



REPUBLIC OF KENYA



**Kisiangani & 3 others v Steve Fwesa t/a Travellers Hotel Plaza & another (Environment & Land Case E008 of 2022) [2023] KEELC 22205 (KLR) (13 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22205 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT & LAND CASE E008 OF 2022  
EC CHERONO, J  
DECEMBER 13, 2023**

**BETWEEN**

**SHADRACK NAKITARE KISIANGANI ..... 1<sup>ST</sup> PLAINTIFF  
EUGINE WANJALA KISIANGANI ..... 2<sup>ND</sup> PLAINTIFF  
SAVEROUS KITININDI KISIANGANI ..... 3<sup>RD</sup> PLAINTIFF  
SAMMY MUMBWANI KISIANGANI (SUING AS LEGAL ADMINISTRATORS  
OF THE ESTATE OF PETER KOINANGE KISIANGANI ALIAS PETER  
KISIANGANI ALIAS PETER KOIYANGE - DECEASED) ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**STEVE FWESA T/A TRAVELLERS HOTEL PLAZA ..... 1<sup>ST</sup> DEFENDANT  
COUNTY GOVERNMENT OF BUNGOMA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The applicant, vide a Chamber Summons dated 7<sup>th</sup> May, 2023 seeks the following orders;
  - a. That Marygorethi Kisiangani being an interested party herein be allowed to join these proceedings.
  - b. That the costs of this application be provided for.
2. The application is supported by the affidavit of Marygorethi Kisiangani and grounds apparent on the face of the said application. The application is opposed by the plaintiffs/respondents who filed grounds of opposition through the firm of J.W Sichangi & Company Advocates.
3. When the said application came up for directions on 26/7/2023, the parties agreed to canvass the same by way of written submissions.



### **Applicants Summary of Facts**

4. The proposed interested party/applicant in her supporting affidavit stated that she is the daughter to the deceased, one Peter Koinange Kisiangani (Deceased) and that the plaintiff is her eldest step brother. She stated that she has a great interest in the suit property in that the same was sold by all her family members including the 1<sup>st</sup> plaintiff who was given his share and transferred with the blessings of all family members to the 1<sup>st</sup> defendant. She stated that the plaintiff duly received his share of the proceeds of sale of the suit property herein, just like the rest of her siblings. She said that it is only fair that she be joined as party in this suit.

### **Plaintiff/Respondent's Response in Opposition to the Said Application.**

5. In opposition to the said application, the plaintiffs/Respondents filed grounds of opposition raising the following issues;
  - i. The applicant is a stranger to the estate of the deceased as she is not an administratrix
  - ii. The plaintiffs brought the suit as legal administrators of the estate of the deceased and the applicant is not one of them
  - iii. That applicant has not disclosed any role to play whether to be enjoined as the plaintiff or defendant and could just be a joyrider.
  - iv. The whole application is unfounded, lacks merit and should be jettisoned with costs.

### **Legal Analysis and Decision**

6. I have considered the application, the supporting affidavit, the grounds of opposition and the relevant law. The gist of this application is that the proposed interested party wishes to be added to this suit as an interested party and that her presence before court is necessary in order to enable the Honourable court to effectually and completely adjudicate upon and settle all questions involved in the suit. She stated that she has great interest in the suit property which belonged to their late father Peter Koinange Kisianga'ni (deceased) and which property was authorized and/or sanctioned to be sold by the deceased's wife and all the children of the late Peter Koinange Kisianga'ni (deceased) including the 1<sup>st</sup> plaintiff
7. According to the applicant, the suit property Land parcel No. Webuye Municipality Plot No. 7996/78A belonging to their deceased father was sold by all the family members to the 1<sup>st</sup> defendant and each member was given his/her share, including the 1<sup>st</sup> plaintiff.
8. Order 1 Rule 10(2) of the *Civil Procedure Rules* provides the guiding principles for joinder of a party and 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 effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”



9. It is clear from the provisions of the law that, before a party is added to a suit, the court must evaluate the importance of such a party and his/her relevance to the just determination of the suit. In the case of *JMK V Mwm & Another* [2015] eKLR the Court of Appeal held;

“...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 the trial; that it can be done even after judgment where damages are yet to be assessed; that it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable; and that a party can even be added at the appellate stage.”

10. Again in *Joseph Njau Kingori v Robert Maina Chege & 3 Others* [2002] eKLR, Nambuye J (as she then was) enumerated four aspects to consider before joining a party to a suit as follows;

- i. Whether the applicant is a necessary party?
- ii. Whether he is a proper party?
- iii. Whether there is a relief flowing from him to the plaintiff? And
- iv. Whether the ultimate order or decree cannot be enforced without his participation in the proceedings?

11. Coming to the present application, the applicant contends that the subject matter of this suit being Land parcel No. Webuye Municipality Plot No. 7996/78A belonged to their late father Peter Koinange Kisiangani (deceased) and sold to the 1<sup>st</sup> defendant with the authority of his wife and all family members, including the 1<sup>st</sup> plaintiff and the proceeds shared amongst all the family members. The proposed interested party/applicant is not seeking any relief or share from the suit property which she admits was lawfully and procedurally sold to the defendant herein.

12. Applying the principles set out in the cited cases above, I find that the proposed interested party/applicant is not a proper and necessary party as there is no relief flowing from him to the plaintiff and the ultimate order/decreed can be enforced without her participation in these proceedings. The proposed interested party/applicant's concern is that she privy to some factual information how the suit land was sold to the 1<sup>st</sup> defendant with authority and consent of all family members and the proceeds shared amongst all family members. In my view, such information can be given to the court without necessarily being joined as a party to these proceedings. The applicant can give such information in any capacity other than being a party to this suit.

13. In view of the matters aforesaid, I find the Chamber Summons application dated 7<sup>th</sup> July 2023 devoid of merit and the same is hereby dismissed with costs.

**READ, DATED, DELIVERED AND SIGNED IN THE OPEN COURT/VIRTUALLY AT BUNGOMA THIS 13<sup>TH</sup> DECEMBER, 2023**

**HON.E.C CHERONO**

**ELC JUDGE**

In the presence of;

1. Applicant/Advocate-absent
2. Respondent/Advocate-absent
3. Okwaro C/A

