



Southfork Investment Limited v Esquire Investments Limited & 5 others; Maina (Intended Interested Party) (Environment & Land Case 23 of 2020) [2023] KEELC 22490 (KLR) (20 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22490 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 23 OF 2020
JO MBOYA, J
DECEMBER 20, 2023**

BETWEEN

SOUTHFORK INVESTMENT LIMITED PLAINTIFF

AND

ESQUIRE INVESTMENTS LIMITED 1ST DEFENDANT

ADAN MAALIM MURSAL 2ND DEFENDANT

NAIROBI CITY COUNTY 3RD DEFENDANT

CHIEF LAND REGISTRAR 4TH DEFENDANT

DIAMOND TRUST BANK KENYA LIMITED 5TH DEFENDANT

THE HONORABLE ATTORNEY GENERAL 6TH DEFENDANT

AND

IBRAHIM NJUGUNA MAINA INTENDED INTERESTED PARTY

RULING

Introduction and Background

1. The Intended Interested Party/Applicant has approached the court vide the Notice of Motion dated the 11th December 2023; brought pursuant Sections 1A, 1B, 3A and 100 of the *Civil Procedure Act*; Order 1 Rule 10(2) of the *Civil Procedure Rules*, 2010; and in respect of which the Intended Interested Party/Applicant herein has sought for various reliefs, *inter-alia* [verbatim];
 - i. This Honorable court be pleased to grant stay proceedings in this matter and particularly the further hearing of the suit pending the hearing and determination of this application.



- ii. That this court be pleased to order that the Intended Interested Party be enjoined in the suit
 - iii. That upon grant of prayer 2 above, Leave be granted to the Intended Interested Party to file necessary pleadings in support of his claim over the subject matter.
 - iv. That the Honorable court be pleased to re-open the Plaintiff's case upon granting all parties leave to amend their pleadings.
 - v. That the Honorable court be pleased to order all the parties to serve the Intended Interested Party with their pleadings.
 - vi. That the Honorable court do grant any further orders it deems fit to grant
2. The instant Application by and on behalf of the proposed Intended Interested Party is anchored on various grounds alluded to at the foot thereof. Furthermore, the Application is supported by the affidavit of Ibrahim Njuguna Maina [the Intended Interested Party/Applicant], sworn on even date and to which the Applicant has exhibited seven [7] documents, in support of his claim.
 3. Upon being served with the instant Application, the Plaintiff/Respondent proceeded to and filed a Replying affidavit sworn on the 15th December 2023; and in respect of which same has attached/annexed assorted documents in support of the contents of the Replying affidavit.
 4. On the other hand, the 1st Defendant/Respondent filed Grounds of opposition dated the 15th December 2023; and in respect of which same has contended, inter-alia, that the Intended Interested Party/Applicant has neither demonstrated nor shown any nexus between L.R No. 1870/I/112, which same contends to have been allocated unto him [Applicant]; with the suit property before the court.
 5. Other than the Plaintiff/Respondent and the 1st Defendant/Respondent, the rest of the Defendants neither filed Grounds of opposition nor Replying affidavit or otherwise.
 6. Be that as it may, the subject Application came up for hearing on the 18th December 2023, whereupon the advocates for the respective Parties covenanted and ventilate the Application under reference vide oral submissions.
 7. Consequently and in this regard, the Honourable court thereafter proceeded to and gave directions in line with the request and/or proposal by the advocates for the respective Parties. In short, the Application under reference was canvassed vide oral submissions.

Parties's Submissions:

a. Applicant's Submissions:

8. The Applicant herein adopted and reiterated the grounds enumerated at the foot of the Application and thereafter adopted the averments contained vide the Supporting affidavit sworn on the 11th December 2023. Furthermore, the Applicant herein thereafter highlighted and canvassed four [4] pertinent and salient issues for consideration by the Honourable court.
9. Firstly, Learned counsel for the Applicant has submitted that the Applicant herein was duly and lawfully allocated Plot number L.R No. 1870/1/112 – Westland's; *vide* Letter of allotment dated the 10th August 2009. Besides, Learned counsel added that upon the allotment of the property to and in favor of the Applicant, same [Applicant] proceeded to and made payments on account of stand premium on the 17th July 2013.



