



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kamau v Owiti & 2 others; Osugo & another (Interested Parties) (Environment & Land Case 30B of 2013) [2023] KEELC 20645 (KLR) (13 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20645 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 30B OF 2013  
MAO ODENY, J  
OCTOBER 13, 2023**

**BETWEEN**

**KENNETH GITUNDA KAMAU ..... PLAINTIFF**

**AND**

**LEWIS THORZELIUS GOGO MTEPE ..... 1<sup>ST</sup> DEFENDANT**

**LUCAS OWITI ..... 2<sup>ND</sup> DEFENDANT**

**CLEOPHAS BICHANGA NYAMETA ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**LAWRENCE NYABIAGE OSUGO ..... INTERESTED PARTY**

**THOMAS MASEKI MAERA ..... INTERESTED PARTY**

**RULING**

1. This ruling is in respect of a Notice of Motion dated February 21, 2022 brought by the 3<sup>rd</sup> Defendant seeking the following orders;
  - a. Lawrence Nyabiage and Thomas Maseki Maera be joined as Defendants or necessary parties.
  - b. Upon being joined, parties be granted leave to amend their respective pleadings.
  - c. Costs of this application be provided for.
2. The application was supported by the affidavit of Cleophas Bichanga Nyameta sworn on the same day where he deponed that he was acting as an advocate with instructions of the vendor and its agents.



He also deponed that any money that he released was with the instructions of the vendor which information was known by the Intended Interested Parties.

3. According to the deponent, joinder of the two parties will explain how the accounts of the vendor were run since the parties were responsible for running of the bank accounts. That the sum of money sued for was paid to the vendor as deposit and appropriated as directed by the said company and approved by the Intended Interested Parties.
4. The Plaintiff in response filed grounds of opposition that the Applicant has not demonstrated any identifiable stake or legal interest proximate enough to stand apart from any interest that is merely peripheral.
5. The Plaintiff further stated that the purported Interested Parties have not demonstrated what prejudice they will suffer if they are not made parties to these proceedings. The Respondent also stated that the Applicant has equally not demonstrated the relevance of their participation or their interest in the matter given that those parties did not directly interact with the Plaintiff.

### **Applicant is Submissions.**

6. Counsel identified two issues for determination, whether the Applicants' joinder brings a new angle or fresh facts to the suit and whether there is reasonable cause of action against the Intended Interested Party by the 3<sup>rd</sup> Defendant.
7. Counsel submitted that according to Order 1 Rule 3, 10 (2) & 14 and Order 51, a party or persons may be joined as Defendants against whom any right to relief of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative where, if separate suits were brought against such persons any common question of law or fact would arise.
8. Counsel also relied on Rule 2 of the [Constitution of Kenya Practice and Procedure Rules, 2013](#) which defines an Interested Party as 'a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation.'
9. Mr. S.M Kimani relied on the case of [Francis Kariuki Muruatetu & Another v Republic & 5 others](#) [2016] eKLR where the court referred to the case of [Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others](#) [2014] eKLR submitting that the 3<sup>rd</sup> Defendant was only acting as an agent of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants through the Intended Interested Parties who were in a fiduciary relationship with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and that the moneys received as deposit from the purchase price was appropriated by the two Intended Interested Party with the approval of the 1<sup>st</sup> and 2<sup>nd</sup> Defendant.
10. According to counsel, joining of the Intended Interested Parties as co-Defendants will help the court determine the question on how the money received from the purchaser by the 3<sup>rd</sup> Defendant on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendant was disbursed or appropriated.
11. It was his submission that the issue for the court to determine is whether by joining the Intended Interested Parties will bring any fresh angle to the case relying on the case of [Meme v Republic](#) [2004] 1 EA 124 where the High Court observed that a party could be enjoined in a matter for the reasons that his or her presence will result in the complete settlement of all the questions involved in the proceedings or to provide protection for the rights of a party who would otherwise be adversely affected in law or to prevent a likely course of multiplied litigation.
12. Counsel also submitted that another reason why it is necessary to join the two necessary parties in these proceedings is that they are bound by the outcome of the case, and the questions or disputed issues the



court to settle, are which cannot be effectually and completely settled unless the Intended Interested Parties are joined in the suit as in the case of *Amon v Raphael Tuck & Sons Ltd* [1956] 1 All E.R.

### Analysis and Determination

13. The issue for determination is whether the Applicant have met the threshold for joinder as Interested Parties in this suit.
14. Order 1 Rule 10(2) of the *Rules* stipulates as follows:
  - (2) 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 effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”
15. In the case of *Pravin Bowry v John Ward and Another* [2015] eKLR the Court of Appeal considered the principles to be considered in an application for joinder of parties to a suit where the court referred to the Ugandan case of *Deported Asians Custodian Board v Jaffer Brothers Ltd* [1999] 1 E.A. 55 (SCU) where the court stated as follows:

“A clear distinction is called for between joining a party who ought to ‘have been joined as a defendant and one whose presence before the court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. A party may be joined in a suit because the party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the cause or matter...”

For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the court in that suit. Alternatively, a person qualifies (on an application of a defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.”

16. Similarly in 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, and 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.?"

17. An Applicant seeking to be joined as an Interested Party must establish and show precisely an identifiable stake that he or she has in the suit. The Applicant must show that the orders that the Plaintiff seeks would legally affect his or her interest.
18. Will the participation of the of the Interested Parties help in effectual and complete settlement of all question in the suit and to avoid multiplicity of suit. If the answer to this question is positive then such application can be allowed, but if negative then the Applicants would be termed as busy bodies who come to waste judicial time and resources.
19. The Applicant contends that that he was acting as an advocate with instructions of the vendor and its agents and any money that he released was with the instructions of the vendor.
20. The Applicant has not shown any identifiable stake in this suit. What I gather from the submission is that they do not need to be joined in this suit. The issue that he had received money with the instructions from the agent is information that can be passed to court by such parties being called as witnesses and not parties to the suit. They will not add any value to the case but to convolute it further noting that this is a 2013 matter.
21. Based on the reasons that have been advanced by the Applicant, I am not convinced that the participation of the Intended Interested Parties will be assist this court in coming up with the final determination of the matter. The application is therefore dismissed with costs to the Plaintiff.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 13<sup>TH</sup> DAY OF OCTOBER 2023.**

**M.A. ODENY**

**JUDGE**

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated March 28, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the *Civil Procedure Rules*.

