



Da Costa v Maina & 3 others; Hure (Interested Party) (Suing as the Administrator of the Estate of Barkat Bibi Shad alias Barkat Bibi w/o Wali Mohammed Shad, Deceased) (Environment & Land Case E177 of 2023) [2025] KEELC 4611 (KLR) (24 April 2025) (Ruling)

Neutral citation: [2025] KEELC 4611 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E177 OF 2023**

**JG KEMEL, J
APRIL 24, 2025**

BETWEEN

SHERIFFA ANGELO DA COSTA PLAINTIFF

AND

DORCAS WANGUI MAINA 1ST DEFENDANT

NAIROBI CITY COUNTY GOVERNMENT 2ND DEFENDANT

NATIONAL LAND COMMISSION 3RD DEFENDANT

CHIEF LAND REGISTRAR 4TH DEFENDANT

AND

ABDI RAHMAN SHEIKH ISMAIL HURE INTERESTED PARTY

**SUING AS THE ADMINISTRATOR OF THE ESTATE OF BARKAT BIBI SHAD
ALIAS BARKAT BIBI W/O WALI MOHAMMED SHAD, DECEASED**

RULING

1. Before me for determination is the Interested Party's Motion of 16/5/24 seeking in the main joinder in the suit.
2. The application is based on the grounds annexed thereto and the supporting affidavit of Abdi Rahman Sheikh Ismail Hure (Rahman), the interested party herein and deponed on even date.
3. He averred that the late Barkat Bibi Shad was the registered owner of the Nairobi Block 42/119 formerly LR No 209/3271/54 situate at Easleigh Nairobi, the suit land herein. That he is the widower, administrator and the beneficiary of the deceased's estate. That the alleged sale agreement dated the 13/12/2005 in which the Plaintiff purported to purchase the suit land is a forgery since the deceased



never sold the suit land to anyone let alone the Plaintiff in her lifetime. That in addition she never executed the transfer of the suit land of even date. That the said transfer is the product of fraudulent acts of Manawar Sultan Beg Mirza, the alleged attorney (holding a false power of attorney) of the deceased. He is apprehensive that he stands to lose the suit land which he and the deceased worked hard to build and manage.

4. In conclusion he urged the court to allow the application for joinder of the Interested party who he terms as a necessary party to the proceedings in order for the court to effectually adjudicate all the questions arising from the dispute to finality. He added that no prejudice will be suffered by the Respondents.
5. The application is opposed by the Plaintiff vide her Replying affidavit of 25/7/24 where she averred that the application is an afterthought noting that the matter was filed in 2023 and the applicant obtained the certificate of confirmed grant in 2022. That the application is coming too late in the day when the suit is being readied for hearing. In any event she argued that the interest of the applicant is in doubt absent any evidence to buttress his claim.
6. Dorcas Wangui Maina vide her replying affidavit of 25/7/24 opposed the application on the grounds that Manawar Sultan Beg Mirza sold the land to her on the strength of a power of attorney donated by the deceased on 4/3/97. She relied on the affidavit of Manawar Sultan Beg Mirza sworn on 8/7/24 in support of her averment that the suit land belonged to the deceased. Pursuant to the power of attorney allegedly donated to Manawar Sultan Beg Mirza, a daughter of the deceased, the land was conveyed to her in 2005 as shown by the sale agreement and the transfer dated the 13/3/2005 and 7/9/2005 respectively before her demise in 2000 in the United Kingdom. That Rahman is misleading the court since he is a stranger to the estate of the deceased and his quest to be enjoined in the proceedings is but a ploy to unlawfully and fraudulently claim ownership of the land. That equally the letters of grant of administration and the certificate of confirmation of grant allegedly issued by the Kadhi are fraudulent and the same should be subjected to full investigation. The court was urged to disallow the application.
7. In a supplementary affidavit sworn on the 7/11/24 the applicant deposed that he and the deceased got married on 1/1/2000 under Islamic Law and a copy of the marriage certificate marked as "ARSIH-1" was enclosed in support. That upon her death he obtained the grant of letters of administration and finally a certificate of confirmation of grant, both documents exhibited and annexed to the affidavit. He also availed a copy of the title and contended that as at her demise in the year 2000, the deceased owned the suit land. That the whole suit before the court revolves around the question of ownership of the disputed property and therefore his presence is necessary for the full adjudication of the controversy before the court.

