



Tugboat Enterprise Limited & 11 others v Ngolo & 12 others; Chembe (Intended Interested Party) (Official Suing on behalf of Casuarina Self Help Group) (Environment & Land Case E026 of 2020) [2023] KEELC 22382 (KLR) (14 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22382 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E026 OF 2020
FM NJOROGE, J
DECEMBER 14, 2023**

BETWEEN

TUGBOAT ENTERPRISE LIMITED & 11 OTHERS PLAINTIFF

AND

RASHID KAJELA NGOLO & 12 OTHERS DEFENDANT

AND

**SAMMY RAMADHAN CHEMBE INTENDED INTERESTED PARTY
OFFICIAL SUING ON BEHALF OF CASUARINA SELF HELP GROUP**

RULING

1. By a Notice of Motion dated 17th March 2022, the Applicant sought for the following orders: -
 - a. Spent.
 - b. That this Honourable Court do order Sammy Ramadhan Chembe an official of Casuarina Self Help Group, be added as an interested party to this suit;
 - c. That the interested party be granted an opportunity to submit written and oral arguments in the above matter;
 - d. That the intended interested party be allowed to submit with leave of the court any other information it may deem important and relevant to allow for the just disposition of the matter;
 - e. That the costs of this application be provided for.
2. The application is based on the grounds thereof and the Supporting Affidavit of Sammy Ramadhan Chembe, the Applicant, sworn on the even date. The Applicant deposed that he is an official of



Casuarina Self Help Group with the authority to act on behalf of the said group. He annexed a copy of the said authority. He averred that members of the said group have been in occupation of the properties subject in this suit which he referred to as ancestral lands; that they have built permanent structures, continued to cultivate crops and even interred some of their deceased relatives thereon. For those reasons, any adverse orders issued in the suit will affect them.

3. The Plaintiffs opposed the application. They filed a Replying Affidavit sworn by Professor Abdullah Naji Said, a director of the 1st Plaintiff, on 3rd February 2023. The said Abdullah deposed that the Plaintiffs were not aware of the self-help group and their attempts to join the suit was calculated at derailing the expeditious determination of the suit. He was of the view that the intended interested party should file another suit against the Plaintiffs.
4. The Applicant filed a further affidavit dated 23rd March 2023 in response to the Plaintiffs' replying affidavit. Notably, there was no response from the Defendants. The application was canvassed by way of written submissions.

Applicant's Submissions

5. In their submissions filed on 26th June 2023, Counsel for the Applicant identified two issues for determination, namely whether the application for joinder of interested party is merited, and secondly, who should bear the costs of the application.
6. Regarding the first issue, counsel quoted the definition of an "interested party" echoed in the case of *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others* [2015] eKLR; *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others* [2017] eKLR. She added that the guiding principles in such an application were articulated by the Supreme Court in *Raila Amollo Odinga & another v IEBC & 2 Others & Michael Wainaina Mwaura (as Amicus Curiae)* [2017] eKLR; *Francis Kariuki Muruatetu & another v Republic & 5 others* Petition 15 as consolidated with 16 of 2013 [2016] eKLR; and in *Judicial Service Commission v Speaker of the National Assembly & Another* [2013] eKLR. According to her, the applicant had met the principles set out in the above cases.
7. Counsel added that this court is empowered to order that a necessary party is joined to a suit as envisaged under Order 1 Rule 10 (2) of the *Civil Procedure Rules* and Rule 7 (1) of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*.
8. Counsel submitted that the applicant sufficiently demonstrated that his interest transcends merely being affected by any orders that may be issued; that the applicant's joinder will ensure that the issues in the suit are fully settled at once. To buttress this point Counsel relied on the case of *Skov Estate Limited & 5 others v Agricultural Development Corporation & another* [2015] eKLR. She added that another condition to be considered was whether the suit is still pending as it was held in *Florence Nafula Ayodi & 5 others v Jonathan Ayodi Ligure v John Tabalya Mukite & another; Benson Girenge Kidiavai & 67 others (intended interested parties)* [2021] eKLR; and in *Leonard Kimeu Mwanthi v Rukaria M'twerandu M'iringu; Nathaniel Kithinji Ikiugu & 4 others (intended interested parties)* [2021] eKLR; that the present suit has neither been heard nor finalized therefore this was the appropriate stage to join the Applicant.
9. It was counsel's further submission that the applicant and about 500 members of the said group have always lived on the suit land while consistently being promised individual titles by the National Land Commission upon survey. This fact so she argued was not disputed by the Plaintiffs. To counsel, this makes the applicant both a necessary and proper party to the suit as was defined by the India Supreme Court in *Balaram v P. Chellathangam & others*; that there will be real prejudice occasioned to the Applicant if the application is not allowed.



