



**Maweu v Muthama & another; Nzuki (Applicant) (Environment & Land  
Case 148 of 2014) [2022] KEELC 2629 (KLR) (14 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2629 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 148 OF 2014**

**A NYUKURI, J  
JULY 14, 2022**

**BETWEEN**

**BONIFACE MUTUA MAWEU ..... PLAINTIFF**

**AND**

**JOSEPH MWANIA MUTHAMA ..... 1<sup>ST</sup> DEFENDANT**

**PETER MWANZIA MWANIA ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**ANTHONY D.K NZUKI ..... APPLICANT**

**RULING**

**Introduction**

1. This ruling is in respect of the application dated 2<sup>nd</sup> February 2021, filed by Antony D. K. Nzuki, the Intended Interested Party/Applicant, seeking for the following orders;
  - a. That Antony D. K. Nzuki be enjoined in these proceedings as an interested Party.
  - b. That costs of this application be provided for.
2. The application is premised on the affidavit of the applicant sworn on February 2, 2021 as well as his supplementary affidavit sworn on 30<sup>th</sup> August 2021. The Applicant deposed that between 1998 and 2012, and with consent of the 3<sup>rd</sup> Defendant, he purchased one and a half acres from the Plaintiff to be excised from land parcel known as Matungulu/Nguluni/610 (hereinafter referred to as the suit property) as well as a half an acre from the Plaintiff to be excised from another parcel of land situated near Tala High School, which land the applicant is in possession; that in 2013 the 2<sup>nd</sup> Defendant invaded the Applicant's land and fenced it off; that the Plaintiff herein has failed to disclose that he sold part of the suit property to the Applicant and four other people; that if he is not allowed to



participate in these proceedings, his interests will be prejudiced and that he wished to participate in these proceedings to protect his interest in the suit property.

3. The application is opposed. Peter Mwanzia Mwanja, the 2<sup>nd</sup> Defendant filed a replying affidavit on 30<sup>th</sup> September, in opposition to the application. He deponed that the application is an afterthought as this suit has been pending since 2014, yet it is only now that the applicant seeks to be joined as a party; that the Applicant is not the legal owner of the suit property and his claim that he purchased the same in 1998 after the legal owner had passed away and his estate had not been administered is not true; that the issues raised by the Applicant are too remote to the suit and that if the Applicant has a claim against the Plaintiff herein, he ought to file a separate suit as against the Plaintiff; that the application is a delaying tactic and an abuse of the due process.
4. In addition, Boniface Mutua Maweu, the Plaintiff in this matter filed a replying affidavit in opposition of the application. He averred that the Applicant had no identifiable stake in the proceedings; that the Applicant's contention that he purchased land from the Plaintiff has nothing to do with this matter and therefore the Applicant's claim is a new claim which should be in a separate suit as against the estate of the late Maweu Kavuu, the Plaintiff's father, whose estate is administered by the Plaintiff and that the Plaintiff's claim is for recovery of the land belonging to the estate of his late father from the Defendant and therefore has no nexus with the Applicant's claim.
5. The application was canvassed by written submissions. On record are the Applicant's submissions filed on October 26, 2021, the Plaintiff/Respondents' submissions filed on December 15, 2021 and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' submissions filed on January 12, 2022.

### Submissions

6. Counsel for the Applicant submitted that the determination of this suit shall affect the Applicant's rights to the suit property. Counsel argued that the Defendant's case is that the suit property was transferred to them under customary law upon the demise of the Plaintiff's father before his registration as proprietor thereof. And that the issue in respect of the Applicant's claim is whether the Plaintiff passed valid beneficiary rights to the Applicant herein. It was counsel's position that the Applicant had demonstrated his stake in the proceedings by annexing copies of the agreement and his correspondence to the Independent Police Oversight Authority and the Matungulu District Officer. Reliance was placed on the cases of *Meme v Republic* [2014] eKLR, *Republic v Attorney General (Sued for and on behalf of the Ministry of lands) & 2 Others Exparte South and Central [Thika] Investments Limited* [2015] eKLR, *Anna Namae Masibov Benard Wasilwa Wepukhulu; Margaret Onyanchi Maloba & 3 Others (Co-Respondents)* [2021] eKLR, *Mary Njeri Kabundi v Christine Mithiri Mbugua & 2 Others* [2020] Eklr, *Stephen Kirumba Gichuru v Parsitau Ole Sayo & Another* [2018] eKLR and *Nyaega Mogocho Onses v Magabe Mwita ngweina* [2018] eKLR; all of which this court has considered.
7. In response, counsel for the Plaintiff/Respondent submitted that the Applicant had not satisfied the threshold for joinder of an Interested Party as was held in the case of *Francis Kariuki Muruatetu & Another v Republic & 5 Others* [2016] eKLR. It was counsel's contention that being a purchaser of part of the suit property does not give the Applicant an automatic right to become a party to the suit as he has no real stake in these proceedings. Counsel observed that the Applicant's claim does not form a transaction with the dispute between the Plaintiff and the Defendant in this matter as his claim forms a new cause of action from the dispute in this suit.
8. It was further submitted that the Applicant had not demonstrated how he will be prejudiced if he is not joined to these proceedings and how the decision of this court will affect him. Further, counsel



submitted that the Applicant lacked the necessary locus standi as he can only bring a suit against the estate of the late Maweu Kavuu, but not become a party in these proceedings.