10. It was the further submissions by and on behalf of the Applicant that even though the payment on account of the stand premium was made outside the 30-day period, same was duly received, receipted and acknowledged by the Commissioner of Lands and hence the acceptance of the payment, albeit outside time denoted that the Letter of allotment was re-activated and thus became lawful.
11. Secondly, Learned counsel for the Applicant has submitted that even though the Applicant is the lawful allottee and thus owner of L.R No. 1870/1/112, the Plaintiff herein has since filed and maintained the instant suit purporting to be the registered owner and/or proprietor of L.R No. 1870/II/452 [L.R No 209/11875], which property, falls on the same ground as the property allocated to and in favor of the Applicant herein.
12. Arising from the fact that the property allegedly claimed by the Plaintiff falls on the same ground with (sic) L.R No. 1870/1/112 – Westland's, Learned counsel for the Applicant has submitted that the Applicant herein therefore has a direct stake and/or interests in respect of the subject suit and thus same ought to be joined as an Interested Party.
13. Thirdly, Learned counsel for the Applicant has submitted that unless same [Applicant], is joined into the proceedings as an Interested Party, same [Applicant], would be denied and/or deprived of the requisite opportunity to ventilate his claim to and in respect of the plot which was allocated unto him. Further and in addition, Learned counsel for the Applicant has also contended that the Applicant would also suffer prejudice and/or grave injustice, in the event of denial of opportunity.
14. Fourthly, Learned counsel for the Applicant has submitted that the instant matter is still pending hearing and hence there is reasonable basis to warrant the joinder of the Intended Interested Party/Applicant. In any event, Learned counsel for the Applicant has contended that the subject Application has been made during the pendency of the proceedings and thus the court is seized of the requisite Jurisdiction to grant same.
15. Other than the foregoing, Learned counsel for the Applicant has thereafter invited the Honourable Court to take cognizance of the various annexures, which have been attached to the supporting affidavit and to find and hold that the Applicant herein truly has an interests over and in respect of the subject suit as well as the suit property.
16. Premised on the foregoing, Learned counsel for the Applicant has thus implored the court to find and hold that the Applicant has established and demonstrated the requisite grounds envisaged under Order 1 Rule 10(2) of the Civil Procedure 2010, to warrant the joinder of same as an Interested Party.

b. Plaintiff's/Respondent's Submissions:

17. The Plaintiff/Respondent herein adopted and reiterated the contents of the Replying affidavit sworn on the 16th December 2023; and thereafter proceeded to and canvassed four [4] salient and pertinent issues for due consideration by the court.
18. First and foremost, Learned counsel for the Plaintiff/Respondent has submitted that the Applicant herein has neither established nor demonstrated any claim and/or interests in respect of the suit property, to warrant his [Applicant's], joinder into the subject suit, either as an Interested Party or otherwise.
19. Additionally, Learned counsel for the Plaintiff/Respondent has submitted that the suit herein touches on and/or concerns ownership of L.R No. 209/11875 (1870/II/452), whereas the property being claimed by and on behalf of the Applicant is said to be L.R No. 1870/1/112, which is [sic] separate and distinct from the suit properties.



20. On the other hand, Learned counsel for the Plaintiff/Respondent has thereafter invited the Honourable court to take cognizance of paragraph 8 of the Replying affidavit, which outlines the details of the suit properties before the court.
21. Secondly, Learned counsel for the Plaintiff/Respondent has also submitted that even though the Applicant herein contends to have been duly and lawfully been allocated L.R No. 1870/1/112, vide Letter of allotment dated the 10th August 2009, it is contended that the impugned Letter of allotment lapsed for want of compliance with the terms and conditions thereunder.
22. Furthermore, Learned counsel for the Plaintiff/Respondent has also submitted that other than the fact that the impugned Letter of allotment lapsed and therefor ceased to exist, the Applicant herein has also not placed before the Honourable court any Certificate of title to underpin his [Applicant] claim to L.R. No 1870/1/112, to warrant a contention that same [Applicant], has any genuine title, worthy of being ventilated before a court of law.
23. Thirdly, Learned counsel for the Plaintiff/Respondent has also submitted that the Applicant himself has tendered and produced to court two Letters, one written by Nairobi Metropolitan Services, [now defunct] dated the 25th June 2020; and the other written by the Nairobi City County Government, which both indicate that what is being claimed by the Applicant herein ceased to exist in 1982; and thus the Letter of allotment issued to the Applicant was/is a nullity.
24. Fourthly, Learned counsel for the Plaintiff/Respondent has submitted that what the Applicant herein desires to do, is to join the instant suit with a view to propagating his claims, pertaining to and concerning L.R No. 1870/1/112, which is separate and distinct from the suit properties or at all.
25. Consequently and in the premises, Learned counsel for the Plaintiff herein has contended that the Applicant herein cannot be therefore joined into the subject matter, insofar as the claim(s) sought to be canvassed by and on his behalf are parallel to and inconsistent with the claims being propagated by and on behalf of the Plaintiff herein.
26. In view of the foregoing, Learned counsel for the Plaintiff/Respondent has pointed out that the issues being raised by and on behalf of the Applicant herein can only be adverted to and ventilated in a separate forum, filed by the Applicant and not otherwise.
27. In support of the foregoing submissions and more particularly that the Applicant cannot seek to be joined into the said proceedings with a view to propagating his claim(s), Learned counsel for the Plaintiff/Respondent has cited and relied on, inter-alia, the case of Communications Commission of Kenya & 3 other v Royal Media Services Ltd & 7 other (2017)eKLR, Francis Muruatetu & Another v Republic and 5 other (2016)eKLR, respectively.
28. Based on the foregoing, Learned counsel for the Plaintiff/Respondent has therefore contended that the Applicant has neither demonstrated nor established a basis to warrant his joinder into the subject proceedings either as required by law or at all.
29. Consequently and in the premises, learned counsel for the Plaintiff/Respondent has invited the Honourable court to dismiss the Application with costs.

