



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Benjamin Ithinyai M'narangui (Deceased) & Nderere Muhunyo Gathii (Deceased)
(Environment & Land Case 50 of 2018) [2022] KEELC 2284 (KLR) (16 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2284 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT & LAND CASE 50 OF 2018**

**YM ANGIMA, J
JUNE 16, 2022**

BETWEEN

**DAVID KIMENGERE WAITITU SUIING AS THE PERSONAL
REPRESENTATIVES OF THE ESTATE OF THE LATE BENJAMIN ITHINYAI
M'NARANGUI (DECEASED) 1ST PLAINTIFF**

**DAVID GITONGA SUIING AS THE PERSONAL REPRESENTATIVES OF
THE ESTATE OF THE LATE BENJAMIN ITHINYAI M'NARANGUI
(DECEASED) 2ND PLAINTIFF**

**JOHN NGOTHO NDURERE SUIING AS THE PERSONAL REPRESENTATIVES
OF THE ESTATE OF THE LATE NDURERE MUHUNYO GATHII
(DECEASED) 3RD PLAINTIFF**

**JAMES MUTHAMI NDURERE SUIING AS THE PERSONAL
REPRESENTATIVES OF THE ESTATE OF THE LATE NDURERE MUHUNYO
GATHII (DECEASED) 4TH PLAINTIFF**

AND

ANGELA WAIRIMU GETHI 1ST DEFENDANT

MURUA LIMITED 2ND DEFENDANT

AND

SAMUEL WARIIRE MUGI APPLICANT

BENSON MAINA CHEGE APPLICANT



RULING

1. By a notice of motion dated 27.12.2021 based upon Sections 1A, 3 & 3A of the [Civil Procedure Act](#) (Cap.21), Order 1 rule 10(2), Order 40 rules 1 & 2, Order 51 rule 1 of the [Civil Procedure Rules 2010](#) (the Rules) and any other enabling provisions of the law, the Applicants sought to be joined in the proceedings as interested parties. They also sought an interim order of injunction upon such joinder for a period of 180 days to enable them harvest some crops on the suit property.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Samuel Wariire Mugi on December 27, 2021 together with the exhibits thereto. The Applicants contended that they had leased a portion of 3 acres each out of the suit property for 2 years with effect from 6th July, 2020 for farming purposes and that their crops were yet to mature for harvesting. They contended that the Defendants had already issued them with eviction notices and that unless the interim injunction was granted they shall suffer irreparable damage hence the application.
3. The Plaintiffs informed the court that they did not wish to oppose the application whereas the Defendants opposed the same on the basis that the court was *functus officio* and that, in any event, the purported leasing was undertaken by parties who were adjudged as trespassers in the judgment. The Defendants considered the application to be an abuse of the court process and an attempt to delay or undermine the Plaintiff's impending eviction from the suit property.
4. When the application was listed for inter partes hearing it was directed that it shall be canvassed through written submissions. The record shows that the Applicants filed their submissions on May 18, 2022 whereas the Defendants filed theirs on April 5, 2022. The Plaintiffs did not file any submissions since they were not opposed to the application.
5. The Applicants submitted that they were legally interested in the outcome of the suit since they had a leasehold interest in a portion of the suit properties which was yet to expire. They cited the case of [Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others](#) [2014] eKLR in support of their submissions and urged the court to allow their joinder in the proceedings. The Defendants, on the other hand, submitted that the court had become *functus officio* after passing the decree hence it had no jurisdiction to join the Applicants in the proceedings at such a late stage.
6. The court is of the opinion that even though it has wide discretion to join a party at any stage of the proceedings under Order 1 rule 10 of the Rules, such discretion must be exercised judiciously and for good reason. The joinder must serve a useful purpose towards resolution of the dispute. The material on record shows that judgment in this suit was delivered in 2019 before the alleged leases were made. By that judgment the court dismissed the Plaintiffs' claim and allowed the Defendants' counterclaim over the suit property. It was definitely a judgment in rem.
7. The status of an interested party was considered in detail in the case of [Kenya Medical Laboratory Technicians & Technologists Board & 6 Others v Attorney General & 4 Others](#) [2017] eKLR where the High Court stated as follows:

“A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights. In determining whether or not an Applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party the true test lies not so much in analysis of what



the constituents of the Applicant’s rights are, but rather in what would be the result on the subject matter of the action if those rights could be established. It is apparent that a party claiming to be enjoined in proceedings must have an interest in the pending litigation, but the interest must be legal, identifiable or demonstrate a duty....”

8. Although the Applicants have annexed a copy of what they call a lease agreement over a portion of the suit property, there is nothing on record to show that the said lease was duly registered so as to bind the third parties who were not privy thereto. There is no evidence to show that the purported lessor(s) had any authority to grant a lease especially in view of the decree *in rem* passed in November, 2019. The court is thus not satisfied that the Applicants have any legal identifiable stake, legal interest or duty in the proceedings. Such an agreement can at most operate as a contract between the contracting parties themselves. Accordingly, the court finds and holds that the Applicants have not made out a case for their joinder in the proceedings.
9. In view of the court’s finding on the issue of joinder, it shall not be necessary to consider the prayer for an injunction since it has no basis in law. A prayer for an injunction can only be pursued or prosecuted by a person who is a party to the proceedings in question. Consequently, the prayer for an injunction must fail.
10. The upshot of the foregoing is that the court finds no merit in the Applicants’ application for joinder as interested parties and for an injunction. As a consequence, the Applicants’ notice of motion dated December 27, 2021 is hereby dismissed with costs to the Defendants.

It is so ordered.

RULING DATED AND SIGNED AT NYAHURURU THIS 16TH DAY OF JUNE, 2022 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

In the presence of:

Ms. Mureithi for the Plaintiffs

Mr. Mapesa for the Defendants

N/A for the Applicants/Interested Parties

CA- Carol

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Y. M. ANGIMA

JUDGE

