



**Mutisya & another (Suing as Legal Administrators of the Estate of James Mutisya Wathome) v Mutisya & another (Sued as Administrators of the Estate of Wambua Mutisya); Nthiwa (Intended Interested Party) (Environment & Land Case 38 of 2019) [2022] KEELC 3649 (KLR) (18 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3649 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 38 OF 2019**

**A NYUKURI, J**

**MAY 18, 2022**

**BETWEEN**

**STEPHEN WAITA MUTISYA ..... 1<sup>ST</sup> PLAINTIFF**

**BERNARD MUTUKU MUTISYA ..... 2<sup>ND</sup> PLAINTIFF**

**SUING AS LEGAL ADMINISTRATORS OF THE ESTATE OF JAMES MUTISYA WATHOME**

**AND**

**MARTHA WAMBUA MUTISYA ..... 1<sup>ST</sup> DEFENDANT**

**GIDEON KAVAI WAMBUA ..... 2<sup>ND</sup> DEFENDANT**

**SUED AS ADMINISTRATORS OF THE ESTATE OF WAMBUA MUTISYA**

**AND**

**IRENE KALONDU NTHIWA ..... INTENDED INTERESTED PARTY**

**RULING**

1. Vide a Notice of Motion application dated November 13, 2020, brought under order 1 rules 8, 9 and 10 of the *Civil Procedure Rules* and article 159 of the *Constitution* of Kenya 2010, the intended interested party/ applicant sought for the following orders;
  - a) Spent.
  - b) That the proposed interested party/ applicant be allowed to join this suit as interested party.
  - c) That costs of the suit be provided for.



2. The application is supported by the annexed affidavit of the applicant sworn on November 13, 2020 and a further affidavit sworn on November 19, 2020. The applicant averred that she was a creditor to the estate of the late Wambua Mutisya by virtue of Succession Cause no 239 of 2014 and that the plaintiffs had not made full disclosure in their pleadings; that the 2<sup>nd</sup> defendant herein passed on, on September 13, 2020; that the plaintiffs took advantage of name similarity to lay claim on the suit property and that they sought to be joined to these proceedings to protect their interests.
3. The application is opposed. The 1<sup>st</sup> defendant, Martha Wambua Mutisya filed a replying affidavit sworn on February 4, 2021 where she averred that it is not true that the intended interested party is a creditor to the estate of the late Wambua Mutisya and therefore the applicant has not demonstrated any interest in the suit property; that the grant issued in High Court Succession Cause no 239 was partially confirmed pending determination of this suit; that the interested party should only participate in this suit as a witness and not as a party; that the applicant is a busy body who is only interested in unjust enrichment; that the applicant should ventilate their claim in the succession cause and that the evidence purported to be produced by the interested party ought to be produced by the authors of the said documents.
4. The application was canvassed by written submissions and on record are the applicant's submissions filed on November 3, 2021. No submissions were filed by the Respondents.

### **Submissions**

5. The applicant submitted that in Machakos High Court Succession Cause no 239 of 2014, the court admitted the intended interested party as a creditor to the estate and an order issued that the intended interested party was entitled to three acres to be excised from land parcel no Donyo Sabuk/komarok Block1/389, or in the alternative she is entitled to the market value of the said three acres from the estate of the deceased. Counsel relied on the case of *Meme v Republic [2004] 1 EA 124*, [Judicial Service Commission v The Speaker of the National Assembly & Another and Marigat Group Ranch & 3 Others v Wesley Chepkoimet & 19 Others](#) [2014] eKLR, for the proposition that the court will join a party to a suit where their presence is necessary to enable the court determine all issues in dispute, because they have an identifiable stake in the proceedings and avoid proliferated litigation.

### **Analysis and determination**

6. I have considered the application, the response and the submissions. The issue that arise for determination is whether the applicant has met the threshold for joinder as interested party in these proceedings.
7. Order 1 Rules 9 and 10 of the Civil Procedure Rules provide that where a party's presence in a suit is necessary to enable the court to effectually and completely determine a dispute, the court may join that person to the proceedings.
8. In the case of [Trusted Society of Human Rights Alliance v Mumo Matemo & 5 Others](#) [2014] eKLR, the court held as follows;

Consequently, an interested party is one who has an identifiable stake in the proceedings, though he or she was not a 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/her interest will not be well articulated unless he himself or she herself appears in the proceedings and champions his or her own cause.



9. It is therefore clear that where an applicant demonstrates that they have an interest or stake in the proceedings and that unless they participate in such proceedings, their interests will be prejudiced; the court may join them to such proceedings as Interested Party.
10. In the instant application, the Interested Party alleges that she is a creditor to the estate of Wambua Mutisya and by virtue of the order of the court in High Court Succession Cause no 239 of 2014, she is entitled to three acres thereof. The applicant states that confirmation of the succession matter was to await the determination of this suit and that in the succession court she had been awarded 3 acres from the suit property. I have perused the attached consent order made between the plaintiff and the interested party dated November 20, 2019, which shows that the plaintiff had agreed that the interested party is entitled to three acres from the suit property. That allegation has not been denied by the plaintiff.
11. In my view, the applicant's interest in the suit property demonstrates an identifiable stake therein. I am of the opinion that the applicant has shown that she has an identifiable stake in these proceedings and therefore her application for joinder is justified.
12. In the end, I find and hold that the applicant's application dated November 13, 2020 is merited and the same is allowed as follows;
  - a. The intended interested party be and is hereby joined to these proceedings as an interested party.
  - b. That the interested party is directed to file and serve her pleadings, witness statements and documents in 14 days from the date hereof; while the plaintiffs and the defendants have corresponding leave to file and serve their pleadings, witness statements and documents in response thereto, in 14 days of service.
  - c. Each party shall bear its own costs.
13. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 18TH DAY OF MAY 2022 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A NYUKURI**

**JUDGE**

**In the presence of;**

**Mr Mugo holding brief for Mr Mulekyo for the interested party/applicant**

**Mr Odhiambo and Ms Mutinda for the defendants/respondents**

**Kevin Kimari - Court assistant**