10. Regarding the issue for costs, counsel guided by Section 27(1) of the *Civil Procedure Act* and the case of *Republic v Rosemary Wairimu Munene, ex-parte applicant Ihururu Dairy Farmers Cooperative Society Limited*, submitted that costs should follow the event and be in the cause.

Plaintiffs' Submissions

11. Counsel for the Plaintiffs relied on the definition outlined in the *Black's Law Dictionary*, 9th edition where an "interested party" is defined as a party who has a recognizable stake and therefore standing in a matter, and the definition envisaged in Order 1 rule 10 (2) of the *Civil Procedure Rules*. To counsel, the applicant did not fit the description of an interested party but an intended plaintiff or defendant. This, counsel argued, was because the applicant's intention to be joined is to ventilate a claim on their alleged ownership and seek reliefs of some sorts thus beating the whole purpose for joinder envisaged under the aforesaid Order 1 Rule 10 (2), that is, to enable the court effectually and completely adjudicate upon and settle all the issues. Counsel relied on the case of *Marigat Group Ranch & 3 others v Wesley Chepkoimet & 19 others* [2014] eKLR.
12. To the Plaintiffs' counsel, the applicant's claim over the suit property cannot be determined in the present suit since the presence of the interested party will only be limited to the issues between the plaintiffs and defendants herein.
13. I have read and considered the Application and the annexures thereto, the response filed by the Plaintiffs, the rival submissions and relevant provisions in law together with the various authorities cited in support of each claim. I am of the considered opinion that the issues for determination are: -
- a. Whether the joinder will assist the court in the effective and effectual determination of all questions arising in the suit;
 - b. Whether the Applicant has any identifiable stake in the proceedings;
 - c. Whether the joinder or non-joinder will prejudice the parties herein;
 - d. What are the orders as to costs?

Analysis and Determination

14. 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 and settle all questions involved in the suit, be added."

15. The Applicant herein has sought to be joined as an Interested Party to the present suit for the reason that he, together with members of Casuarina Self-help Group, have been in occupation of the suit properties since the independence period; that their forefathers lived thereon and they have since built permanent structures. The suit properties described in the plaint are Malindi L.R. No 5465 and L.R. No. 5466 said to have been amalgamated to L.R. 6461 which was subdivided into 42 parcels. It is also clear that the Plaintiffs' claim against the Defendants is grounded on the tort of trespass. The Plaintiffs pray inter alia for orders of vacant possession of the suit properties and a permanent injunction against the said defendants.



16. The Plaintiffs on the other hand are of the view that since the Applicant has his own claim over the suit property, he should then file another suit against the Plaintiffs. Alternatively, he should have sought to join the suit as a defendant but not as an interested party.
17. The first and most important point will be to define an interested party so as to determine whether the Applicants falls within that definition or category. The parties have aptly submitted on this point. I will rely on the definition established by the Supreme Court in *Communications Commission of Kenya and 4 Others -v- Royal Media Services Limited & 7 Others* Petition No. 15 OF [2014] eKLR that: -

“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.?”

18. Similarly, in *Justin Kitbinji Nderi & 2 others v Director of Public Prosecutions & Another; Njiiru Micheni Nthiga (Interested Party)* [2020] eKLR the court relied on the case of *SKOV Estate Limited & 5 Others v Agricultural Development Corporation & Another* (supra) where Munyao J. held that;

“18. In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party. In other words, there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in



one way or another. A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant...” (Emphasis mine

19. I have carefully perused the Plaintiffs’ replying affidavit; it is clear to me that they did not dispute that the intended interested party or the other members of the said self-help group reside on the suit properties. All they disputed was the existence of the self-help group. As already established, the orders sought by the Plaintiffs in the main suit include vacant possession of the suit properties. If the Plaintiffs’ case were to succeed, the orders issued would in this court’s view adversely affect the applicant herein. The Plaintiffs’ argument that the applicant should have filed another suit is not tenable (See *SKOV Estate Limited & 5 Others v Agricultural Development Corporation & Another* (supra)).
20. In light of the foregoing, I find that the Applicant has demonstrated that he has an identifiable stake in these proceedings and that failure to join him to the proceedings would prejudice him.
21. The upshot of the foregoing is that the application dated 17th March 2022 is merited. It is hereby allowed. The costs of the application shall be in the cause. The matter shall be mentioned on 29/2/24.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 14TH DAY OF DECEMBER, 2023.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