9. Counsel maintained that the suit herein was a claim for recovery of land that was fraudulently acquired from the estate of Maweu Kavuu and therefore the Applicant's interest is not disclosed.
10. On their part, counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants submitted that for a party to be joined to court proceedings as an Interested Party, they must show that they are a necessary party for a complete and effectual adjudication of the dispute before court, that they have a stake in the proceedings and that their presence will help determine the issues in dispute. Counsel observed that the suit seeks eviction and permanent injunction against the Defendants, and since the Applicant is not the owner of the suit property, he has failed to demonstrate a stake in these proceedings to warrant his joinder thereto.
11. Besides, counsel argued that the applicant was guilty of indolence as he had come to court many years after the suit was filed and that he has failed to explain the delay, yet he states that the defendant invaded his land in 2013. Counsel referred the court to the case of *Skov Estate Limited & 5 Others v Agricultural Development Corporation & Another* [2015] eKLR for the proposition that, for a party to be joined as an Interested Party to proceedings pending before court, they must show that their presence in the proceedings is necessary to enable the court settle all questions in the matter.

### **Analysis and Determination**

12. I have considered the application together with the supporting and supplementary affidavits, the replying affidavits together with parties' submissions. In my considered view, the issue that emerge for determination is whether the Applicant has met the threshold for joinder to these proceedings as an Interested Party.
13. Order 1 Rule 10 (2) of the *Civil Procedure Rules* provides for the threshold of joinder of a person to proceedings as an Interested party in the following terms;

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.
14. The *Black's Law Dictionary 11<sup>th</sup> Edition*, defines Interested Party as "a party who has a recognizable stake (and therefore standing) in a matter."
15. Essentially therefore, for a person to succeed in their application to be joined as interested party to any court proceedings, they must demonstrate that they have a distinguishable stake in the matter and their presence in the proceedings is necessary for purposes of enabling the court to effectually and completely adjudicate upon and settle all questions in the suit. If such party is bringing new questions to the suit, they may have to file separate suits, as their presence may confuse the real issues in dispute.
16. In the case of *Communication Commission of Kenya & 4 Others v Royal Media Services Limited & 7 Others* [2014] eKLR, the Supreme Court held as follows;

In determining whether the Applicant should be admitted into these proceedings as an Interested Party, we are guided by this court's ruling in the Mumo Matemu case where the court (at paragraphs 14 and 18 held;



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

17. Similarly, in the case of *Methodist Church in Kenya v Mohammed Fugicha & 3 Others* [2019] eKLR, the Supreme Court held as follows;

Therefore, in every case, whether some parties are joined as interested parties or not, the issues to be determined by the court will always remain the issues as presented by the principal parties, or as framed by the court, from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues or introduce new issues for determination by the court.

18. It is therefore clear that a party can be joined to proceedings as interested party as long as they are not bringing a new cause of action, dispute or issue in the proceedings. They are seeking to be joined because the adjudication of the dispute as it is between the parties in the proceedings requires their presence for effectual and complete determination of the dispute. Their presence will not be necessary if it will change the course of the dispute by changing the issues between the principal parties. In addition, the court is enjoined by sections 1A and 1B of the *Civil Procedure Act* as well as section 19 of the *Environment and Land Court Act* to ensure that its resources are used efficiently. Therefore, in determining whether to join a party to proceedings as an interested party, the court ought to consider whether by declining to join such party as an interested party to such proceedings, there is a likelihood of multiplicity of suits over the same subject matter.
19. In the instant case, the Applicant contends that he purchased one acre to be excised from the suit property from the Plaintiff herein and that the Plaintiff has failed to disclose this fact to the court. He also contends that his land was trespassed upon by the Defendants in 2013 and therefore the decision in this case will affect his rights. Applying the threshold in the Methodist Church case, it is my view that the issue that the Intended Interested party would be presenting to court is whether he purchased the suit property from the plaintiff and whether the defendant's presence thereon amounts to trespass. The issue in the suit herein is whether the suit property belongs to the estate of the late Maweu Kavuu and whether the Defendant trespassed thereon. As the Intended Interested Party claims ownership of part of the suit property and complains that the Defendants' occupation thereof affects his proprietary rights, I find and hold that the Applicant has demonstrated an identifiable stake in these proceedings.
20. In the premises, I find and hold that the application dated February 2, 2021 is merited and the same is allowed in the following terms;
- a. Antony D.K. Nzuki be and is hereby joined to these proceedings as an Interested Party.
  - b. The Interested Party is granted leave to file his pleadings, witness statements and documents in 14 days of this ruling.
  - c. Costs of the application shall abide the determination of the suit.
21. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 14<sup>TH</sup> DAY OF JULY 2022 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**



**JUDGE**

**In the presence of:**

Ms Azangalala holding brief for Mr. Katunga Mbuvi for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants

No appearance for the Plaintiff

No appearance for the Intended Interested Party/Applicant

Ms Josephine Misigo – Court Assistant

