



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nzyimi & another v Ngaruiya & another; Kimeu (Administrator of Syokimau Farm Ltd) (Interested Party); Registered Trustees of Faith Mission Church & 13 others (Proposed Interested Parties) (Environment & Land Case E001 of 2021) [2022] KEELC 3863 (KLR) (26 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3863 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ENVIRONMENT & LAND CASE E001 OF 2021**

**CA OCHIENG, J**

**JULY 26, 2022**

**BETWEEN**

**RICHARD MAKAU NZYIMI ..... 1<sup>ST</sup> PLAINTIFF**  
**MUENI KIKETI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE KIKETI NZYIMI ALIAS KIKETI) ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**WILFRED NG'ANG'A NGARUIYA ..... 1<sup>ST</sup> DEFENDANT**  
**CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**PAUL MASILA KIMEU (ADMINISTRATOR OF SYOKIMAU FARM LTD) ..... INTERESTED PARTY**

**AND**

**REGISTERED TRUSTEES OF FAITH MISSION CHURCH .... PROPOSED INTERESTED PARTY**  
**IBRAHIM SAKWA MZEE ..... PROPOSED INTERESTED PARTY**  
**HARUN NGUGI NDUNG'U ..... PROPOSED INTERESTED PARTY**  
**ISAAC MUSILA MUTUA ..... PROPOSED INTERESTED PARTY**  
**FIBIAN CHIMAKATI ..... PROPOSED INTERESTED PARTY**  
**JOSEPH MUTINDA MUTUKU ..... PROPOSED INTERESTED PARTY**  
**MATHEW MULI MUTISO ..... PROPOSED INTERESTED PARTY**  
**MAGDALINE WANJIRU KINYANJUI ..... PROPOSED INTERESTED PARTY**



**BEATRICE ANYANGO MACHIO ..... PROPOSED INTERESTED PARTY**  
**JOEL MULI ..... PROPOSED INTERESTED PARTY**  
**STANLUS NDETI MWANIA ..... PROPOSED INTERESTED PARTY**  
**GIDEON OMARE ..... PROPOSED INTERESTED PARTY**  
**FRANCIS MUOKI ..... PROPOSED INTERESTED PARTY**  
**AMBROSE WAMBUA MUTUA ..... PROPOSED INTERESTED PARTY**

## **RULING**

1. What is before court for determination is the proposed interested parties chamber summons application dated the March 15, 2021 brought pursuant to sections 1A, 1B, 3A of the *Civil Procedure Act*; order 1 rules 10 & 25 of the *Civil Procedure Rules* and article 159 of the *Constitution*. The applicants seek the following orders:
  1. Spent
  2. That the proposed interested parties be and are hereby joined as the interested parties forthwith for further orders.
  3. That the plaintiffs be compelled to serve the plaint and all other documents in this suit upon the applicants consequent to the joinder orders.
  4. That leave be and is hereby granted to the proposed interested parties to file their replying affidavits in this suit before any further proceedings.
  5. That the cost of this application be provided for.
2. The application is premised on the grounds on the face of it and the supporting affidavit of Harun Ngugi Ndungu, the 3<sup>rd</sup> proposed interested party who has sworn the said affidavit on behalf of the other proposed interested parties. He deposes that the fulcrum of the dispute herein revolves around a parcel of land known as LR No 12715/155, hereinafter referred to as the 'suit land'. He contends that they have an interest in the suit land since they had bought it from one Mosica Properties Limited who purchased it from the interested party herein. He explains that on diverse dates in 2008, they entered into sale agreements with the said Mosica Properties Limited to buy plots curved from the suit land. He confirms that some of the proposed interested parties have built their houses on the suit land and are staying thereon with their families. Further, that they have been paying land rent in respect to their respective plots. He avers that there is also another case being ELC No 226 of 2016 before this court wherein the 1<sup>st</sup> defendant has sued the 1<sup>st</sup> to 6<sup>th</sup> proposed interested parties among other parties and the main issue in contention is the ownership of the suit land. He reiterates that since the proposed interested parties have an interest recognized in law as innocent purchasers for value, it would be fair that their application is allowed. Further, that it would be extremely prejudicial to adjudicate and determine the question of ownership of the suit land without granting the proposed interested parties an audience as they will be affected by the decision of the court in this matter.
3. The application was canvassed by way of written submissions.



