



REPUBLIC OF KENYA



Butt v Ambala & another; Ambala (Proposed Interested Party) (Environment & Land Case 511 of 2018) [2023] KEELC 21742 (KLR) (23 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21742 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 511 OF 2018
MD MWANGI, J
NOVEMBER 23, 2023**

BETWEEN

HADIJA ASIF BUTT PLAINTIFF

AND

ODUOR HAWI AMBALA 1ST DEFENDANT

THE REGISTRAR OF TITLES 2ND DEFENDANT

AND

OGOLA KODHEK AMBALA PROPOSED INTERESTED PARTY

(In respect of the Proposed Interested Party's Application dated 27th April, 2023)

RULING

Background

1. By Notice of Motion dated 27th April, 2023 the Applicant sought for the following orders: -
 - a) That Ogola Kodhek Ambala be joined as an Interested Party in these proceedings.
 - b) That the costs of this Application be provided for.
2. The application is based on the grounds thereof and the Supporting Affidavit of Ogola Kodhek Ambala sworn on the 27th April, 2023. The deponent avers that he is the registered owner of LR No. 1160/947, 1160/948 and 1160/949 all in Karen, Nairobi. The deponent avers that Plaintiff/ Respondent's case is that he purchased LR No. 1160/947 from a third party. However, pursuant to the Court of Appeal's Order and Judgement, the third party's titles were revoked.
3. He further avers that the Plaintiff's suit herein relates to his said property LR No. 1160/947 whereas the Proposed Interested Party is currently not a party in this case. The deponent states that the Plaintiff



has trespassed into his property and those of his siblings and there is in fact another suit ELC No. 67 of 2020.

4. The application is not opposed.

Analysis and Determination

5. I am of the considered opinion that the sole issue for determination arising therefrom is as follows: -

- (i) Whether the Applicant should be joined as an Interested Party in the proceedings herein.

A. Whether the Applicant should be enjoined as an Interested Party in the proceedings herein

6. Order 1 rule 10(2) of the [Civil Procedure Rules](#) states 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 effectually and completely to adjudicate upon or settle all questions involved in the suit, be added.”

7. The Applicant herein has sought to be joined as an Interested Party to the suit for the reason that he is the registered owner of LR No. 1160/947, 1160/948 and 1160/949 all in Karen, Nairobi. He depones that the Plaintiff’s suit herein relates to his property LR No. 1160/947 whereas the Proposed Interested Party is currently not a party in this case.

8. [Black’s Law Dictionary](#) defines an Interested Party as

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

The Supreme Court of Kenya further defined who an Interested Party is 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](#).

9. Subsequently, having defined who an Interested Party is, it is important then to determine whether the Applicant satisfies the criteria for joinder as an Interested Party in the proceedings.

10. The law on joinder of interested parties to suits has been settled by the Supreme Court of Kenya in the case of [Francis K. Muruatetu and another v Republic & 5 others](#) (2016) eKLR,. The court set out identifiable key elements for consideration in an application for joinder as an Interested Party. The elements are 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.”

11. The Applicant sought for a joinder into these proceedings on the basis that he has proprietary interests in the suit properties. It is in the interest of justice that he be accorded a chance to be heard.
12. The upshot of the foregoing is that the prayers sought in the Notice of Motion dated 27th April, 2023 are granted and I proceed to make the following orders: -
 - (i) That Ogola Kodhek Ambala is joined in this suit as an Interested Party.
 - (ii) Costs shall follow the cause.

It is so ordered.

RULING DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF NOVEMBER, 2023.

M. D. MWANGI

JUDGE

In the virtual presence of:

Mr. Ng'ang'a for the Interested Party

Mr. Ogado for the Plaintiff

No appearance for the Defendants

Court Assistant: Yvette

M. D. MWANGI

JUDGE

