



Raymark Limited v Ouma & 2 others; Wainaina & 5 others (Applicant) (Environment & Land Case E045 of 2021) [2022] KEELC 12638 (KLR) (26 September 2022) (Ruling)

Neutral citation: [2022] KEELC 12638 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E045 OF 2021
FM NJOROGE, J
SEPTEMBER 26, 2022**

BETWEEN

RAYMARK LIMITED PLAINTIFF

AND

RAYMOND OCHIENG OUMA 1ST DEFENDANT

EVANRAY COMMERCIAL AGENCIES 2ND DEFENDANT

NAKURU LAND REGISTRAR 3RD DEFENDANT

AND

ALEX WAINAINA HINGA APPLICANT

DAVID NJENGA IYAI APPLICANT

FREDRICK MWANGI MBUTHIA APPLICANT

SIMON NJUGUNA MWANGI APPLICANT

ALEX WAINAINA HINGA APPLICANT

GEORGE KINUTHIA NJUGUNA APPLICANT

RULING

1. This is a ruling with respect to the applicants notice of motion application dated May 25, 2022. The application is brought under order 1 rule 10(2) of the [Civil Procedure Rules](#), sections 1A, 1B and 3A of the [Civil Procedure Act](#) and it seeks the following orders:
 - a. That the applicants herein be joined as interested parties and thereafter be allowed to file such pleadings that may be necessary for the effective, efficient and final determination of this matter.



- b. That the costs of this application be in the cause.
2. The application is supported on the grounds on the face of the application and the affidavit sworn by Fredrick Mwangi Mbuthia the 3rd applicant. In the affidavit he deposes that on various dates, the applicants purchased portions of land parcel No Solai/Ndungiri Block 10/80 (Olbonata farm) from the 2nd defendant while the 1st defendant executed the agreements as a director of the 2nd defendant; that at the time of the purchase, the records at the lands office indicated that the 2nd defendant was the registered owner of the said parcel of land; that they were never notified that the 2nd defendant's title was defective; that the issues raised in this suit relate to the proprietary rights in respect to land parcel No Solai/Ndungiri Block 10/80 (Olbanata farm) and all the subdivisions thereof; that the parcels of land they purchased from the 2nd defendant were to be subdivided from the said title; that they wish to be joined in these proceedings to canvass their interests and ensure that they are protected.
 3. In response to the application, the 2nd defendant's director Evanson Mwangi Gakuo filed a replying affidavit sworn on June 10, 2022. He deposed that he had the consent of the 1st defendant to swear the affidavit; that the applicants do not have any reasonable claim related to the parties herein and their participation will raise issues that are not right for determination before the court and thus delay the disposal of the suit; that the applicants are purchasers of land through a land transaction between them individually and the 2nd defendant herein and they have no claim against the plaintiffs or the 1st and 3rd defendants; that pursuant to the sale agreement between the applicants and the 2nd defendant herein, the applicants were required to make payments upon which they would be entitled to take possession and thereafter be issued with title deeds; that the applicants defaulted in making payments and the 2nd defendant was constrained to invoke the default clause in their respective agreements; that the issues between the 2nd defendant and the applicants are not relevant issues for determination herein; that the applicants did not acquire any proprietary interest over the suit property.
 4. Neither of the parties filed submissions in respect to the application.

Analysis and Determination

5. After considering the application and the response thereto, it is my view that the only issue that arises for determination is whether the applicants should be joined as interested parties in this suit.
6. Order 1 rule 10(2) of the [Civil Procedure Rules](#) 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 effectually and completely to adjudicate upon or settle all questions involved in the suit, be added.”

7. The Supreme Court in the case of [Communication Commission of Kenya & 4 others v Royal Media Services Limited & 7 others](#) [2014] eKLR held as follows:

“(22) 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 Matemo 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...

- (23) Similarly, in the case of *Meme v Republic*, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:
- (i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
 - (ii) joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
 - (iii) joinder to prevent a likely course of proliferated litigation.”

8. Further the court in the case of *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others* [2017] eKLR held as follows:

“A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights. In determining whether or not an applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party the true test lies not so much in an analysis of what are the constituents of the applicant's rights, but rather in what would be the result on the subject-matter of the action if those rights could be established. It is apparent that a party claiming to be enjoined in proceedings must have an interest in the pending litigation, but the interest must be legal, identifiable or demonstrate a duty in the proceedings directly identifiable by examining the questions involved in the suit. From my analysis above, the applicant has demonstrated a legal and identifiable interest and also a duty to participate in the proceedings. An interested party may also be added to the case by the court itself, where it appears to the court that it is desirable to do so to resolve a dispute or an issue.”

9. In this matter the applicants allege that they purchased portions of land parcel No Solai Ndungiri Block 10/80 (Olbonata farm). They further allege that at the time of purchasing the property, it was registered in the name of the 2nd defendant and that since this suit relates to the proprietary rights regarding the suit property, they seek to be joined in the suit as interested parties. They have annexed to their application copies of the land sale agreements between themselves and the 2nd defendant.
10. The 1st and 2nd defendants on the other hand argue that the applicants are purchasers of the property through a land transaction between them and the 2nd defendant and that they have no claim against the plaintiff or the 1st and 3rd defendant. They further allege that the applicants defaulted in making payments and that the 2nd defendant intends to invoke the default clause.
11. I have already given my reasoning in ruling No 1 delivered earlier today in this same suit, that led to joinder of two other persons in the suit as defendants. I order that the same reasoning shall apply in the instant application which I find to have merit. Consequently, I allow the application dated May 25, 2022 and I issue the following orders:
- a. The applicants, Alex Wainaina Hinga, David Njenga Iyai, Fredrick Mwangi Mbuthia, Simon Njuguna Mwangi, Alex Wainaina Hinga and George Kinuthia Njuguna are hereby joined to the present suit as the 6th – 11th defendants respectively.



- b. The plaintiff shall amend the plaint to join and plead as against the said two new defendants in accordance with the disclosures of purported purchases made in their application;
- c. The plaintiff shall serve upon the two new defendants the amended plaint with summons within 14 days of this order through their counsel on record herein, in default of which the instant suit shall stand struck out;*
- d. The costs of the application shall be in the cause.*
- e. The suit shall be mentioned on October 6, 2022 for further directions.

DATED, SIGNED AND ISSUED AT NAKURU VIA ELECTRONIC MAIL ON THIS 26TH DAY OF SEPTEMBER, 2022.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

