



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC CASE NO.172 OF 2010

SAMUEL KAVOLOKO SEKE.....1ST PLAINTIFF

FRANCIS NGIGE WAWERU.....2ND PLAINTIFF

VERSUS

WASWA DEVELOPMENT SOCIETY.....1ST DEFENDANT

THE LAND REGISTRAR MACHAKOS.....2ND DEFENDANT

AND

DR. WILLIAM NYAKWADA & 49 OTHERS.....INTERESTED PARTIES/APPLICANTS

RULING

INTRODUCTION

1. Vide a Notice of Motion Application dated 20th April 2021 and filed in court on 23rd April 2021, the Intended Interested parties/Applicants sought for the following orders;

a) Spent

b) Spent

c) That Dr. William Nyakwada and 49 others be joined as interested parties in this suit.

d) That costs of this Application be provided for.

2. The Application is supported by grounds stated on its face as well as the supporting Affidavit of **DR. WILLIAM NYAKWADA**, the 1st Interested party, sworn on 20th April 2021, where he deposed that the applicants have an interest in this matter, having bought land parcel number 3/1973 (hereinafter referred to as the suit property) from the second plaintiff; that having signed land sale agreements in relation to the suit property and having made full payments of the consideration thereof, they have a claim over the suit property and are necessary parties to this suit.

3. The application is opposed. The 1st Plaintiff, Samuel Kalovoto Seke filed a replying affidavit sworn on 11th May 2021, where he deposed that the Application was frivolous, vexatious and improperly directed at him; that the court had issued orders to strike out his name from the proceedings since the 2nd Plaintiff had fraudulently used his name to file the suit; that the suit does not raise any cause of action; that the application be dismissed and that his name be removed from these proceedings.

4. On 8th November 2021, Mr. Arum, counsel for the 1st Defendant and Mr. Mwambonu, counsel for the 2nd Defendant, informed court that they were not opposed to the application.

5. The application was canvassed by way of written submissions. On record are the Intended interested parties' submissions filed on 5th October 2021. Both the Plaintiffs and the Defendants did not file any submissions.

INTENDED INTERESTED PARTIES'/APPLICANTS' SUBMISSIONS

6. The Applicants submitted that they had bought the suit property from the 2nd Plaintiff, who had in turn bought the same from the 1st Plaintiff. They argued that if they are not joined to the suit, their interests will be prejudiced and that there will be miscarriage of justice. They relied on the case of *Moses Wachira vs Niels Bruel & 2 Others (2015) eKLR* where the court cited with approval the decision of the Supreme Court in *Communications Commission of Kenya & 4 Others vs Royal Media Services Limited & 7 Others (2014) eKLR* where the Supreme Court described an interested party as one who has a stake in the proceedings before court, though they are not parties therein, and will be affected by the court's decision either way. Counsel for the applicants also relied on the case of *Francis Kariuki Muruatetu & Another vs Republic & 5 Others; Supreme Court Pet. 15 and 16 of 2015, (2016) eKLR* where the Supreme Court established the test for joinder of interested parties to a cause. They further submitted that the intended interested parties will suffer prejudice if the suit is allowed to proceed in their absence. They prayed that the court allows the joinder so as to effectively determine the matters raised in the suit.

ANALYSIS AND DETERMINATION

7. I have considered the application, the reply and the submissions filed. In my considered view, the sole issue that arise for determination is whether the Applicants ought to be joined in this suit as interested parties.

8. Statutory provisions on joinder of parties are provided for in Order 1 Rule 10, (2) of the Civil Procedure Rules, which provision 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.”

9. The Black's Law Dictionary defines “interested party” as:-

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

10. In the case of *Trusted Society of Human Rights Alliance Vs. Mumo Matemu & 5 Others [2014] e KLR*, the Supreme Court 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 personal interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause.

11. Essentially therefore, any person who, though not a party to proceedings pending in court, has an interest in the subject matter of such proceedings to the extent that they will be affected by the decision of the court whichever way the decision goes, then such person qualifies to be termed as an interested party and ought to be allowed to join such proceedings to protect his or her interests.

12. I have considered the Applicants' allegations that they purchased the suit property from the 1st Plaintiff, which they are now in possession. I have perused the sale agreements annexed to their affidavit and it appears that, indeed they have a stake in these proceedings and it will only be in the interests of justice that they be allowed an opportunity to be part of these proceeding to enable them champion whatever cause they have against the parties in this matter.

13. It is apparent therefore that whichever way the decision of this court goes, the intended interested parties will be affected. Hence their presence in this suit is necessary to enable the court to effectually and completely adjudicate upon and settle all issues arising in this suit.

14. I therefore find and hold that the Application dated 20th April 2021 is merited whereof I make the following orders;

- a) **The Intended Interested Parties/Applicants be and are hereby joined to this suit as Interested Parties.**
- b) **The Interested Parties are granted 14 days from today to file and serve their pleadings in this suit.**
- c) **Upon service, the Plaintiffs and the Defendants are granted leave of 14 days to respond to the pleadings filed by the Interested Parties.**
- d) **All the parties to this suit shall file and serve their witness statements and documents and comply with Order 11 within 14 days of close of pleadings or 45 days of today, whichever is sooner.**
- e) **This matter shall be mentioned on 28th of March 2022 for purposes of fixing a hearing date.**
- f) **Costs shall abide the suit.**

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 16th DAY OF FEBRUARY 2022 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

IN THE PRESENCE OF:

MS MUSA FOR INTENDED INTERESTED PARTIES

NO APPEARANCE FOR THE PLAINTIFF

NO APPEARANCE FOR THE DEFENDANTS

MS JOSEPHINE MISIGO – COURT ASSISTANT