



Muliro v Wanyama & 15 others; Muliro (Proposed Interested Party) (Environment & Land Case 9 of 2023) [2023] KEELC 22304 (KLR) (19 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22304 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 9 OF 2023
FO NYAGAKA, J
DECEMBER 19, 2023**

BETWEEN

MUKASA MWAMBU MULIRO PLAINTIFF

AND

JOSEPH MUCHOE WANYAMA 1ST DEFENDANT

WILSON WAKWEIKA MUKUBUYI 2ND DEFENDANT

TOM BARASA WANYAMA 3RD DEFENDANT

BENJAMIN LUKA BARASA 4TH DEFENDANT

GETA MATOFARI 5TH DEFENDANT

CLEOPHAS MASINDE 6TH DEFENDANT

NICKSON ONZERIO 7TH DEFENDANT

SIMON SIFUNA 8TH DEFENDANT

GEDION WANYONYI KUYA 9TH DEFENDANT

JOHN MULEYI 10TH DEFENDANT

WANASWA SUNGURA 11TH DEFENDANT

AUGUSTINE WANYAMA 12TH DEFENDANT

LEONARD SIFUNA 13TH DEFENDANT

RICHARD WEKESA 14TH DEFENDANT

MURUNGA MKEMBU 15TH DEFENDANT

PATRICK SOITA 16TH DEFENDANT

AND



RULING

Background

1. Mukasa Mwambu Muliro, the plaintiff herein, instituted the plaint dated February 27, 2023, as the legal representative of the estate of Henry Masinde Muliro (hereinafter ‘the Deceased’). He sought a permanent injunction against the defendants herein from trespassing, encroaching or making use of land parcel LR No 11209 of IR 19870/3 (hereinafter ‘The suit property’).

The Application

2. Through a notice of motion application dated March 15, 2023 (hereinafter ‘The application’), was supported by the affidavit and Supplementary Affidavit of Mukose Naburuku Muliro deposed on March 15, 2023 and July 10, 2023 respectively, Mukose Naburuku Muliro sought to be joined to the suit as an Interested Party.
3. The prayers were crafted in the following terms:
 - i. That the honourable court be pleased to join Musoke Nabururku Muliro as an interested Party to this suit.
 - ii. That the honourable court be pleased to issue any further or consequential orders in the interests of fair hearing and justice in the circumstances.
 - iii. That Costs of this application be in the cause.
4. As can be gleaned from the grounds and affidavits in support of the application, the applicant stated that the suit property belonged to deceased who was said to be his father.
5. The applicant claimed that he had applied for grant of letters of administration in the deceased’s estate at the High Court in Eldoret in Succession Cause No 23 of 2023. He contended the plaintiff herein had instituted the instant case secretly without involving all the beneficiaries in the Estate of the Deceased.
6. It was his position that the suit property was the subject in Eldoret Succession Cause No. 23 of 2023. His position therefore was that the outcome of this suit will have a direct effect on the distribution of the estate in the succession proceedings. He deposed that the foregoing case is in the process of gazettelement for him to be issued with grant of letters of administration Intestate.
7. In the supplementary affidavit, he deposed that he had an interest in the suit property by virtue of the orders in Eldoret Succession Cause No 125 of 1993 where the Court revoked in entirety the grant of Letter of Administration issued to Mercia Muliro (deceased) for excluding the children of Redempta Nekesa Muliro from the list of beneficiaries and that the Court ordered that any of the beneficiaries could apply afresh.
8. He deposed further that the plaintiff/respondent had the right to file an answer to petition and cross-petition to air his grievances. It was his case that the plaintiff’s replying affidavit raised family disputes that should be separated from this dispute and heard by a different court.



The Submissions

9. The proposed interested party filed written submissions dated June 15, 2015. It was his case that he had a recognizable interest in the suit and to that end referred to various decisions including, the Supreme Court decision in Petition No 15 and 16, *Francis Karioko Muruatetu & another v Republic & 5 others* where parameters that define an interested party were discussed.