c. 1st Defendant's/Respondent's Submissions:

30. The 1st Defendant adopted the Grounds of opposition dated the 15th December 2023; and thereafter highlighted four [4] pertinent issues for consideration by the Honourable court.



31. First and foremost, Learned counsel for the 1st Defendant has submitted that prior to and before a court of law can direct the joinder of an Applicant as an Interested Party, it is incumbent upon the court to appraise/ ascertain the claim by the Applicant and to discern whether same raises and/or demonstrates any stake over and in respect of the suit and by extension the suit property.
32. Nevertheless, Learned counsel for the 1st Defendant/Respondent has submitted that in respect of the instant matter, the Applicant herein has neither demonstrated nor established the nexus between L.R No. 1870/1/112, (which is claimed by the Applicant) to the suit properties before the court.
33. Consequently and in view of the foregoing, Learned counsel for the 1st Defendant/Respondent has submitted that the Applicant herein therefore has no stake and/or interest over and in respect of the suit properties to warrant his joinder/inclusion into the suit as an Interested Party, or otherwise.
34. Secondly, Learned counsel for the 1st Defendant has submitted that even assuming that the Applicant's [sic] property, namely, L.R No. 1870/1/112, is in existence; it is evident that same (property), appears to be situated in Block 1; and not in Block 2, wherein the suit properties are located and/or situated.
35. From the foregoing submissions, Learned counsel for the 1st Defendant/Respondent has therefore pointed out that it is evident that the Applicant's [sic] property, which is being relied upon to propagate the claim for joinder, is truly separate from the suit properties.
36. Thirdly, Learned counsel for the 1st Defendant has submitted that from the annexures and/or documentation espoused by the Applicant himself, it is apparent that the property being claimed by the Applicant herein ceased to exist in the year 1982.
37. Furthermore, Learned counsel for the 1st Defendant/Respondent has invited the Honourable court to consider the Letter exhibited by the Applicant and which has been authored by Nairobi Metropolitan Services, [now defunct], whose contents has neither been challenged nor impugned by the Applicant.
38. In the premises, Learned counsel for the 1st Defendant/Respondent has submitted that the Applicant herein has no legitimate claim or at all, to warrant seeking joinder into the subject proceedings.
39. Lastly, Learned counsel for the 1st Defendant has submitted that the Applicant herein has therefore failed to demonstrate the basis upon which same ought to be joined into the subject suit or at all.
40. In support of the foregoing submissions, Learned counsel for the 1st Defendant/Respondent has cited and relied on the holding in the case of *Francis Kariuki Muruatetu versus Republic* (2016)eKLR, where the Supreme Court of Kenya duly considered the legal ingredients to be established and/or satisfied before one can be joined as an Interested Party.

d. 2nd Defendant's/Respondent's Submissions:

41. The 2nd Defendant/ Respondent herein intimated to the court that same has neither filed Grounds of opposition nor Replying affidavit or at all.
42. Nevertheless, Learned counsel for the 2nd Defendant has pointed out that same is equally opposed to the joinder of the Applicant as an Interested Party to and in respect of the subject matter.
43. Furthermore, Learned counsel for the 2nd Defendant/Respondent has also contended that the Applicant has not demonstrated the nexus, [if any], between L.R No. 1870/1/112; and the suit properties, or at all, to warrant his (Applicant's) joinder into the subject suit as an Interested Party.



