



Mathu v Kenya National Highway Authority & another (Environment & Land Case E004 of 2022) [2022] KEELC 12727 (KLR) (28 September 2022) (Ruling)

Neutral citation: [2022] KEELC 12727 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE E004 OF 2022
TW MURIGI, J
SEPTEMBER 28, 2022**

BETWEEN

KARIUKI MATHU PLAINTIFF

AND

KENYA NATIONAL HIGHWAY AUTHORITY 1ST DEFENDANT

SINOHYDRO CORPORATION LTD 2ND DEFENDANT

RULING

1. By a notice of motion dated March 10, 2022 brought pursuant to the provisions of order 1 rule 10(2) of the *Civil Procedure Rules*, section 1A, 1B and 3A of the *Civil Procedure Act* and all other enabling provisions of the law the applicant seeks for the following orders: -
 1. Spent.
 2. That the Kenya Forest Service be enjoined in this proceedings as an interested party.
 3. That the costs of the application be provided for.
2. The application is premised on the grounds appearing on its face together with supporting affidavit of the applicant sworn on the even date.

The Applicant's Case

3. A summary of the grounds and the averments is that the Kenya Forest Service granted the 1st defendant a Special Use License to utilise the suit property for purposes of constructing the Kibwezi Interchange. The applicant averred that the Kenya Forest Service is the lawful owner of the suit property since the plaintiff's title had been revoked by the National Land Commission. The applicant argued that the joinder of the Kenya Forest Service will assist the court to effectively determine all the questions arising



in the suit. The applicant argued that the Kenya Forest Service will be greatly prejudiced if they are not enjoined as an interested party as it has an identifiable stake in the proceedings herein.

The Respondent's Case

4. Opposing the application, the plaintiff/respondent vide his replying affidavit sworn on April 25, 2022 averred that the application is frivolous, a non-starter, illogical, an afterthought and misleading. He averred that he is the bonafide owner of the suit property and that therefore, Kenya Forest Service has no locus standi to participate in the proceedings herein. He argued that it was false to state that Kenya Forest Services was the lawful owner of the suit property as no evidence was tendered in support thereof. The respondent went on to state that according to the map, the suit property which is situated on the south eastern part does form part of the special license granted by Kenya Forest Services to the 1st defendant.
5. The respondent argued that the application to enjoin Kenya Forest Services in the proceedings is intended to delay the conclusion of this matter since the intended interested party does not have an identifiable stake on his property. He argued that the applicant has not demonstrated the prejudice that the intended interested party would suffer in the event it is not enjoined in the proceedings herein.
6. The application was canvassed by way of written submissions.

The applicant's Submissions

7. The applicant's submissions were filed on July 6, 2022.
8. Learned counsel for the applicant submitted that the only issue for determination was whether the court can grant the orders sought.
9. Counsel reiterated the grounds and the averments contained in the application. Learned counsel submitted that the court is empowered to order the joinder of a party or parties in order to assist the court to effectively determine the questions involved in the suit. In support of his submissions, learned counsel cited the following authorities: -
 - a. *Departed Asians Property Custodian Board v Jaffer Brothers Ltd* (1998) 1EA55.
 - b. *KMK v MWM 7 another* (2015) eKLR.

The respondent's Submissions

10. The respondent's submissions were filed on July 21, 2022.
11. Learned counsel for the respondent submitted that the only issue for determination was whether the Kenya Forest Services should be enjoined in this suit as an interested party.
12. With regards to the merits of the application, learned counsel contended that the applicant had failed to meet the threshold required to enjoin an interested party to the proceedings. In defining an interested party, counsel cited the case of *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others* (2015) eKLR.
13. Counsel went on to submit that the principles guiding the joinder of an interested party were laid down by the Supreme court in the case of *Raila Amollo Odinga & another v Independent Electoral and Boundaries Commission & 2 others & Micheal Wainana Mwaura (as Amicus Curie)* (2017) eKLR.



14. Counsel submitted that the Intended interested party had failed to meet the requirements as it ought to have filed a formal application seeking to be enjoined as interested party to the suit. Counsel argued that the application was improperly before the court as it was made by a party to the suit.
15. Counsel went on to state that if at all the Kenya Forest Service had an interest in this matter, it would appoint an attorney to make the application to enjoin it in the suit.
16. Counsel argued that the defendant can only seek to have another party enjoined as a third party to the proceedings but not as an interested party. He argued that the 1st defendant cannot seek reliefs on behalf of a party who is indolent.
17. Counsel further submitted that the respondent was the registered owner of the suit property while the Kenya Forest Services occupies the next plot has never laid any claim over the respondent's land.
18. Counsel urged the court to dismiss the applicant's application.

Analysis And Determination

19. Having considered the application, affidavits and the rival submissions, I find that the only issue that arises for determination is whether the application to enjoin Kenya Forest Services as an interested party is merited.
20. The law governing the joinder of parties is grounded on order 1 rule 10(2) of the [Civil Procedure Rules](#) which provides as follows;

“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 to effectually and completely to adjudicate upon or settle all questions involved in the suit, be added.”

21. The [Black's Law Dictionary](#) (8th Edition) page 3548 defines an interested party as follows;

“a party who has a recognizable stake and therefore a standing in the matter.”

22. In the case of [Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others](#) (2015) eKLR the court held that;

“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 interest will not be well articulated unless he himself or she herself appears in the proceedings and champions his or her cause.”

23. The Supreme court of Kenya in the case of [Francis Karoki Muruatetu & another v Republic & 5 others](#) (2010)eKLR set out the key elements for consideration in an application for joinder of an interested party as follows:-

- a. 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.



- b. 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.
 - c. 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.
24. Going by the above decisions, an interested party must therefore demonstrate that it is necessary for he/she be enjoined in the suit so that the court may settle all the questions involved. The intended interested party must make a good case to be enjoined in the suit. The intended interested party must demonstrate that it has an identifiable stake in the proceedings.
25. These are persuasive decisions that state the legal position with regard to joinder of Interested Parties.
26. The 1st defendant in his supporting affidavit deposed that the Intended interested party is the owner of the suit property and therefore it has an identifiable stake in the proceedings herein.
27. Under the Civil Procedure Rules the defendant can only enjoin a third party to a case but cannot apply for a party to be made an interested party. It is upon anyone Interested in any proceedings to make a formal application to be enjoined as such and then demonstrate to the court that he/she has an identifiable stake in the proceedings before the court. This can only be done by the intended interested party and not by any other party. In the present case the application has been made by the defendant on behalf of the Intended interested party.
28. As rightly submitted by the respondent the interested party can appoint an attorney to file the application if all it has a claim in the proceedings herein. The intended interested party is capable of suing and being sued. It is therefore not proper for the 1st defendant to make an application to enjoin the intended interested party in the proceedings herein.
29. The upshot of the foregoing is that the application dated March 10, 2022 is devoid of merit and the same is dismissed with costs the plaintiff/respondent.

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HON. T. MURIGI
JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 28TH DAY OF SEPTEMBER, 2022.

IN THE PRESENCE OF: --

court assistant – Mr. Kwemboi

Maruti for applicant.

Mulandi for the respondents.

Both parties have complied.

By consent hearing on 29/11/2022.