The Plaintiff's/Respondent's Case

10. Mukasa Mwambu Muliro responded to the application through his replying affidavit deposed to on March 27, 2023. He deposed that the application was devoid of merit and should be dismissed since the applicant had not demonstrated what interest he had in the suit. It was his case that the instant suit was instituted to protect the property of the deceased from invasion by the defendants who are not beneficiaries of the deceased's estate.
11. He deposed that the suit herein had no relationship with the purported Eldoret Succession Cause No 23 of 2023. It was his case that the suit was intended to bar the defendants from intermeddling with the estate of the deceased and had nothing to do with the distribution of the estate.
12. The plaintiff claimed that the intended interested party was not an administrator of the estate of the deceased and had no capacity to be joined in this suit. He deposed that he obtained a limited grant for purposes of suing and defending suits on behalf of the estate of the deceased and that the Succession Cause in Eldoret had been filed in disregard of the consent of all the beneficiaries of the subject estate.
13. It was his case that the application herein was abuse of process.

The Submissions

14. The plaintiff filed written submissions dated July 4, 2023. He replicated largely the depositions in his replying affidavit.

Issues for Determination

15. Having carefully appreciated the parties' rival positions, the issues that arise for determination are:-
 - i. Whether this court has jurisdiction
 - ii. Depending on (i) above whether the application is merited.
16. I now consider the issues sequentially.

Analysis

i. Whether the Application is merited

17. In order for one to be enjoined in a matter, it is an established principle that the suit herein is still pending before it. For one to move the court successfully for such as application, besides the merits of the case, he or she must do so during the pendency of the proceedings in that matter. I am guided by the case of *Florence Nafula Ayodi & 5 others v Jonathan Ayodi Ligure v John Tabalya Mukite & another; Benson Girenge Kidiavai & 67 others (applicants/intended Interested Parties)* [2021] eKLR. In the case, this court held that the proceedings must be either be at "the nascent or other stages but must be alive." That was the similar holding in *Leonard Kimeu Mwanthi v Rukaria M'twerandu M'iringu; Nathaniel*



- Kitbinji Ikiugu & 4 others (Intended Interested Parties)* [2021] eKLR, Lady Justice Mbugua J stated, “A party claiming to be enjoined in proceedings must have an interest in the pending litigation...”
18. In the instant case, this suit has not been heard: it is ‘youthful’ and alive. This now turns me to the merits of the application.
 19. Order 1 rule 10 of the *Civil Procedure Rules, 2010* as amended in 2020 which provides for addition of “a necessary” party. It stipulates that “The court may at any stage of the proceedings, either upon or without the application of either party,...order 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.”
 20. There is no dearth of case law on the fact that an interested party can be joined to a suit. This is done under the provisions of order 1 rule 10 of the *Civil Procedure Rules*. Simply put, after the promulgation of the 2010 *Constitution*, the procedure relating to it is firmly and clearly stipulated in the statutes and subsidiary legislation of the country. The main source of this is a special procedure provided in Legal Notice No 117 of 2013. It was Gazetted on June 28, 2013 as the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*, (I refer to them as the *Mutunga Rules, 2013*).
 21. In rule 2 of the *Rules* an interested party is defined. The procedure of being enjoined as such is provided for in rule 7. Under sub-rule 1 of rule 7 it is provided that “A person, with leave of the court, may make an oral or written application to be joined as an interested party.” Therefore, the proposed interested party must move the court but he ought to seek leave of the court first. Once granted he will be enjoined. But before he does so, he must bring himself within the parameters of the law.
 22. In the case of *Francis Kariuki Muruatetu & another v Republic & 5 others*, Petition 15 as consolidated with 16 of 2013 [2016] eKLR the Supreme Court set out guidance on the requirements for successful application for joinder as an interested party. The court gave three principles. These were at paragraph 37 where the court stated that he must show:
 - (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.
 23. I have considered the instant application. The applicant only says he was left out of the application process in the plaintiff’s process of obtaining the grant of letters ad litem. That it was the reason he applied to be enjoined.
 24. In my view the application herein fails to meet the threshold of the *Francis Muruatetu case (supra)*. Being left out of the application for the grant of letters ad litem is not a stake in this matter. It can only be an issue of challenging the manner in which the order of the Court in the matter where the letters ad litem were given were obtained. The applicant has not set out the submissions he intended to make



and how relevant they would be in the instant case. What I understand this proposed interested party to be saying is that there is a succession matter pending before the Eldoret Court. That can only be handled by the said Court.

25. The upshot is that the application fails and is dismissed with costs to the respondents.
26. In order to make move the matter forward and fast, this court fixes the instant suit for mention on January 18, 2024 for directions on how the parties will address the court as to whether it has jurisdiction.
27. It is so ordered.

RULING DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 19TH DAY OF DECEMBER, 2023

HON. DR. *IUR* NYAGAKA

JUDGE, ELC KITALE