44. Other than the foregoing, Learned counsel for the 2nd Defendant/Respondent has adopted and reiterated the submissions by and on behalf of the Plaintiff/Respondent and the 1st Defendant/Respondent, respectively.

e. 3rd Defendant's/Respondent's Submissions:

45. The 3rd Defendant/Respondent intimated to the court that same has neither filed Grounds of opposition nor Replying affidavit to the Application by and on behalf of the Intended Interested Party/Applicant.

46. Nevertheless, Learned counsel for the 3rd Defendant ventured forward and stated that same is not averse to the Application by the Intended Interested Party/Applicant. For coherence, Learned Counsel intimated to the Court that the Application thus ought to be allowed.

f. 4th and 6th Defendants'/Respondents' Submissions

47. The 4th and 6th Defendants filed Grounds of opposition dated the 15th December 2023, which were thereafter adopted and highlighted by Learned counsel for the 4th and 6th Defendants, respectively.

48. Firstly, it was the submissions by Learned counsel for the 4th and 6th Defendants/Respondents that the Applicant herein has neither established nor demonstrated any legal interest and/or stake in respect of the suit properties, to warrant his joinder as an Interested Party.

49. Furthermore, Learned counsel has submitted that a suit/civil proceedings belongs to the Parties thereto and therefore whenever such other or additional Party seeks joinder, then it behooves the intended Party to truly demonstrate his/her interests in the suit, prior to and before a court of law can consider joinder.

50. To this end, Learned counsel for the 4th and 6th Defendants has cited the decision of the Supreme Court of Kenya in *Trusted Society of Human Rights Alliance v Mumo Matemu & others* (2021)eKLR, where the court underscored the caution and circumspection to be observed before an order for joinder can be made and/ or decreed.

51. Secondly, Learned counsel for the 4th and 6th Defendants has submitted that what the Applicant herein seeks to propagate is a claim pertaining to and/or concerning ownership of L.R No. 1870/1/112, which claim is separate and distinct from the issues being ventilated at the foot of the instant case.

52. Additionally, Learned counsel for the 4th and 6th Defendants/Respondents has contended that a Party, the Applicant herein not excepted, cannot seek to be joined into an existing suit, with a view to propagating a cause of action, which is at variance with; or inconsistent to, the one being canvassed by the Principal Parties in the suit.

53. Thirdly, Learned counsel for the 4th and 6th Defendants has also submitted that pursuant to the provisions of Order 1 Rule 10(2) of the *Civil Procedure Rules*, 2010, a Party, the Applicant herein not excepted, can only be admitted and/or joined into an existing proceedings, if same has been able to demonstrate that such a Party is truly interested in the proceedings or is a necessary party.

54. Nevertheless, Learned counsel for the 4th and 6th Defendants has pointed out that the Applicant herein, has however failed to show and demonstrate that same is truly a necessary party worthy of being joined into the proceedings.

55. Lastly, Learned counsel for the said Defendants has submitted that even though the Applicant herein contends to have been issued with a Letter of allotment, it is evident that the impugned Letter of



allotment, which was (sic) issued on the 10th August 2009, lapsed long before the Applicant could make payments over and in respect thereof.

56. To the extent that the impugned Letter of allotment, (sic) lapsed long before same was acted upon, Learned counsel for the 4th and 6th Defendants has therefore submitted that the Applicant hence has no legitimate interests and/or rights, even over (sic) L.R No. 1870/1/112, capable of being ventilated and/or canvassed before a court of law.
57. Arising from the foregoing, Learned counsel for the 4th and 6th Defendants has therefore invited the Honourable court to find and hold that even the letter of allotment being relied upon by and on behalf of the Applicant is null and void and thus incapable of premising the claims being alluded to by and on behalf of the Applicant.
58. In this respect, Learned counsel for the 4th and 6th Defendants has cited and relied on the decision in the case of *Torino Enterprises Ltd v The Attorney General* (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment), where the Supreme Court of Kenya underscored that a Letter of allotment which is not acted upon within the stipulated timeline lapses and becomes void for all intents and purposes.
59. In a nutshell, Learned counsel for the said Defendants has therefore implored the court to find and hold that the subject Application is premature, misconceived and otherwise legally untenable.

