



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MAKUENI**

**ELC PETITION NO. 1 OF 2019**

**FRANCIS MWEU MBALUTO (Suing as the legal representative  
of the Estate of MBALUTO ILLENDU (Deceased).....PETITIONER/APPLICANT**

**VERSUS**

**NGAI ADJUDICATION SECTION COMMITTEE.....1<sup>ST</sup> RESPONDENT**

**SUB-COUNTY ADJUDICATION & SETTLEMENT OFFICER MAKUENI.....2<sup>ND</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**-AND-**

**JOSEPHAT MUSYOKA MUTONYE.....INTERESTED PARTY**

**FRIDAH MUTHEU WAMBUA INTENDED.....INTERESTED PARTY/APPLICANT**

**RULING**

1. The application for determination is the Notice of Motion dated 13<sup>th</sup> November, 2020 filed by the Intended Interested Party/Applicant. It is brought under **Articles 22 and 23 (3) (f) of the Constitution, Sections 7,8 and 9 of the Fair Administrative Action Act, Rules 4,7 and 13 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice & Procedure Rules, 2013, Sections 1,1A,3 and 3A of the Civil Procedure Act** in addition to other provisions of the law.

2. The Applicant seeks the following Orders:

i) *[SPENT]*

ii) **THAT the Honourable Court be pleased to enjoin FRIDAH MUTHEU WAMBUA the beneficial to the suit land being all that property known as Plot No. 1499 NGAI ADJUDICATION SECTION situated in Kitundu Location within Mbooni West Sub-County.**

iii) **THAT this Honourable Court be pleased to allow the Proposed Interested Party to participate in these proceedings and grant her leave to file all the necessary pleadings against the Petitioner herein in this matter.**

iv) **THAT costs of this application be provided for.**

3. The application is supported by the affidavit of Fridah Mutheu Wambua sworn on 13<sup>th</sup> November, 2020 and it is based upon these salient grounds. Firstly, the affiant deposed that in the year 2017, she purchased Plot No. 1499 Ngai Adjudication Section (the suit property) from the Josephat Musyoka Mutonye (the Interested party) whereafter she commenced development thereon and has enjoyed peaceful possession since. That the Orders issued by this Court on 24<sup>th</sup> April, 2019 have a direct impact on her interest in the suit property. That the orders sought will assist this Court to reach a final determination of the suit. That it is in the interest of natural justice, equity and conscience that the application be allowed.

4. The Petitioner filed a replying affidavit sworn by the legal representative thereof, Francis Maweu Mbaluto, on 2<sup>nd</sup> December, 2020. He deposed therein that the memorandum of sale marked as Exhibit FMW-1 did not identify any particular property registered in the name of the Interested Party. Again, that the said memorandum of sale did not disclose the parties to the agreement and it was unclear as to whether the property being sold was by an individual, company or a society. That when the memorandum of sale was being executed on 26<sup>th</sup> May, 2017, the suit property along with Plot Nos. 1550 and 1552 were still registered in the name of Mbaluto Illendu (Deceased) before the 1<sup>st</sup> Respondent authorized his removal from the register on 21<sup>st</sup> June, 2017. Hence, it is deposed that the Interested Party did not have good title to the suit property to enable him transfer the same to the Applicant.

5. It was deposed further that the Exhibit FMW-2 did not confirm the Applicant as the registered owner of Plot No. 1499. That the Applicant had not demonstrated an ascertainable interest in the suit property. That there had been an unexplained inordinate delay in the filing of the application by the Applicant. That the Applicant's remedy lies against the Interested party whom she ought to pursue in a separate forum. It was prayed that the application be dismissed with costs for being an abuse of process of this Court.

6. In a supplementary affidavit sworn by the Applicant on 1<sup>st</sup> February 2021, she deposed that in a demarcation exercise conducted in or about 12<sup>th</sup> August, 2014, it was determined that the suit property was rightfully allocated to the Interested party. That being aware of the decision of the Demarcation Officer, the Interested Party could thus execute a sale agreement with the Applicant. That the 1<sup>st</sup> Respondent confirmed the decision of the Demarcation Officer allocating the suit property to the Interested party in the Minutes dated 21<sup>st</sup> June, 2017. Lastly, the Applicant stated that her joinder to the suit would be of no prejudice to the Petitioner's case but she would ultimately be affected by the decision either way.

