



Waweru v Muhinja; Amcco Properties Limited (Intended Interested Party) (Environment & Land Case E040 of 2021) [2025] KEELC 3271 (KLR) (7 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3271 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E040 OF 2021**

**JA MOGENI, J
APRIL 7, 2025**

BETWEEN

GEOFLY NJUNGE WAWERU PLAINTIFF

AND

PETER KAMAU MUHINJA DEFENDANT

AND

AMCCO PROPERTIES LIMITED INTENDED INTERESTED PARTY

RULING

1. Before me is the Notice of Motion Chamber dated 30/10/2024 brought by the Applicant under Section 1A, 1B, 3B of the *Civil Procedure Act* Cap 21 Order 1 rule 10(2) and Rule 25 Order 12 Rule 7 of the Civil Procedure Rules, Article 48, 50 of *the Constitution* of the Republic of Kenya 2010 and all other enabling provisions of the law for orders:
 1. Spent
 2. That leave be granted to the Plaintiff/Applicant to include and/or enjoin an Interested Party herein being AMCCO Properties LTD in this matter
 3. That upon grant of prayer 2 above, the Honorable Court be pleased to issue an order of Status Quo on the land Ngairubi/Thigio/604 to remain until hearing and determination of the Application for review dated 26/7/2024
 4. That the Plaintiff/Applicant be allowed to amend its Application dated the 26/07/2024 by including the intended Interested Party as an Interested Party in the proceedings before the Court
 5. That cost of this Application be catered for by Plaintiff/1st Respondent herein.



2. The Application is supported by the Affidavit sworn by the Applicant on 30/10/2024 and the grounds on the face of the Notice of Motion.
3. From the Supporting Affidavit the key averment is that the Applicant has filed an Application for review which will be prejudiced if the intended Interested Party is not included in the proceedings.
4. That the Defendant despite there being an Application for review dated 26/07/2024 hurriedly and hastily effected transfer of the parcel of land to another party known as AMCCO Properties Limited. Thus it is the Applicant's averment that the said intended Interested Party must be included in these proceedings since in the likely event that the Plaintiff/Applicant is successful he stands to be affected.
5. That the Application is important since the registration of ownership is now in the name of the new Company which is a land buying Company and that why the Plaintiff seeks status quo to maintain and preserve the state and position on Nguirubi/Thigio/604. That whereas the Court had issued status quo on the 1/10/2024 on merit but this was vacated on 28/10/2024 in lieu of the new ownership.
6. They averred that for a just and fair determination of the matter, it would not prejudice the Defendant nor the Interested Party if enjoined in the proceedings since any orders issued by the Honorable Court will affect them.
7. The Intended Interested Party filed a Replying Affidavit dated 31/01/2025 and averred that the prayers made in the Application dated 30/10/2024 lack merit for reasons that the subject parcel of land in issue Nguirubi/Thigio/604 has already been sub-divided thus rendering the orders sought impossible to grant since it has been overtaken by events thus immaterial. That the register of Nguirubi/Thigio/604 is closed since the purchase of the land took place in August 2024 since there were no orders estopping any sale and purchase.
8. That the transfer and subdivision was concluded in October 2024 and that the intended Interested Party followed the stipulated laid down procedure in Section 44 of the [Land Registration Act](#) and as such assumed all rights under Section 25 of the [Land Registration Act](#) and that the title document should be held as conclusive evidence of ownership as stipulated in Section 26 of the [Land Registration Act](#), 2012.
9. The Intended Interested Party averred that compelling it to be part of the proceedings would be a futile exercise since the property does not exist in law its ownership having been divested to third parties.
10. The Applicant filed a Further Affidavit in response to the Replying Affidavit for the intended Interested Party dated 14/02/2025 and averred that his Application had merit in lieu of the intended Interested Party being a necessary key and essential party for incorporation over the subject property in review by the Court.
11. He further avers that the transfer to the intended Interested Party was done illegally and that there is no evidence of sub-division exhibited and therefore the said land is still in existence and that the titles exhibited 'JMK1' show that the titles are still in the name of the Interested Party and not other third parties.
12. That whereas the Court issued orders for the intended Interested Party to cease carrying out any development or activities in the said parcel of land this was ignored. Thus the intended Interested Party is a key party to these proceedings in lieu of having registered and is still registered over the suit and that the Interested Party is a key party to the review proceedings.



