



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NYAHURURU**

**ELC NO. 6 OF 2021**

**HANNAH MUTHONI GICHU.....PLAINTIFF**

**-VERSUS-**

**MALEWA RANCHING CO. LTD.....1<sup>ST</sup> DEFENDANT**

**NJENGA NDUNGU T/A NJENGA ENTERPRISES.....2<sup>ND</sup> DEFENDANT**

**VICTORIA WANJIKU MACHARIA.....1<sup>ST</sup> INTERESTED PARTY**

**NDUNG’U KARIUKI.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

**A. INTRODUCTION**

1. The material on record shows that by a notice of motion dated 23<sup>rd</sup> April, 2021 the 2<sup>nd</sup> Interested Party applied to be joined as an Interested Party in the suit on the basis that he was the registered proprietor of the suit properties, that is, **Title Nos. Nyandarua/Kipipiri/Lereshwa Block 1 (Malewa Ranch)/816 and 817**. It would further appear from the record that vide a notice of motion dated 10<sup>th</sup> February, 2021 the 1<sup>st</sup> Interested Party also sought to be joined as an Interested Party in the suit and for the instant suit to be consolidated with **ELC No. 777 of 2017** and **Nyahururu CMCC No. 67 of 2019** which were said to be related to the instant suit.
2. The record further shows that the two applications were heard virtually before Hon. Justice John Mutungi on 27<sup>th</sup> July, 2021 who allowed the prayers for joinder of the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties but deferred the issue of consolidation. The honourable Judge then transferred the suit to the ELC at Nyahururu to deal with the suit and the application for consolidation. The said orders were made in the absence of the advocates for the 1<sup>st</sup> Interested Party who were unable to join the online platform for one reason or another.

**B. THE 1<sup>ST</sup> INTERESTED PARTY’S APPLICATION**

3. Aggrieved by the orders made on 27<sup>th</sup> July, 2021 allowing the 2<sup>nd</sup> Interested Party to be joined in the proceedings, the 1<sup>st</sup> Interested Party filed a notice of motion dated 21<sup>st</sup> September, 2021 under **Section 3A of the Civil Procedure Act (Cap. 21), Order 12 Rule 7 of the Civil Procedure Rules and all enabling provisions of the law** seeking the 2<sup>nd</sup> Interested Party. The application was based upon the grounds set out on the face of the application and the contents of the supporting affidavit sworn by George Gitamo Onsombi Advocate on 21<sup>st</sup> September, 2021. It was contended that the order of 27<sup>th</sup> July, 2021 did not have the input of the 1<sup>st</sup> Interested Party and that the log in link provided by the court on that date was erroneous. It was further contended that none of the parties shall suffer prejudice by allowing the application since they shall have an opportunity of being heard on the application for joinder.

**C. THE 2<sup>ND</sup> INTERESTED PARTY’S RESPONSE**

4. The 2<sup>nd</sup> Interested party, Ndungu Kariuki, filed a replying affidavit sworn on 12<sup>th</sup> October, 2021 in opposition to the application. He stated that the instant application was misconceived, frivolous and an abuse of the court process. He stated that as the registered owner of the suit properties, he was entitled to be heard in the proceedings and that the Plaintiff who filed the instant suit did not object to his joinder in the proceedings. He further stated that the court had unfettered discretion to allow joinder of parties at any stage of the proceedings and that the 1<sup>st</sup> Interested Party had not demonstrated what prejudice or injustice she shall suffer by the orders of 27<sup>th</sup> July, 2021.

**D. DIRECTIONS ON SUBMISSIONS**

5. When the application was listed for *inter partes* hearing on 30<sup>th</sup> September, 2021, it was directed that it shall be canvassed through written submissions. The parties were consequently given timelines within which to file and exchange their submissions. The record shows that the 2<sup>nd</sup> Interested Party filed his submissions on 28<sup>th</sup> October, 2021 whereas the 1<sup>st</sup> Interested Party filed hers on 10<sup>th</sup> November, 2021.