7. The Interested Party swore his affidavit on 25<sup>th</sup> January, 2021 simply stating that he did not object to the application herein.

8. The Applicant filed her submissions on 4<sup>th</sup> February, 2021. It was submitted on her behalf that **Order 1 Rule 10(2)** outlines the mode for joinder of a party desirous to participate in civil proceedings. That the test to be applied was whether the Applicant could demonstrate an identifiable interest in the subject matter of the litigation even though such interest must not necessarily succeed in the trial. That she had demonstrated her stake in these proceedings having purchased the suit property from the Interested party and made developments thereat hence her need to articulate her concerns. Lastly, it was submitted that her presence in these proceedings was in the interest of justice and that her participation would not prejudice either party's case. The following authorities were relied on: -

i) **Shirvling Supermarket Limited v Jimmy Ondicho Nyabuti & 2 others [2018] eKLR;** and

ii) **Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others [2014] eKLR**

9. The Petitioner filed submissions on 19<sup>th</sup> May, 2021. In response, it was submitted that the core question should be whether there is a necessity of the proposed interested party in these proceedings. That the non-inclusion of the Applicant as a party to the suit was due to the absence of proof of registration of title to the suit property in her favour. That the absence of such registration divested the Applicant of any right to claim a legitimate interest in this suit. Owing to that, it would not be impossible for this Court to pass an effective decree in the absence of the Applicant. That the Applicant's claims are remote to the main issues in the suit and therefore, it would require that the Applicant files a separate suit against the Interested party. The following authorities were relied on: -

i) **Hadson Moffat Kamau v Makomboki Tea Factory Limited [2007] eKLR;**

ii) **Skov Estate Limited & 5 others v Agricultural Development Corporation & another [2015] eKLR;**

iii) **Brek Sulum Hemed v Constituency Development Fund Board & another [2014] eKLR;** and

iv) **Marigat Group Ranch & 3 others v Wesley Chepkoiment [2014] eKLR**

10. The only question for determination is whether the proposed interested party has satisfactorily demonstrated that she has an identifiable stake in these proceedings and that she stands to suffer prejudice if her interests are not articulated herein. This Court's decision is guided by **Rule 2 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice & Procedure Rules, 2013** and the Supreme Court of Kenya decision in **Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 others [2014] eKLR** wherein the learned Judges held as follows:-

*“[22] In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court's Ruling in the Mumo Matemo case where the Court (at paragraphs 14 and 18) held:*

*“[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...”*

*[23] 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 questions 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.”***

11. In my inquiry of the facts, the Applicant herein represented that she purchased the suit property from the Interested Party in 2017. She availed a memorandum of sale as the Exhibit marked FMW-1. She also averred that she had made developments to the suit property. Notably, the Interested Party did not object to the averments as being untrue. Regardless of whether the Interested Party had a good title to transfer to the Applicant, the prima facie evidence points to the fact that the Land Adjudication and Settlement Office in Makueni confirmed him as the proprietor meaning he could transfer his title. At this stage, the Applicant has an identifiable purchaser’s interest which legally, this Court is enjoined to safeguard.

12. In addition to the above, I find that the Applicant’s contribution to these proceedings will be of relevance having fully disclosed the nature of her interest in these proceedings. The Applicant provided useful Exhibits such as the certified copies of the minutes of the Ngai Adjudication Section Committee which gives considerable insight to where the Interested Party derived his authority to transfer his title in the suit property to the Applicant. Indeed, the addition of the Applicant to these proceedings will enhance the discourse and naturally, the vitally concerned parties to these proceedings will have an opportunity to challenge her evidence. Contrary to the Petitioner’s objections, the failure to include the Applicant will deny her the opportunity to champion her interests and prejudice a complete hearing of the matter.

13. In conclusion, I do not find merit in the objections that the application has been made to delay or that the issues raised therein are too remote to the core petition. The upshot is that the Notice of Motion dated 13<sup>th</sup> November, 2020 is allowed in terms of prayers 2 and 3. Costs shall be in the cause.

**SIGNED, DATED AND DELIVERED VIA EMAIL THIS 9<sup>TH</sup> DAY OF MARCH, 2022**

**MBOGO C.G.**

**JUDGE**

**9/3/2022**

Court Assistant: T.Chuma