13. Counsel for parties agreed to proceed by way of written submissions which I have considered. The Defendant did not participate in this Application choosing not to file any Replying Affidavit. Also the Applicant did not file any submissions in relation to the Application dated 30/10/2024.
14. The only issue for determination is whether the intended Interested Party may be added as an Interested Party into this suit. Order 1 rule 10(2) provides:-

“The Court may at any stage of the proceedings either upon or without the Application of either party, and on such terms as may appear to the Court to be just order.... that the name of any person who ought to be joined, whether as Plaintiff or Defendant, or whose presence before the Court may be necessary in order to enable the Court effectively and completely adjudicate upon and settle all the questions involved in the suit, be added.”(emphasis added)
15. Section 3A saves the inherent jurisdiction of the Court to make such orders as may be necessary for the ends of justice and to prevent the abuse of the Court process, while Section 1A and 1B are about the overriding objective of the *Civil Procedure Act* and Rules, to facilitate the just, expeditious proportionate and affordable resolution of Civil disputes, with the appropriate support and participation of the parties and their Counsel.
16. It is argued for the Applicant that it is just and fair to incorporate the new party in these proceedings as an Interested Party for according him a fair hearing opportunity to be heard on merit.
17. The Court in Nairobi ELC Case No.119 /2014 Habiba W Ramadhan & 7 Others vs. Mary Njeri Gitiba (2017) eKLR stated;

“As already observed by the Court, under Order 1 Rule 10(2) the Court has discretion to order joinder of any party to a suit any stage of the proceedings so long as the presence of that party before the Court is necessary in order to enable the Court to effectually and completely adjudicate upon and settle all questions in dispute. However, the said discretion must be exercised judiciously. The Interested Party herein has averred that he is the legitimate owner of the suit property in dispute and that the Plaintiff herein are his tenants and that this matter cannot effectively and completely be decided in his absence. The Court has noted that in the pleadings filed by the Plaintiffs herein, they mentioned one Kibungei Arap Kogo who is the Applicant herein.”
18. The intended Interested Party submitted that since the suit property had changed hands, the Applicant’s claim for joinder had been overtaken by events. That taking into account the Court’s principles, the intended Interested Party does not have any interest in the original dispute and such property does not exist at the moment. Further that since they were not part of the ownership dispute initially and indeed, their participation will not be of any assistance.
19. The intended Interested Party has relied on the case of *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others* [2014] eKLR, the Supreme Court emphasized that an Interested Party must show:
 - a) A personal stake or legal interest in the proceedings.
 - b) A real connection to the dispute, beyond a general concern.
 - c) That their participation will help resolve the legal issues in question.”



20. In the instant suit the intended Interested Party is not even interested in pursuing any claim to the suit property. Further the intended Interested Party has submitted that it has no locus before the Court. It therefore follows that one cannot force a party to participate in a suit where they have no interest.
21. This is in sharp contrast with the Court's finding in the case of Nairobi Civil Case No.100/2016 Jusuf Abdi Adan Vs. Hussein Ahmed Farah & 3 Others (2017)eKLR where the Court was of the view that since the Applicant therein was alleging that his fundamental rights under Article 35(2) and 33(3) of *the Constitution* had been infringed that he had a right to be enjoined in the suit as an Interested Party under Article 48 and 50 of *the Constitution*.
22. In the instant case the intended Interested Party has submitted that the pursuit to enjoin the Intended Interested Party herein is a futile, moot and legally untenable exercise, as they lack locus standi in these proceedings. Furthermore, in civil litigation, locus standi is as important as jurisdiction. A party's lack in capacity to sustain a suit renders the Court the ability to grant the orders sought. Therefore, the Plaintiff/Applicant herein should seek rightful compensation, if any, from the Respondent herein.
23. The Supreme Court in the case of Judicial Service Commission vs. Speaker of National Assembly & 8 Others (2014) eKLR and Francis Karoki Muruatetu & Another vs. Republic & 5 Others (2010)eKLR went on to state;

