



REPUBLIC OF KENYA



Katiku v Katiku; Katiku (Interested Party) (Environment & Land Case 59 of 2017) [2023] KEELC 21415 (KLR) (25 October 2023) (Ruling)

Neutral citation: [2023] KEELC 21415 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE 59 OF 2017**

TW MURIGI, J

OCTOBER 25, 2023

BETWEEN

JOHN NYEKI KATIKU PLAINTIFF

AND

SIMON MUINDE KATIKU DEFENDANT

AND

REGINA CK KATIKU INTERESTED PARTY

RULING

1. Before me for determination is the Notice of Motion dated 24th February, 2023 brought under Order 1 Rule 10(2), Order 51 Rule 1 of the *Civil Procedure Rules*, Section 3A of the *Civil Procedure Act* and all other enabling provisions of law in which the Applicant seeks the following orders:-
 1. Spent.
 2. Spent.
 3. That the Interested Party be enjoined in this suit in that capacity and be granted leave to file the defence and/or any other pleadings.
 4. That the costs be provided for.

The applicant's case

2. The Applicant averred that she is the daughter of the deceased and is therefore entitled to a share of land parcel No. Block 1/82/Kalembwani & Ngaamba Farmers Association. She argued that it is imperative that she is enjoined in the proceedings herein so that she can safeguard her interest in the suit property.



The respondent's case

3. The Respondent filed a replying affidavit sworn on 21st March, 2023 in opposition to the application. She averred that the application is misconceived as the suit property is known as Mukaa/Konza/Kiima Kiu/Block 1/82 and not Block 1/82/Kalembwani & Ngaamba Farmers Association as alleged by the Applicant. She further averred that the suit property is registered in the name of the Defendant.
4. She further averred that the Applicant has not disclosed the name of the deceased person whose share she is claiming to be entitled to. She averred that the application has been brought late in the day since the parties herein have already filed their respective pleadings. She contended that the Defendant will suffer prejudice if the orders sought are granted.

The response

5. In a supplementary affidavit filed on 17th May 2023, the Applicant averred that the suit property herein was formerly known as land parcel No. Block 1/82/Kalembwani/Ngaamba Farmers Association.
6. She further averred that the suit property originally belonged to Kalembwani & Ngaamba Farmers Association but was subsequently subdivided and allocated to the Society members including her late father Mr. Katitku. She asserted that the suit property was registered in the name of the Defendant to hold on his own behalf and in trust for the entire Katitku family.
7. She maintains that her joinder to the proceedings herein will enable the court to effectively adjudicate and settle all the questions involved in the suit herein.
8. The parties were directed to canvass the application by way of written submissions.
9. The Applicant's submissions were filed on 17th May, 2023 which I have duly considered.
10. The Defendant/Respondent did not file written submissions as directed.

Analysis and Determination

11. Having considered the application, the respective affidavits and the Applicant's written submissions, the only issue that arises for determination is whether the Applicant should be enjoined as an Interested Party in the proceedings herein.
12. The law governing the joinder of parties is grounded on Order 1 Rule 10(2) of the *Civil Procedure Rules* which provides 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 to effectually and completely to adjudicate upon or settle all questions involved in the suit, be added.”
13. 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.”



14. The Supreme Court of Kenya in *Communications Commission of Kenya and 4 Others v 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 in defining who an Interested Party is, 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.”

15. In the case of *Trusted Society of Human Rights Alliance v 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.”

16. The Supreme Court of Kenya in the case of *Francis Karoki Muruatetu & Another Vs Republic & 5 Others* (2016) 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 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.”

17. These are persuasive decisions that state the legal position with regards to joinder of Interested Parties.



18. Going by the above decisions, an Interested Party must therefore demonstrate that it is necessary for he/she be 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 joined in the suit. The intended Interested Party must demonstrate that it has an identifiable stake in the proceedings.
19. Turning to the present case, the Applicant averred that she is the daughter of the deceased and is therefore entitled to a share of the suit property. In this regard, she annexed a copy of her national identity card to her supporting affidavit. The Applicant contended that the suit property initially belonged to her father was registered in the name of the Defendant to hold in trust for the entire family.
20. The Defendant on the other hand contended that the Applicant has not disclosed the name of the deceased person whose share she is claiming to be entitled to.
21. The court is satisfied from the material on record that the Applicant has demonstrated that she has an identifiable stake in the proceedings herein. Her involvement in the proceedings will be necessary to enable the court to effectively and completely adjudicate upon this matter.
22. The upshot of the foregoing is that the application dated 24th February, 2023 is merited and the same is allowed as prayed. Costs shall be in the cause.

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HON. T. MURIGI

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 25TH DAY OF OCTOBER, 2023.

IN THE PRESENCE OF:-

Court assistant - Mr. Kwemboi.

Mrs Mutua for the Plaintiff.

Mutisya for the Interested Party.

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