g. 5th Defendant's/respondent's Submissions:

60. The 5th Defendant neither filed Grounds of opposition nor Replying affidavit to and in respect of the subject Application.
61. Furthermore, Learned counsel for the 5th Defendant/Respondent submitted that the impugned Letter of allotment dated the 10th August 2009, which is being relied upon by the Applicant, to anchor his claim to and in respect of the suit property, was stated to be void and thus a nullity, by the concerned authorities, inter-alia, Nairobi Metropolitan Services (now defunct) and the Nairobi City County Government, respectively.
62. To the extent that the impugned Letter of allotment being relied upon by the Applicant was declared to be null and void, Learned counsel for the 5th Defendant/Respondent has therefore invited the court to find and hold that the Applicant has not demonstrated the requisite locus standi to warrant his joinder into the subject proceedings or at all.
63. In view of the foregoing, Learned counsel for the 5th Defendant has similarly implored the court to find and hold that the Application by and on behalf of the proposed interested party is therefore premature and misconceived.

Issues For Determination:

64. Having reviewed the Application beforehand and the respective Responses; and having taking account of the oral submissions by the respective Parties, the following issues do emerge and are thus worthy of determination;
 - i. Whether the Applicant herein has any lawful rights to and in respect of L.R No. 1870/1/112; or at all and whether the said property has any nexus to the suit properties before the court.
 - ii. Whether the Applicant herein has established and/or demonstrated any stake and/or interests over and in respect of the suit properties to warrant joinder into the subject matter.



- iii. Whether the proposed claim by the Applicant, if at all, can be propagated and/or canvassed in the instant suit to warrant joinder or otherwise.

Issue Number 1

Whether the Applicant herein has any lawful rights to and in respect of L.R No. 1870/1/112 or at all and whether the said property has any nexus to the suit properties before the court.

65. The Applicant herein has filed the instant application, contending that same is the lawful and legitimate allottee/owner of L.R No. 1870/1/112 – Westland’s, which same contends to have been allocated to him (Applicant) vide Letter of allotment dated 10th August 2009.
66. Other than the fact that the Applicant contends to have been allocated [sic] L.R No. 1870/1/112, it is admitted and acknowledged by the Applicant himself that same, however did not pay (sic) the statutory levies alluded to and contained on the face of the Letter of allotment within the requisite/statutory 30 days period.
67. Furthermore, it is acknowledged and admitted by the Applicant herein that same (sic) only paid the stand premium alluded to and contained on the face of (sic) the Letter of allotment on the 17th July 2013, which is well beyond the stipulated/statutory duration provided for at the foot of the Letter of allotment.
68. Nevertheless, Learned counsel for the Applicant has contended that despite the fact that the payment in question was not made within the requisite/statutory period, the payment was however, made and same was received, receipted and acknowledged by the Commissioner of lands.
69. Consequently and in view of the foregoing, Learned counsel for the Applicant has contended that the fact that the payments was received, receipted by the Commissioner of lands well outside the 30 days period, denotes that the terms of the Letter of allotment were re-activated and thus the Applicant’s interests thereto were duly acknowledged.
70. Arising from the foregoing, Learned counsel for the Applicant has therefore contended that the Applicant herein has lawful and legitimate rights to and in respect of L.R No. 1870/1/112, capable of being ventilated before a court of law.
71. Be that as it may, there is no gainsaying that the Letter of allotment (sic) dated the 10th August 2009, which is being propagated by the Applicant herein, contained special terms and covenants, which the Applicant was obliged to comply with prior to and or before actualizing the interests in respect of the property named thereunder.
72. On the other hand, it is worthy to underscore that the special terms/ conditions at the foot of the Letter of allotment included, inter-alia, a clause that the Applicant was obligated to accept the terms of the Letter of allotment and to pay the statutory levies, within 30 days from the date of the postmark; and that in the event of default, the Letter of allotment was to lapse.
73. Pertinently, the terms of the Letter of allotment were so explicit and the failure to comply with and/or abide by same, rendered the Letter of allotment extinct and thus incapable of being actualized and/or acted upon, ex-post facto, either as contended by the Applicant, or at all.
74. Arising from the foregoing, it is therefore common ground that by the time the Applicant herein was (sic) purporting to pay the statutory levies at the foot of the impugned Letter of allotment, same was dead and thus incapable of being acted upon, or at all.