**E. THE ISSUES FOR DETERMINATION**

6. The court has considered the notice of motion dated 21<sup>st</sup> September, 2021, the replying affidavit in response thereto as well as the submissions of the parties. The court is of the opinion that the main issue for consideration is whether the 1<sup>st</sup> Interested party has made out a case for review, variation or setting aside of the orders made on 27<sup>th</sup> July 2021 allowing the joinder of the 2<sup>nd</sup> Interested Party.

**F. ANALYSIS AND DETERMINATION**

7. The court has considered the material and submissions on record. The gist of the 1<sup>st</sup> Interested Party's grievance is that she was not heard before the 2<sup>nd</sup> Interested party's application for joinder was allowed due to no fault of her own. She submitted that she had filed a replying affidavit in opposition to the application. She was of the opinion that there was no need of joining the 2<sup>nd</sup> Interested party as an interested party in the suit since the Plaintiff could have easily amended the plaint to make him a 2<sup>nd</sup> Defendant. The 1<sup>st</sup> Interested Party cited the case of **William Ntomauta M'ethanga** (sued as **N'mauta Nkari**) v **Baikamba Kirimania [2017] eKLR** in support of the application.

8. The 2<sup>nd</sup> Interested Party, on the other hand, submitted that the court was entitled to allow the joinder of a party at any stage of the proceedings for the purpose of effectually and completely adjudicating upon all the questions involved in the suit. He submitted that as the current registered proprietor of the suit properties he was entitled to be heard in the proceedings and that the court was right in granting his application. It was further submitted that the 1<sup>st</sup> Interested party had not demonstrated what prejudice, if any, she shall suffer as a result of such joinder. He therefore urged the court to dismiss the application with costs.

9. There is no dispute that the 2<sup>nd</sup> Interested Party is the registered proprietor of the suit properties. There is no dispute that he was never joined in the plaint as a party and that the court had at some point directed the Plaintiff to amend the plaint to join the registered owner as a party. In those circumstances, the Hon. Justice Mutungi was perfectly entitled to allow joinder of the registered owner even in the face of opposition by the 1<sup>st</sup> Interested Party.

10. The 2<sup>nd</sup> Interested Party's interest in the proceedings was clearly established once he demonstrated that he was the current registered proprietor. Such order cannot be set aside or varied unless it is clearly demonstrated that the court misdirected itself and acted on wrong principles; that it took into account irrelevant considerations; that it failed to take into account relevant considerations; and that the decision was plainly erroneous. It is not enough to simply demonstrate that one of the parties was not present when the application for joinder was heard. The case of **William Ntomauta M'ethanga (supra)** which was cited by the 1<sup>st</sup> Interested Party concerned the setting aside of an *ex parte* judgment where the Appellant had shown a defence on the merits. It is, therefore, clearly distinguishable from the instant application challenging the joinder of an Interested party in a suit.

11. The court finds no grounds for review within the meaning of **Order 45 of the Civil Procedure Rules** have been demonstrated in the instant application. There is no evidence of any error on the face of the record or discovery of any new and important matter to warrant a review as known to law. There is absolutely no evidence to demonstrate that the 1<sup>st</sup> Interested Party shall suffer any prejudice or injustice as a result of the orders of 27<sup>th</sup> July, 2021.

**G. CONCLUSION AND DISPOSAL**

12. The upshot of the foregoing is that the court finds no merit in the 1<sup>st</sup> Interested Party's notice of motion dated 21<sup>st</sup> September, 2021. The same is consequently dismissed with costs in the cause. The parties shall be at liberty to take a date for hearing the prayer for consolidation of suits in the notice of motion dated 10<sup>th</sup> February, 2021.

**RULING DATED AND SIGNED AT NYAHURURU AND DELIVERED VIA MICROSOFT TEAMS PLATFORM THIS 27TH DAY OF JANUARY, 2022.**

In the presence of:

No appearance for the Plaintiff

Mr. Kago for the 1<sup>st</sup> Defendant

Ms. Mungai holding brief for Mr. Rodi for 2<sup>nd</sup> Interested Party

No appearance for the 2<sup>nd</sup> Defendant

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**Y. M. ANGIMA**

**ELC JUDGE**