



Gambella Investment Limited v Registered Trustees of the Pentecostal Assemblies of God; Oloo & Oloo Advocates LLP (Intended Interested Party) (Environment & Land Case E312 of 2024) [2025] KEELC 3494 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3494 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E312 OF 2024**

**JG KEMEL, J
APRIL 30, 2025**

BETWEEN

GAMBELLA INVESTMENT LIMITED PLAINTIFF

AND

REGISTERED TRUSTEES OF THE PENTECOSTAL ASSEMBLIES OF GOD DEFENDANT

AND

OLOO & OLOO ADVOCATES LLP INTENDED INTERESTED PARTY

RULING

1. Before me for determination is the Intended Interested Party’s application dated 28/01/2025. The application is expressed to be brought pursuant to Section 1A and 3A of the Civil Procedure Act and Order 1 Rule 10 (2), Rule 14 and 25 of the Civil Procedure Rules. The Applicant prays for orders that;
 - a. The Applicants herein, Ms. Oloo & Oloo Advocates LLP be joined in this suit as an Interested Party.
 - b. This application be heard on a priority basis based on the ruling delivered on 16/1/2025 by Justice Mugo that this suit be placed before his successor for further directions regarding the said application by the Applicant herein.
 - c. Costs of this application be provided for.
2. The application is based on the grounds on the face of it and further supported by the Affidavit of Dr. Martin Oloo dated 28/01/2025. The deponent avers that he was formerly instructed to represent the Defendant in this suit. Counsel avers that vide the Ruling delivered on 16/1/2025, Justice Mugo



granted leave to the firms of Wasilwa Makhakara & Co. Advocates and Bryan Khaemba & Company Advocates to come on record for the Defendant in place of the Applicant.

3. The deponent deposes that the said law firms have since filed applications dated 28/10/2024 and that of 29/10/2024 respectively seeking to set aside the consent dated 29/8/2024. He avers that he legally signed and entered into the consent with the Plaintiff's Advocates based on the instructions received from the Defendant.
4. He argues that he has an identifiable interest over the subject matter of the pending application in so far as it relates to entry of the consent judgment and his joinder shall aid in the just determination of the controversy. He prays that the Applicant be joined as an interested party to these proceedings.

Defendant's Grounds of Opposition

5. The Defendant opposed the application through the grounds of opposition dated 30/01/2025. The Defendant avers that the Advocate only represented a party in the proceedings and has no proprietary or justiciable stake in a dispute between parties over the suit property. Further, that the Applicant has not disclosed who among the alleged Registered Trustees instructed him to negotiate, conclude and sign the Consent.
6. The Defendant further avers that the Applicant intends to circumvent the prohibiting provisions of Rule 9 of the Advocates Practice Rules which prevents an Advocate from acting in a matter where he will be called as witness. That other than receiving rent in the sum of Kshs. 6 Million as annual rent from the Plaintiff, the Applicant has no other interest or stake in the instant suit.

Defendant's Replying Affidavit

7. The Defendant also filed a Replying Affidavit sworn by Rev. Kennedy Mbaranya Adiara, its General Superintendent, dated 4/02/2025. The deponent avers that the only nexus of the Proposed Interested Party to the proceedings herein is its allegations that it was instructed by the Defendant herein to represent it in this matter and no other interest over the suit property.
8. The deponent avers that in any event, the Defendant's application dated 28/10/2024 seeks to cross-examine Dr. Martin Oloo, the Advocate who acted for the Defendant in this matter hence the veracity of the Applicant's instructions to represent the Defendant in these proceedings shall be addressed.
9. The deponent stated that the Applicant has not demonstrated any legitimate interest it has in the present proceedings or the subject suit. Therefore, the application for joinder is devoid of any merit and ought to be dismissed with costs.

Applicant's Supplementary Affidavit

10. The Applicant filed a Supplementary Affidavit dated 18/03/2025 sworn by Dr. Martin Oloo, Advocate in response to the Defendant's Replying Affidavit. He states that he is aware of who an interested party is in a suit and the requirements to be met for one to be joined as such. He avers that the Defendant has sought to set aside the consent executed by his firm on behalf of the Defendant and adopted as a decree of the Court on 23/09/2024. Counsel further states the background of the suit as contained in the Plaintiff. He states that he not only witnessed the execution of the Joint Venture Agreement dated 20/12/2023 by the Registered Trustees but also represented the Defendant in this dispute leading to the execution of a consent and its adoption by the court.
11. He further deposes that the Defendant in its applications dated 28th and 29th October, 2024 seeks to set aside the consent judgment whilst making serious allegations of fraud and forgery against the



Applicant. Therefore, the joinder of the Applicant to the proceedings is necessary as it shall enable the court to effectively and completely adjudicate the dispute herein. That it is the allegations of fraud, forgery and illegalities that makes the Applicant have interest in the subject matter of this proceedings. More so, since the trustees who instructed the Applicant have since disowned it.

12. On the issue of cross-examination, Counsel avers that as a witness, he will not be able to challenge the evidence and allegations of fraud levelled against his firm. However, if joined as an Interested Party, the Applicant shall be able to call witnesses, adduce evidence and contest allegations of fraud and forgery. He contends that non-joinder of the Applicant will occasion a great injustice to it as a finding on allegations of fraud and forgery may be made without according it a hearing and affording it an opportunity to present and contest evidence. He therefore prays that the court allows joinder of the Applicant to these proceedings.