75. In this respect, it suffices to adopt, restate and reiterate the holding of the case in the case of *Syedna Mohammed Burbannuddin Sabeb & 2 others versus Benja Properties Ltd & 2 others* [2007] eKLR, where the court held thus;

“In any event, the letter of allotment relied upon by the Defendant had itself expired, and was therefore invalid. I do not accept Mr. Kirundi, Counsel for Defendant’s argument, that the expired letter, when acted upon, had been “revived” through conduct. The letter had expired. It was dead. There was nothing to “revive”.

76. Other than the position adverted to in the decision [supra], the Supreme Court of Kenya had occasion to consider the legal implication of a Letter of allotment which had not been acted upon and whose term lapsed long before [sic] payments were made.

77. For coherence, the Supreme Court rendered herself in the case of *Torino Enterprises Limited versus Attorney General* (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment), where the court held thus;

57. The respondent also challenged the letter of allotment on grounds that at the time of its transfer, the conditional thirty (30) days acceptance period had lapsed. As it turned out, the letter was also silent on whose behalf the commissioner of lands had made the allotment. Noting that the Commissioner of Lands by an allotment letter dated December 19, 1999 purported to allocate the suit property to Renton company limited. Thereafter, by a letter dated April 25, 2001, Renton company limited sought approval from the Commissioner of Lands to transfer the same to the appellant. The appellant’s ownership is traced back to this allotment Letter even if subsequently registered under the Registration of Titles Act cap 281 (Repealed) on April 26, 2001.

58. So, can an allotment letter pass good title? It is settled law that an allotment letter is incapable of conferring interest in land, being nothing more than an offer, awaiting the fulfilment of conditions stipulated therein. In *Dr Joseph NK Arap Ng’ok v Justice Moiyo Ole Keiyua & 4 others* CA 60/1997 [unreported]; and in *Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others* HC Civil Case No 182 of 1992; [2008] eKLR, the superior courts restated this principle as follows:

“It has been held severally that a letter of allotment per se is nothing but an invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer an interest in land at all” [Emphasis added].

59. The pronouncement in *Gladys Wanjiru and Dr Joseph N. K. Arap Ng’ok* (supra) has been echoed in various Environment and Land Court decisions post the 2010 Constitution, including; *Lilian Wanjeri Njatha v Sabina Wanjiru Kuguru & another*, Environment and Land Case No 471 of 2010; [2022] eKLR; *John Elias Kirimi v Martin Maina Nderitu & 4 others*, Environment and Land Suit No 320 of 2011; [2021] eKLR; and *Kadzoyo Chombo Mwero v Ahmed Muhammed Osman & 11 others*, Environment and Land Case No 42 of 2021; [2021] eKLR, to mention but a few.

60. Suffice it to say that an Allottee, in whose name the allotment letter is issued, must perfect the same by fulfilling the conditions therein. These conditions include but are not limited to, the payment of a stand premium and ground rent within prescribed timelines. But even after the perfection of an allotment letter through the fulfillment of the conditions stipulated therein, an allottee cannot pass valid title to a third party unless and until he acquires title to the land through registration under the applicable law. It is the act of registration that confers



a transferable title to the registered proprietor, and not the possession of an allotment letter. In *Peter Wariire Kanyiri v Chrispus Washumbe & 2 others*, Environment and Land Court Case No 603 of 2017; [2022] eKLR, Kemei, J held as follows: “[15]. In the case at hand, in the absence of any title registered in the name of the Plaintiff, the Court is unable to hold that the Plaintiff is the registered proprietor of the land. This is because the letter of allotment lapsed within 30 days and the same is of no legal consequences” [Emphasis added].