## Analysis and Determination

4. Upon consideration of the instant chamber summons application including the affidavit and submissions, the only issue for determination is whether the proposed interested parties should be joined in this suit.
5. The applicants in their submissions reiterated their averments as per the supporting affidavit and contended that they are necessary parties in this suit and will suffer immense prejudice if they are not allowed to join it. To support their arguments, they relied on the following decisions: *Pravin Bowry v John Ward and another* [2015] eKLR and *Civicon Limited v Kivu Watt Limited and 2 others* [2015] eKLR.
6. *Black's Law Dictionary* 10<sup>th</sup> Edition, page 1298 defines an interested party as follows:

"A party who has a recognizable stake (and therefore standing) in a matter."
7. In respect to joinder of a party to a suit, order 1 rule 10 of the *Civil Procedure Rules* stipulates as follows:
  - (1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.
  - (2) 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 party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added."
8. In the case of *Joseph Njau Kingori v Robert Maina Chege & 3 others* [2002] eKLR Nambuye, J as she then was, provided the guiding principles to be adhered to when an intending interested party seeks to be joined in a suit and stated thus:

"When the above principles are applied to the facts of these applications it is clear that the guiding principles when an intending party is to be joined are as follows:

  - (1) He must be a necessary party;
  - (2) He must be a proper party;
  - (3) In the case of the defendant there must be a relief flowing from that defendant to the plaintiff;
  - (4) The ultimate order or decree cannot be enforced without his presence in the matter;
  - (5) His presence is necessary to enable the court to effectively and completely to adjudicate upon and settle all questions involved in the suit."



9. In the case of *Pravin Bowry v John Ward and another* [2015] eKLR the Court of Appeal stated the principles to be considered in an application for joinder of parties to a suit and referred to the Ugandan decision of *Deported Asians Custodian Board v Jaffer Brothers Ltd* [1999] 1 EA 55 (SCU) where it was held that:

"A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. A party may be joined in a suit because the party's presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the cause or matter...For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the court in that suit. Alternatively, a person qualifies (on an application of a defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person."

10. See also the decision in *Civicon Limited v Kivu Watt Limited and 2 others* [2015] eKLR.
11. On perusal of the plaint, defence, instant application, including annexures herein, I note the proposed interested parties confirm to have purchased their respective parcels of land between the years 2007-2009 from an alleged owner. They claim to have conducted due diligence, paid the consideration and are in actual possession of the disputed parcel of land. Further, that some of the applicants have been paying land rent for their plots. It has also emerged that there is a related suit being Machakos ELC No 226 of 2016 before this court wherein the 1<sup>st</sup> defendant has sued the 1<sup>st</sup> to 6<sup>th</sup> proposed interested parties among other parties and the main issue in contention is the ownership of the suit land. Based on the facts as presented while relying on the legal provisions I have cited as well as associating myself with the authorities quoted, I opine that the applicants indeed meet the criteria set of an interested party and their involvement in this suit will be necessary to enable the court effectually as well as completely adjudicate upon this matter. Further that the ultimate orders and decree made in this suit will not be enforced without their presence in the matter. I find that the applicants indeed have a constitutional right of being heard in a court of law and will allow them to be joined as interested parties herein. I further find that no prejudice will be suffered by the plaintiffs and defendants if the applicants are allowed to be joined in this suit.
12. In the circumstances, I find the chamber summons application dated the March 15, 2021 merited and will allow it.
13. For good order, I direct that the plaintiffs do serve the plaint and all other documents in this suit upon the interested parties within seven (7) days from the date hereof after which the said interested parties will be at liberty to file their respective responses including replying affidavits in this suit within twenty-one (21) days from the date of service.
14. The costs will be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 26<sup>TH</sup> DAY OF JULY, 2022**



**CHRISTINE OCHIENG**  
**JUDGE**