Defendant's Further Affidavit

13. In response to the Supplementary Affidavit, the Defendant filed a Further Replying Affidavit dated 20/03/2025 sworn by Nathan Chayuga a church member of the Defendant, Ngara Branch. The deponent adduced the Letters dated 15/01/2024 from the Plaintiff's Advocate addressed to the Applicant requesting for; minutes of the meeting of the Land Owner's Board of Trustees where the Joint Venture had been approved, a Board Resolution by the Land Owner authorizing a Joint Venture as well as a registered Trust Deed of the Land Owner and signed Constitution currently governing the affairs of the Land Owner. He avers that the applicant did not comply with the said request hence the Letter dated 19/01/2024 requesting for compliance from the Applicant.
14. The deponent further avers that the Letter dated 11/4/2024 by the Plaintiff's Advocates confirms that the Applicant had received Kshs. 6,000,000/= on 6/4/2024 equivalent to one year's rent. The Plaintiff's Counsel further raised concern that the Applicant's Client had not fulfilled any of its obligations under the Agreement including handing over vacant possession of the property despite receiving the payment as agreed.

Court's direction

15. On 11/3/2025, the Court directed that the application be canvassed by way of written submissions. Parties were directed to file and exchange written submissions. Both parties complied. The Applicant filed submissions dated 8/4/2025 whereas the Defendant's submissions are dated 26/03/2025.
16. The court has had the opportunity to peruse the submissions filed by the parties together with the cited authorities and considered them in its determination.

Analysis and Determination

17. Having considered the application, the affidavit in support, the responses thereto as well as the rival submissions, I am of the view that the only issue for determination is whether the Intended Interested Party should be joined as Interested Party in the proceedings herein
18. The Applicant has sought to be joined as an Interested Party to the suit for the reason that it acted for the Defendant in the instant suit having been duly instructed and recorded a consent which the Defendant seeks to now set aside. The Applicant contends that it has a stake in the matter in view of the allegations of fraud levelled against it.



19. First and foremost, who is an Interested Party? 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.”

20. Black’s Law Dictionary defines an Interested Party as “a party who has a recognizable stake (and therefore standing) in the matter.”

21. Further, The Supreme Court of Kenya in *Communications Commission of Kenya and 4 Others –vs- Royal Media Services Limited & 7* 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.?”

22. Subsequently, having defined who an Interested Party is, it is important to then determine whether the Applicant has satisfied the criteria to warrant the joinder of the proposed Interested Party in the proceedings.

23. 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 vs. 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.”
24. To contextualize the application, a brief chronology of events in this suit will suffice. Vide the Plaintiff dated 29/7/2024, the Plaintiff claimed that the Defendant had reneged on its contractual obligations under the Joint Venture Agreement dated 20/12/2023. The Joint Venture Agreement was for purposes of developing the suit property. The Plaintiff averred that despite the said Agreement, the Defendant did not fulfill its end of the bargain. Later, parties recorded a consent dated 29/8/2024 which was adopted as Judgment of the Court on 23/9/2024.
25. It is instructive to note that before a party is joined in a matter, the Court ought to satisfy itself that the proceedings are alive. That means that the suit must still be pending before the Court. Therefore, the Applicant must move the Court during the pendency of the proceedings in that matter. In the case of Florence Nafula Ayodi & 5 Others –vs- John Tabalya Mukite & Another and Benson Girenge Kidiavai & 67 Others (applicants/intended interested parties) [2021] eKLR, the Court stated thus while considering an application for joinder:-
- 12. The above notwithstanding, it is common sense to expect that for one to be enjoined in certain proceedings, those proceedings have to be pending before the court. In Leonard Kimeu Mwanthi v Rukaria M’twerandu M’iringu; Nathaniel Kithinji Ikiugu & 4 others (Intended Interested Parties) [2021] eKLR, Justice L. Mbugua stated that “A party claiming to be enjoined in proceedings must have an interest in the pending litigation...” In other words, the proceedings should still be alive in the court: they could be at the nascent or other stages but must be alive. In Central Kenya Ltd. V. Trust Bank & 4 Others, CA NO. 222 OF 1998 the Court, in discussing the issue of joinder of parties, held that “We would however agree with the respondent that Order 1 Rule (10) (2) contemplates an application for amendment or joinder of parties where proceedings are still pending before the Court.”
26. In the case of JMK v. MWM & Another (2015) eKLR, which was cited by the Intended Interested Parties, the Court of Appeal addressed the application of Order 1 Rule 10(2) as follows;
- “We would, however, agree with the respondents that Order 1 Rule 10 (2) contemplates an application for amendment or joinder of parties where proceedings are still pending before the Court. Sarkar’s code (Supra) quoting authority, decisions of Indian Courts on the provision, expresses the view that an application for joinder of parties can be filed only in pending proceedings. In the same vein, the Court of Appeal of Tanzania, while considering the equivalent of Order 1 Rule 10 (2) of the Civil Procedure Rules in Tanga Gas Distributors Ltd Vs Said & Others (2014) E. A. 448, stated that the power of the Court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before, or during trial; that it can be done even after judgment where damages are yet to be assessed; that it is only when a suit



or proceedings has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable...”

27. As noted above, a consent Judgement was recorded on 23/9/2024 and the case was closed. As it stands, there are no pending proceedings for the Applicant to be joined. It is for that reason that this application is unmerited.
28. It is dismissed with costs in favour of the respondents.
29. Orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF APRIL, 2025 VIA MICROSOFT TEAMS.

J.G. KEMEI

JUDGE

Delivered Online in the presence of:

1. Ms. Sheunda h/b for Mr. Osundwa for the Plaintiff
2. Mr. Bulowa & Mr. Ochieng’ for the Defendant
3. Ms. Morara for the Interested Party
4. CA – Ms. Yvette