78. Notably, once the terms of the Letter of allotment are neither acted upon nor complied with, within the prescribed/circumscribed timeline, the Letter of allotment lapses and is rendered void for all intents and purposes.
79. Based on the foregoing, it is therefore evident and apparent that the impugned Letter of allotment upon which the Applicant herein relies to propagate his claim to and respect of L.R No. 1870/1/112, was/is non- existent and hence incapable of anchoring the application for joinder or at all.
80. Secondly, even if the impugned Letter of allotment was in existence [which is not the case], it is evident that L.R No. 1870/1/112, (which is claimed by the Applicant) seems to be located in Block 1; as opposed to Block 2 wherein the suit properties are located and/or situated.
81. For the avoidance of doubt, it is not lost on the court that the suit property before the court is described and/or known as L.R No. 1870/11/452; 1870/2/410 or L.R No. 209/11875. Instructively, it is evident that the suit property is shown to be located in Block II and not otherwise.
82. From the foregoing analysis, what becomes apparent is that the property which is being alluded to by and on behalf of the Applicant and which is shown to be situate in Block 1, cannot by any stretch/figment of imagination be said to correspond, [share same ground], with the suit properties.
83. Furthermore, it is also not lost on this court that the Applicant herein has neither tendered nor produced any document to show that L.R No. 1870/1/112, [which is alluded to], shares a common physical ground with the suit properties.
84. In a nutshell, my answer to issue number one[1] hereinbefore is to the effect that the Applicant herein, has no known and/or demonstrable rights/interests over (sic) L.R No. 1870/1/12, either as claimed or at all.
85. Other than the foregoing, the Applicant herein has also failed to show and/or demonstrate any nexus between (sic) L.R No. 1870/1/112, (which is claimed by himself) to the suit properties or at all.

Issue Number 2

Whether the Applicant herein has established and/or demonstrated any stake and/or interests over and in respect of the suit properties to warrant joinder into the subject matter.

86. Other than the contention by and on behalf of the Applicant that same is the lawful allottee in respect of L.R No. 1870/1/112, (which has been discussed in the preceding paragraphs), it was also incumbent upon the Applicant to demonstrate his interests, [if any], as pertains to the suit properties.
87. Pertinently, it is imperative to point out and underscore that prior to and/or before the Applicant can be joined and/or admitted as an Interested Party in respect of the instant suit, same must demonstrate and/or establish that truly same has a demonstrable interest in the suit and by extension, the suit property.



88. To highlight the foregoing position, it suffices to adopt, reiterate and amplify the holding by the Supreme Court of Kenya in the case of *Francis Kariuki Muruatetu & Another v Republic & 5 others* (2016)eKLR, where the court stated and observed as hereunder;

(34) With that definition of “interested party,” the Court proceeded to hold further [paragraphs 17-18]:

“(17) Suffice it to say that while an interested party has a ‘stake/interest’ directly in the case, an amicus’s interest is its ‘fidelity’ to the law: that an informed decision is reached by the Court having taken into account all relevant laws, and entertained legal arguments and principles brought to light in the Courtroom.

[18] Consequently, 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...”

(37) From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party:

One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

- i. 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.
- ii. 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.
- iii. Lastly, a party must, in its application, set out the case and/or submissions 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.

(42) Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed by the Court from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues, or introduce new issues for determination by the Court. One of the principles for admission of an interested party is that such a party must demonstrate that he/she has a stake in the matter before the Court. That stake cannot take the form of an altogether a new issue to be introduced before the Court.



89. Bearing the foregoing exposition in mind, it is now appropriate to revert back and ascertain/discern whether the Applicant herein has demonstrated an Interest and/or stake in the suit and by extension the suit properties, to warrant his inclusion/admission as an Interested Party.
90. Sadly, the Applicant herein has neither placed before the court nor tendered any evidence to show that same was ever allocated L.R No. 1870/II/410; 1870/II/452 or L.R No. 209/11875, which are the suit properties before the Honourable court.
91. Furthermore, it is also not lost on the court that the Applicant herein has also not been able to tender and/or place before the court any Certificate of ownership/Grant speaking to any registrable interests over and in respect of the suit properties, to found a basis for his claim thereto. For coherence, it is the issuance of a Certificate of Title that would anchor any claim of ownership and not otherwise. [See the holding in the case of *Dr. Joseph N.K Arap Ngok versus Justice Moiyo Ole Kieuwa* [1997]eKLR]
92. Arising from the foregoing, it is therefore apparent that the Applicant on whom the burden laid, has not been able to demonstrate the existence of any stake and/or legal interest relative to the suit and by extension the suit properties to warrant his admission as an Interested Party or at all.

Issue Number 3

Whether the proposed claim by the Applicant, if at all, can be propagated and/or canvassed in the instant suit to warrant joinder or otherwise.

