



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL & ADMIRALTY DIVISION**  
**CIVIL SUIT NO. 2459 OF 1997**

**JUMA MUCHEMI:..... PLAINTIFF/1ST RESPONDENT**

**VERSUS**

**WILLIAMS & KENNEDY LTD:..... DEFENDANT/2ND RESPONDENT**

**AND**

**OFFICIAL RECEIVER AND PROVISIONAL**

**LIQUIDATOR RURAL URBAN CREDIT**

**FINANCE LIMITED (*in***

***Liquidation*) :..... PROPOSED INTERESTED PARTY/APPLICANT**

**R U L I N G**

1. By the **Notice of Motion** application dated **4th May 2015**, the Proposed Interested Party seeks the leave of this court to be joined in the present suit as a Interested Party. The Proposed Interested Party is the Official Receiver and provisional Liquidator of Rural Urban Credit Finance Limited (in liquidation). The grounds upon which the application is made is set out therein, and is in the supporting affidavit of **Patrick Thoithi Kanyuira** sworn on 4th May 2015.

2. In brief the Applicant's case is that Mr. Nganga Gicharu who was a shareholder, a director and general manager of the 2nd Respondent herein holds the shares in the 2nd Respondent's company and the property LR No. 5989/5 I.R No. 35080 Nairobi (the subject property) in constructive trust for the proposed Interested Party/Applicant herein. A receiving order was granted in Winding Up cause no. 31 of 1984 on 3rd December 1984 appointing the Applicant as interim liquidator and which was registered against the title of LR No. 5989/5 I.R No. 35080 on 3rd December 1985. All other subsequent attempts of disposing of the property and all other dealings are therefore null and void ab initio under Section 224 of the companies Act Cap 486 Laws of Kenya in the absence of court orders allowing them. The Applicant's interest arising from the said constructive trust would be prejudiced in the event that any orders affecting the title to and status of LR. No. 5989/5 IR. NO. 35802 is made in this suit. The enjoinder of the applicant to the present suit and its presence before court as an Interested Party is

necessary in order to enable the court to completely adjudicate upon and settle all the questions and issues arising in this suit. In the circumstances, it is the Applicant's case that justice and fairness requires that the Applicant herein be enjoined as an Interested Party to the present proceedings.

3. The application is opposed by the Plaintiff as well as the Defendant. The Plaintiff filed a Replying Affidavit sworn by himself on 3rd July 2015 in which he states that the application is irregular and is filed purposely to delay the expeditious determination of this case which is part heard, and that no charge or interest of the Intended Interested Party has ever been registered over the suit property. The Plaintiff's case is that the Proposed Interested Party's claim ought to be for money lent as against the Defendant, an issue which does not concern the other parties. The Plaintiff's case is that in any event, the Interested Party's case is time barred under the Limitation of Actions Act, Cap 21 Laws of Kenya and that the Plaintiff is an innocent Purchaser for value of the suit premises sold to him by the 1st Defendant exercising its chargees power of sale.

4. On its part, the Defendant opposes the application vide Grounds of Oppositions dated and filed in 20th July 2015, and a replying affidavit sworn by Nganga Gicharu on 20th July 2015. The Defendant's case is that the Defendant/2nd Respondent is the rightful owner of the suit property having been issued with a certificate of title on 1st June 1977. The Defendant did not apply for any loan from the proposed Interested Party neither did it use its property as collateral for any loan, save for the loans advanced to it by Post Bank Limited, a third party that is not a party to this suit but is a party in the Defendant's suit HCCC No. 710 of 2008 which is pending before this division. The Defendant's case is that the Applicant has no interest and/or has never laid any claim over the said property, hence the motion before the court is incompetent, misconceived, frivolous, vexatious and scandalous. The Defendant submitted that the Applicant has not produced any document and/or evidence to justify its claim and/or sudden interest over the suit property, LR. No. 5989/5/R. Further, the Defendant submitted that whatever claim and/or interest that the Applicant has over the property in statue barred as the same purportedly arose from a transaction in 1985, about 30 days ago.

5. With the leave of the court, parties filed submission to the application which I have considered. I have also raised the following issues for determination:-

***i. Whether the law allows the application.***

***ii. Whether in the interest of justice the application ought to be allowed.***

***iii. Whether the intended cause of action is statute barred.***

6. To address the first and second issues, Order 1 Rule 10 (2) of the Civil Procedure Rules allows the court at any stage of the proceedings to join a necessary party to the suit in order to serve the ends of justice. It is public knowledge that the Applicant is under liquidation and that the Official Receiver is still locating assets which may belong to the said Rural Urban Credit Finance Limited (in liquidation). It is also not lost to this court that the process of locating such assets is not an easy one, and will in some cases take a very long time. This court has specifically noted the annexures in the supporting affidavit, which, prima facie, indicate that the Applicant's case is strongly arguable, and that in the interest of justice, and so that all issues concerning the suit property should be concluded in the same litigation process, the application should be allowed.

7. The Respondents have submitted that the Intended Interested Party's case is time barred, and that the application amount to an abuse of the court process. However, it is not for this court to make a finding at this stage whether or not the intended cause of action is time barred. At this stage, the court only needs to note that the Applicant appears to have an arguable case to enable it be joined to these proceedings so that all issues relating to the suit, including the allegation of time bar, may be determined in the same suit.

8. In the upshot, Proposed Interested Party's application dated 4th May 2015 is allowed with cost in the cause.

Orders accordingly.

**READ, DELIVERED AND DATED AT NAIROBI THIS 24TH DAY OF NOVEMBER 2015**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

**Mr. Orare for the Plaintiff/1st Respondent**

**M/s Mwachiro for the Defendant/2nd Respondent**

**Mr. Njogu for the Proposed Interested Party/Applicant**

**Teresia – Court Clerk**