courts of competent jurisdiction where no Appeal had been filed.
18. The Respondents/Plaintiffs have now sought for execution of the decree by seeking that the Defendant gives vacant possession of the suit land No Kericho/Chemagel/1401, or in the alternative she be evicted from thereon.
19. The Defendant has tried to prevent this matter from proceeding by filing application after application seeking a myriad of orders despite the matter having been finally determined. The latest one being the current one in which the intended interested parties/Applicants who are the Defendant's children and who had not been parties to the former suits now seek to be joined to the instant suit.
20. The issue for determination is whether the Applicants have certified the legal requirement for being joined as parties to proceedings.
21. Indeed whereas there is nothing inherently objectionable in a person being joined to a pending suit, it is doubtful in the present instance that the joining the intended interested parties would transform the suit into one in which the Defendant and/or Intended Interested Parties/Applicants can then become the principal claimants and seek substantive reliefs keeping in mind that the suit had already been determined in favour of the Plaintiffs/Respondents.
22. The gist of the Applicants' argument is that they have a unique perspective and knowledge regarding the suit land and the circumstances surrounding its acquisition as the children of the deceased Philip Kirui who owned the land prior to his demise. In other words that they would shed light on the issues of ownership and possession of the suit land. This issue, I find has already been determined by a competent court of law and in which no appeal has been preferred.
23. The Legislative framework on the issue of joinder of parties to a suit is spelt out in Order 1 of the Civil Procedures Rules. Order 1 Rule 10 provides a framework for substitution and addition of parties to a suit. Under Order 1 Rule 10(2), the same provides that:

'The court may at any stage of 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 the name of any person who ought to have been joined either as plaintiff or defendant or whose presence before the court may be necessary to enable



- the court to effectually and completely adjudicate upon and settle all questions involved in the suit to be added.'
24. In addition to the above guiding principles, the Court of Appeal in *Meme v Republic* [2004] KLR 637 set out circumstances which would warrant grant of leave to join a party to wit:-
- i. Whether the presence of the party will result in the complete settlement of all the questions involved in the proceedings;
 - ii. Whether the joinder will provide protection for the rights of a party who would otherwise be adversely affected in law: and
 - iii. Whether the joinder will prevent a likely course of proliferated litigation.
25. In *Central Kenya Ltd v Trust Bank Ltd & 5 others* [2000] eKLR, the Court of Appeal held that;
- ' The paramount consideration is whether the party concerned is necessary for the effectual and complete adjudication of all the questions involved in the suit.'
26. Having considered all the circumstances in the present case, I find that a party cannot be added to a suit to introduce a new cause of action or to alter the nature of the suit, but must be a party or parties who are necessary to the *constitution* of the suit without whom no decree can be passed. It should be a party or parties against whom a right or some relief is sought or who, although no relief may be claimed against, but whose presence would be necessary to enable the Court effectively and completely adjudicate upon and settle all the questions involved in the suit.
27. In the instant case, what the Intended interested parties/Applicants seek to shed light on if joined to the suit had already been conclusively decided by a competent court of law and is therefore of no use to the court with regards to the instant suit at hand. Consequently, I am not convinced that joining the intended interested parties/Applicants to the suit would add any value keeping in mind that this suit is at its tail and what remains is the enforcement of the execution.
28. The upshot is that the Application dated March 3, 2023 lacks merit and is herein dismissed with costs. The suit will now be set down for the main hearing.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT KERICHO THIS 26TH DAY OF OCTOBER 2023

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

