



Shah v Shah; Shah (Intended Interested Party) (Environment and Land Case Civil Suit 83 of 2019) [2022] KEELC 3340 (KLR) (28 July 2022) (Ruling)

Neutral citation: [2022] KEELC 3340 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 83 OF 2019
OA ANGOTE, J
JULY 28, 2022**

BETWEEN

PRATIBHA RATILAL NARSHI SHAH PLAINTIFF

AND

NITIN RATILAL NARSHI SHAH DEFENDANT

AND

BHARAT RATILAL SHAH INTENDED INTERESTED PARTY

RULING

1. Through the Notice of Motion dated August 24, 2021, the applicant sought for the following orders:
 - a. That the applicant- Bharat Ratilal Shah be enjoined as an Interested Party in this suit and be allowed to respond to the Originating Summons.
 - b. That the applicant be allowed to rent out Apartment A6 Oshwal View Apartments on L.R. 1870/1/224 pending the hearing and determination of this matter.
 - c. That costs be in the cause.
2. The application is based on the grounds on the face of it and the supporting affidavit sworn by the applicant on August 24, 2021 in which he averred that he is the youngest brother of the parties in this suit and that the subject matter properties herein are held in trust by the parties for the family, having been bought by the Plaintiff using his late father's money from foreign accounts and registered in her name and that of the defendant.
3. The Applicant deponed that trust envisions equal distribution of the properties; that he is entitled to L.R. 1870/1/583 Hansvir court, where he has always lived and L.R. 1870/1/224 Oshwal View; that



the Oshwal View property is vacant due to this dispute and that he should be allowed to receive rental income from it. According to the applicant, he is suffering because he has no source of income and cannot wait for infinity for the parties to sort him out.

4. The defendant opposed the application through a replying affidavit dated October 13, 2021. The defendant deponed that the application is bad in law, misconceived, without basis and should be dismissed with costs; that the applicant has no legal interest or duty in these proceedings because Apartment 6 on L.R. No. 1879/1/224 is jointly owned by the plaintiff and himself and that the applicant therefore has no authority or ownership rights to seek orders to rent out the apartment.
5. The defendant argued that he bought his share of the subject matter through his own hard work, and that the properties were bought several years after the death of their late father. The defendant submitted that the applicant's claim is based on a proposal from the plaintiff, which cannot crystalize into a legal right as it is subject to his accession, which he has not granted.
6. According to the defendant, the applicant intends to introduce new and unfamiliar issues dissimilar to those presented by the principal parties, yet an interested party can only engage within the scope of the pleadings before court. It was deponed that his joinder would thus unnecessarily delay the trial and raise litigation costs to his prejudice.

Submissions

7. Counsel for the intended interested party submitted that the applicant has a stake in these proceedings, as he has an interest as a beneficiary and is entitled to a share of the subject properties. It was submitted that it is thus necessary for the Interested Party to be joined to this suit so that he can properly articulate and champion his interests. Counsel relied on several authorities which I have considered.
8. The defendant's Counsel submitted that the applicant has not demonstrated that his joinder in this suit is essential, crucial and necessary to assist the court in the determination of the questions involved in this suit. Counsel relied on numerous authorities which I have read.

Analysis and Determination

9. The issues for determination in this application are:-
 - a. Whether the interested party should be enjoined in this suit.
 - b. Whether the applicant should be allowed to rent out the suit premises pending hearing and determination of this matter.
10. While the joinder of an interested party is not provided for in the *Civil Procedure Act* and Rules, the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*, Legal Notice No. 117 of 2013 defines an interested party as:

“A person or an entity that has an identifiable stake or legal interest or duty in the proceedings and may not be directly involved in the litigation.”
11. The *Black's Law Dictionary*, 9th Edition at page 1232 defines an Interested Party as:

“A party who has a recognizable stake (and therefore standing) in the matter”



12. The law on joinder of Interested Parties to suits is not a right but is at the discretion of the court. That is the position that the Supreme court took in the case of *Francis K Muruatetu and another v Republic & 5 others* (2016) eKLR where the court held as follows:
- “Enjoinment is not as a right, but is at the discretion of the court; hence, sufficient grounds must be laid before the court, on the basis of the following elements:
- i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough to stand apart from anything that is merely peripheral.
 - ii. The prejudice to be suffered by the intended Interested Party in case of non-joinder must also be demonstrated to the satisfaction of the court. It must also be clearly outlined and not something remote.
 - iii. Lastly, a party must, in its participation, set out the case and/or submissions it intends to make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the court.”
13. The applicant’s case is that the plaintiff and the defendant in this suit are holding the suit properties in trust for him, as they are part of his late father’s estate. The defendant has opposed the application for joinder. According to the defendant, the suit property is held in his name and that of the plaintiff as joint proprietors, and the same cannot be held in trust for his brother, the applicant in the current application.
14. In the Originating Summons, the plaintiff has averred that due to their personal differences with his brother, the defendant, they have not agreed on the mode of distribution of the four properties that are registered in their joint names and that to settle their issues, she proposed to the defendant that Flat No. 2, Ground floor of Block 1 situate on LR 1870/1/583, Hansvir Court should be transferred to her name, in trust for his brother, the applicant, who is the beneficial owner.
15. The deposition by the plaintiff that one of the suit properties should be held by him in trust of the applicant shows that the applicant has an interest in the suit property and should be heard in that regard. Indeed, the decision of this court would determine whether or not Mr. Bharat has a right to any portion of L.R. 1870/1/583 Hansvir Court, where, according to him, he has always lived and L.R. 1870/1/224 Oshwal View.
16. The participation of Mr. Bharat in this suit is also necessary to fully settle the questions raised by the plaintiff and defendant. This court therefore finds that Mr. Bharat has established that he has an interest in this case and should thus be joined as an interested party.
17. The applicant has also sought for an order allowing him to rent out Apartment A6 Oshwal View on L.R No. 1870/1/224 pending the hearing and determination of the suit. According to the applicant, the said property is idle with no tenant due to differences between the plaintiff and the defendant, and that he should be allowed to gain some rental income from it.
18. Considering that the applicant is not the registered proprietor of the suit properties, and in view of the fact that the issue of whether he is entitled to any of the suit property can only be determined upon trial, the court declines to allow the applicant to deal with the suit properties, including Apartment A6 Oshwal View on L.R No. 1870/1/224, in any manner, including renting it out, until the interests of all the parties herein are determined.



19. For those reasons, the applicant's application dated August 24, 2021 partially succeeds in the following terms:
- a. The applicant- Bharat Ratilal Shah be and is hereby joined in this suit as an interested party.
 - b. The applicant- Bharat Ratilal Shah, to file his replying affidavit within 21 days of the date of this Ruling.
 - c. Costs of the application to be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 28TH DAY OF JULY, 2022.

O. A. Angote

Judge

In the presence of;

Ms Musau for Sheilla Mugo for Intended Interested Party.

Ms Muronji for Juma for Defendant

Court Assistant - June