93. As pertains to the issue herein, it is important to point out that a suit and/or a civil proceedings touches on and concerns the various issues which the Primary/Principal Parties desire to canvass and/or ventilate before a court of law.
94. Consequently, whenever a person, who was hitherto not a Party, the Applicant herein not excepted, seeks to be joined into an existing suit, same must not endeavor to bring forth and/or propagate a claim/cause of action which is contradictory to; and/or at variance with, the cause of action canvassed by the primary/principal parties.
95. To this end, it is important to take cognizance of the holding of the Supreme Court of Kenya in the case of *Communication Commission of Kenya & 3 others v Royal Media Services Ltd & 7 other* (2014)eKLR, where the court stated thus;
 - (27) We cannot exercise our discretion to enjoin a party that disguises itself as an Interested Party, while in actual fact merely seeking to institute fresh cause. On this point, we are guided by the principle which we had pronounced in the *Mumo Matemo case* (at paragraph 24), as follows:

“ A suit in Court is a ‘solemn’ process, ‘owned’ solely by the parties. This is the reason why there are laws and Rules, under the *Civil Procedure Code*, regarding Parties to suits, and on who can be a party to a suit. A suit can be struck out if a wrong party is enjoined in it. Consequently, where a person not initially a party to a suit is enjoined as an interested party, this new party cannot be heard to seek to strike out the suit, on the grounds of defective pleadings.”
96. Arising from the dictum espoused by the Supreme Court of Kenya in the case [supra], what is crystal clear is that a Party seeking to be joined as an Interested Party cannot come forth and seek to propagate own cause of action or otherwise.



97. Be that as it may, the Applicant herein has approached the court and same contends that his desire to be joined into the instant proceedings as an Interested Party is to enable same to canvass a position that the suit property was duly allocated unto him and hence he (Applicant) is the lawful owner thereof and not the Plaintiff.
98. Quiet clearly, the grievance/cause of action which the Applicant desires to canvass, ventilate and/or propagate before the court is clearly contradictory to and at variance with the ones espoused vide the pleadings beforehand. In this regard, it suffices to underscore that the kind of grievance alluded to cannot be raised and/or ventilated by an Interested Party.
99. Invariably, if the Applicant herein is duly convinced and satisfied that same was duly allocated L.R No. 1870/1/112 (as alleged), then same is at liberty to file and/or commence own suit and thereafter implead all the Parties, as he (Applicant) pleases.
100. Simply put, the Applicant herein cannot seek to procure and obtain leave of the court to be joined into the existing proceedings and thereafter endeavor to propagate a cause of action, which constitutes a new issue, hitherto not fathomed and/or envisaged by the Principal Parties.
101. To surmise, it is my finding and holding that even if the Applicant had surmounted issues number one [1] and two [2] herein before alluded to, (which is not the case), I would still have come to the conclusion that the intended cause of action/grievances are antithetical to the cause of action propagated by the principal disputants and hence cannot warrant joinder of the Applicant as an Interested Party.
102. In short, my answer to issue number three [3] is to the effect that the intended grievances and causes of action that the Applicant desires to propagate, constitutes all together a new cause of action, which cannot be canvassed and deliberated upon in the current proceedings, whatsoever.

Final Disposition:

103. From the foregoing discourse, it must have become crystal clear, evident and apparent that the Proposed Interested Party/Applicant herein has no demonstrable interest and/or stake in respect of the subject suit and by extension, the suit properties.
104. Further and in addition, it is also not lost on the Honourable court that the issues, which the Applicant herein intend to propagate are issues which are antithetical to and at variance with the cause of action beforehand; and hence the inclusion of same in the current suit, [if at all], would merely operate to convolute the issues for determination.
105. In a nutshell, the Application dated the 11th December 2023; by and on behalf of the Proposed Interested Party/Applicant, is certainly devoid and bereft of merits and hence same ought to be and is hereby dismissed with costs to the Plaintiff/Respondent and the Defendants/Respondents, save for the 3rd Defendant/Respondent.
106. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER 2023.

OGUTTU MBOYA

JUDGE.

In the Presence of;

Benson - Court Assistant.



Mr. OJ Henry for the Proposed Interested Party/Applicant.

Mr. Elijah Mwangi for the Plaintiff/Respondent.

Dr. Jotham Arwa for the 1st Defendant/Respondent.

Ms. Ann Githongori for the 2nd Defendant/Respondent.

Mr. Duwane for the 3rd Defendant/Respondent.

Mr. Allan Kamau for the 4th and 6th Defendants/Respondents.

Mr. Shah for the 5th Defendant/Respondent.