Court's direction

8. With the concurrence of the parties, the court directed the parties to file and exchange written submissions. The Court has read and considered the said submissions.

Analysis and Determination

9. After considering the application, the Affidavits thereto and the 1st Defendant's submissions, the only issue for determination is: Whether the Intended Interested Parties should be enjoined as an Interested Parties in the proceedings herein.
10. The analogy of this case rekindles the Battle for Castle Itter, a World War II battle which took place in 1945, in which American forces (hitherto sworn enemies with the Germans) joined a German renegade force to defend the castle against a third party enemy. In this case the Plaintiff and the 1st



Defendant are claiming the suit land. All along they have viciously proceeded with respect to the preliminary applications against each other until a third party in the name of the Interested party invites himself into their fight and now each one of them is fighting to keep the outsider out of the fray. He has exhibited a marriage certificate, copies of titles, letters of grant of administration as well as the confirmation of grant in support of his application. He added that he is a necessary party to the suit without which the court will not effectually and completely determine the raging controversy as to who is the lawful owner of the suit land. That he stands to suffer prejudice should the suit proceed in his absence.

11. That said the applicant seeks joinder on grounds that he is the widower, administrator and beneficiary of the estate of the deceased previous owner of the land
12. Save for the Plaintiff and the 1st Defendant none of the other defendants opposed the application. They averred that the applicant has not demonstrated any interest in the property; the application is being brought too late in the day when the case is ready for hearing; the application is but an afterthought; is a ploy to defraud the suit land; the applicant is a stranger to the estate of the deceased, the land having been sold by her daughter; the documents presented by the applicant in support of the application are all fraudulent . Forging a united front, they urged the court to dismiss the application.
13. 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 or settle all questions involved in the suit, be added.”

14. Black’s Law Dictionary defines an Interested Party as;

“a party who has a recognizable stake (and therefore standing) in the matter.”

15. The Supreme Court of Kenya in [Communications Commission of Kenya and 4 Others v Royal Media Services Limited](#) [E&S 7](#) [2014] EKLRL shed light on this subject when it held as follows:

“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.?”



16. Subsequently, having defined who an Interested Party is, it is important to then determine whether the Applicant has satisfied the criteria to warrant the joinder in the proceedings.
17. More illuminating is the decision of Supreme Court of Kenya in the case of *Francis K. Muruatetu and Another v Republic & 5 Others* [2016] eKLR, where the court set out identifiable key elements for consideration in an application for joinder as an Interested Party. The elements are as follows: -
 - a. 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.
 - b. 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.
 - c. Lastly, a party must, in its application, set out the case and/or submission 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.”
18. I have looked at the parties claims in this suit and as alluded earlier the Plaintiff and the 1st Defendant lay claim to the land. Equally the long and shot of the applicants cause of action is a claim to the same suit land. Either way should the applicant turn out to be the beneficial owner of the suit land, his exclusion will prejudice him as he will not have been heard on his claim. Equally if the application is disallowed, the current parties will not have had the controversy resolved in finality. In other words, the scenario will breed a proliferation of unending suits which is against public policy that litigation must come to an end.
19. It is trite that a suit in court is a solemn process owned solely by the parties. In the current case the suit herein was filed by the Plaintiff who has exercised the prerogative to elect who to sue; in this case the defendants. The applicant seeks to invite himself to the Plaintiffs suit but as an interested party. To my mind, if the applicants cause of action is ownership of the land as alluded to, then the applicant ought to have approached the court for joinder as either a defendant or a plaintiff but not as an interested party.
20. All in all, I find the application is merited and it is allowed as follows;
 - a. The applicant be and is hereby enjoined in the suit as the 5th Defendant.
 - b. Costs of the application shall be met by the Applicant
21. Orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF APRIL 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the presence of:

Ms Mungai for the Plaintiff/Respondent

Mr Mungai for the 1st Defendant/Respondent



NA for the 2nd -4th Defendants/Respondents
Ms Kamanja for the Interested Party/Applicant
CA- Ms Catherine

