



Ndambiri & another v Mugo & 2 others; Ireri (Applicant) (Environment & Land Case 59 of 2016) [2025] KEELC 3341 (KLR) (8 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3341 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT & LAND CASE 59 OF 2016**

**AK BOR, J
APRIL 8, 2025**

BETWEEN

JAMES MURIITHI NDAMBIRI 1ST PLAINTIFF

VERONICA NYAWIRA NDAMBIRI 2ND PLAINTIFF

AND

EFUREITHI IRIMA MUGO 1ST DEFENDANT

MINISTER FOR LANDS 2ND DEFENDANT

LAND REGISTRAR MBEERE DISTRICT 3RD DEFENDANT

AND

JOHN MWANIKI IRERI APPLICANT

RULING

1. The Applicant filed the application dated 4/5/2023 seeking leave to be joined in the proceedings as an interested party. The application was made on the grounds that he is a member of the Gamumu clan of the Mbeere tribe and had been in exclusive occupation, possession and use of 15 acres out of the parcel of land known as Mbeere/Kirima/1100 (the suit land). He averred that he learnt that the parties in this case filed this suit without notifying him and that he has a claim against the suit land that he wishes to have heard together with this since his interest overrides the title over the suit land.
2. Further, he averred that he has extensively developed the land since 1990 when he took possession believing that the suit land belonged to his clan and that it would be shared amongst them on conclusion of all the Minister's cases. His claim is for a declaration that his occupation of the suit land has created a trust which ought to be terminated and he be issued with a title deed over the portion of the suit property he occupies. He contended that this suit seeks to determine ownership of the suit



- property and it was necessary to join him to the suit to avoid a multiplicity of suits over the same property.
3. He stated that his presence would enable the court effectually and comprehensively determine all the matters in question. He averred that if the application is not allowed he would suffer irreparably since the court will determine ownership of the suit land without pronouncing itself on his interest over the land. That the respondents will not suffer any prejudice if the application is allowed and that it would be in the interest of justice that it be allowed. The Applicant swore the affidavit in support of the application.
 4. Efireithi Irima Mugo, the 1st Defendant opposed the application vide his replying affidavit in which he denied that the Applicant was entitled to the suit land. Further, he denied that the Applicant had sufficient interest in the suit land to entitle him to be joined as a party to this suit. He contended that the Applicant had not explained why he was making the application late in the day nor had he demonstrated that he stands to suffer prejudice in the event that his application was denied. He further contended that the claim by the Applicant and the claim by the Plaintiffs were vastly different and could not be handled in the same suit. He urged the court to dismiss the application.
 5. James Muriithi Ndambiri, the 1st Plaintiff also opposed the application vide a replying affidavit and averred that the Applicant has not been in occupation of the suit land and that he only started trespassing on the suit land after filing his application. He contended that the Applicant had his own parcel of land separate from the suit land. He elaborated that the Applicant is cultivating a small portion of the suit land after trespassing onto the suit land. His position was that this is the wrong suit for the Applicant to bring his claim under since the suit seeks declarations against the Minister's decision. That the Applicant ought to have waited for the finalization of this suit or filed a separate suit. The court directed parties to file written submissions. Only the 1st Defendant filed his submissions which the court has considered. The 1st Defendant submitted that he was registered as proprietor of the suit land on 13/6/2016 upon determination of Minister's Appeal Case Nos. 56/1997, 25/2006 and 20/2011 which were consolidated and an award delivered by the Minister on 4/3/2016. The Applicant was not a party to the three appeals which determined ownership of the suit land. Further, that the Applicant's contention that he is entitled to a share of the suit property was not supported by law. Lastly, that the Applicant had not met the requirements for joinder as an interested party and that he was not a necessary party in this suit.
 6. The issue for determination is whether the Applicant should be joined in the suit as an interested party. In the case of *Skov Estate Limited & 5 others v Agricultural Development Corporation & Another* [2015] KEELC 624 (KLR) which the 1st Defendant cited, the court dealt with the issue of an Interested Party seeking to be joined in a suit and stated that such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. The court added that it was not enough for one to merely show that they had a cursory interest in the subject matter of litigation because litigation invariably affects many people. The court observed that a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, was not enough to entitle one be enjoined in a suit as interested party. There needs to be a demonstration that the interest of the person goes further than merely being affected by the judgment or order. The court stated that whether or not to enjoin a person as an interested party must be looked at within the context and surrounding circumstances of each particular case.
 7. The Supreme Court of Kenya in *Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others; Nature Foundation Limited (Proposed Interested Party)* [2014] KESC 52 (KLR) defined an Interested Party as one who has a stake in the proceedings, though he or she was



not party to the cause ab initio. Such a person is one who will be affected by the decision of the Court when it is made, either way.

8. In the present case, the Applicant claims an interest in the suit land based on alleged occupation since 1990 and the creation of a trust in his favour. This suit is primarily concerned with declaratory orders based on the minister's appeal cases to which the Applicant was not a party. The Applicant's claim of trust is distinct from the main issue in this suit and does not necessitate his joinder as an interested party. His claim can be pursued in a separate suit.
9. The court finds no merit in the application dated 4/5/2023 and dismisses it with no orders as to costs.

DELIVERED VIRTUALLY AT EMBU THIS 8TH DAY OF APRIL 2025.

K. BOR

JUDGE

In the presence of: -

Ms. Rose Njeru for the 1st Defendant

Court Assistant- Diana Kemboi

No appearance for the other parties