“From the foregoing legal provisions, and from the case law the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an Interested Party. (emphasis mine)

The elements were listed as follows:

- i. Since enjoined is not a right, a party has to lay before the Court sufficient grounds by way of a formal Application.
 - ii. The party must demonstrate the personal interest/stake in the matter in the Application.
 - iii. The interest must “be clearly identifiable and must be proximate enough” so as not to appear peripheral.
 - iv. The intended Interested Party must demonstrate the prejudice to be suffered in the event of non-joinder to the satisfaction of the Court. This prejudice must be “clearly outlined and not something remote”.
 - v. The party must “set out the case and/ submissions it intends to make before the Court and demonstrate the relevance of those submissions.”
24. In the end the issue is whether the Applicant has complied with the requirements that give the Court the authority to exercise its discretion in his favour.
 25. As already stated, the suit to which the Applicant seeks to have the intended Interested Party is already concluded. A perusal of the Originating Summons clearly indicates that every allegation is made against Defendant/Respondent.
 26. I have perused the Supporting Affidavit of the Applicant very carefully. Does it set out her interest / stake in the matter? Or the prejudice he will suffer if the Application is not allowed? Does the mere fact that the intended Interested Party bought the land from the Defendant warrant their joinder?



27. This appears to be an issue between the Applicant and the Defendant and not an issue between the Applicant and the intended Interested Party. The Applicant's stake in the original suit property is about adverse possession which from the record accrued before the intended Interested Party came onto the scene. If the interest of the intended Interested Party was indeed at stake it would be the easiest thing for the intended Interested Party to say so. In my view, the intended Interested Party's demonstrated lack of interest in this Application is telling, that this is an issue that is purely between the Applicant and the Defendant which was settled through the Judgment.
28. The intended Interested Party concede that Judgment has been entered in this suit and a decree issued for purposes of execution. Indeed, Judgment was entered herein on 13/06/2024 in favour of the Defendant/Respondent. The matter is now at the execution stage. However, the Plaintiff/Applicant seeks to have enjoined herein, the intended Interested Party. The Applicant/Plaintiff is basically seeking for this Court to reopen this case so that the intended Interested Party be held accountable to the claim of the Plaintiff/Applicant in relation to the suit property which however from the record does not exist.
29. To my mind, I have not been shown any law or legal authority that allows for such prayers. In the Application, the Applicant has relied on Order 1 Rule 10(2) of the Civil Procedure Rules, 2010. However, that provision allows the joinder of a party to the suit before Judgment is entered and not after the Judgment has been entered. The Applicant has further relied on Order 22 rule 22 which does not also allow for what the Applicant is requesting. Neither does Section 3A of the *Civil Procedure Act* nor Article 48 or 50 of *the Constitution*.
30. Coming back to Order 1 rule 10(2) of the Civil Procedure Rules, the question is whether the Applicant has demonstrated that the presence of the intended Interested Party before the Court is necessary? I must answer in the negative.
31. It is clear from the pleadings so far that the issue before the Court was between the Plaintiff and the Defendant/Respondent. The two parties and the Applicant have not demonstrated that joinder of the intended Interested Party cause her prejudice or that their participation will add any value to the already concluded suit.
32. Thus my finding is that the intended Interested Party may not be enjoined into this suit after Judgment has been entered and all the other prayers cannot be granted as they are overtaken by events and also the intended Interested Party is not a party to the suit to enable the granting of the prayers sought touching on the intended Interested Party. To that extent therefore I hereby disallow the Application without any orders as to costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 7TH DAY OF APRIL 2025
VIA MICROSOFT TEAMS.**

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**MOGENI J
JUDGE**

In the presence of:-

Mr. Mwaura for the Plaintiff/Applicant

Defendant – Absent

Ms. Onyangare holding brief for Mburu for the Interested Party



Melita - Court Assistant

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MOGENI J

JUDGE

