



Raymark Limited v Raymond Ouma & 2 others; Gatitu & another (Applicant) (Environment & Land Case E045 of 2021) [2022] KEELC 12631 (KLR) (26 September 2022) (Ruling)

Neutral citation: [2022] KEELC 12631 (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 LIMITED 2ND DEFENDANT

NAKURU LAND REGISTRAR 3RD DEFENDANT

AND

JAMES MWANGI GATITU APPLICANT

GEORGE KINUTHIA NJUGUNA APPLICANT

RULING

1. This is a ruling in respect of the interested parties chamber summons application dated May 31, 2022. It has been brought under order 1 rules 10 (2) and 22 of the [Civil Procedure Rules](#) and section 3a of the [Civil Procedure Act](#) and seeks the following orders:
 - a. That James Mwangi Gatitu and George Kinuthia Njuguna being interested parties herein be allowed to join these proceedings.
 - b. That the costs of this application be provided for.
2. The application is supported by the grounds on its face and in the affidavit sworn by James Mwangi Gatitu on May 30, 2022. In the affidavit he deposes that he has always had a professional relationship with the 1st and 2nd defendants who sold land to him in the year 2009; that he wishes to be joined in the suit as an interested party having purchased ten acres of the suit property from the defendant sometime in November 2019; that he has paid a total of kshs 1,850,000/= toward the purchase price;



that sometime in the year 2018, he paid kshs 400,000/= in cash to one of the defendant (whom he has not identified by name) and who did not issue him a receipt; that he introduced other purchasers to the defendants and they sold to them portions of the suit property; that he tried to take occupation but was informed that the property had pending court cases; that after exerting pressure, he was eventually taken, together with other purchasers, to the suit property and they were shown their respective portions which had beacons; that on October 10, 2019 he went to fence the suit property but was stopped by a group of armed vigilante youths who informed him that the property does not belong to him and neither does it belong to the defendants; that upon investigations, the buyers realized that the defendants had unresolved issues with the plaintiff who also claimed to have an interest in the suit property; that he reported the matter to the police and the DCI and the 1st and 2nd defendants were arrested and charged in court; that later he learnt of the present matter where the defendants had been sued and that since he has an interest in the suit property he seeks to be enjoined in the suit as an interested party.

3. The 2nd interested party also swore a supporting affidavit in which he has alleged to be a purchaser of a portion of land from the 1st and 2nd defendants. He states that he has paid Kshs 4,500,000/= towards the said purchase by way of finance from a bank; that by an agreement with the defendants he was entitled to commission of Kshs 1,500,000/= for introducing other purchasers to the defendants; that he tried to occupy the land but the defendants told him to wait as there were cases pending in court and that in 2019 the defendants offered to refund the purchase price. The rest of his narrative matches that of the 1st interested party.
4. 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 authority of the 1st defendant to swear the affidavit; that the 1st applicant never finalized payments as per the agreement and that the 2nd defendant would be entitled to damages as a result of the breach as well as invoking the default clause in the agreement; that the agreement between the 1st applicant and the 2nd defendant contains the remedies available for both the vendor and the purchaser; that the 2nd applicant did not have any agreement with the 1st and 2nd defendants and so his claim was not known to them and does not relate to this suit; that the applicants are forum shopping and have not demonstrated what prejudice they will suffer if the suit proceeds in their absence; that the applicants will cause significant delays in the suit and introduce issues that have no relevance herein and so their application is unmerited and should be dismissed with costs.
5. The application was heard by way of oral submissions. The applicants sought that the application be allowed while the 1st and 2nd defendants, relying on their replying affidavit sworn on June 10, 2022, submitted that it is the applicants who have breached the agreement.
6. The 1st and 2nd defendants submitted further that the issues that the applicants were raising were inconsistent with what they should be claiming from the court.
7. In response counsel for the applicants submitted that they were seeking normal orders and that the 1st applicant and the 2nd applicant had paid kshs 1,800,000/= paid kshs 4,500,000/= respectively towards the purchase price. Counsel for the defendants concluded his submissions by stating that the applicants therefore have an interest in the suit property.

Analysis and Determination

8. After considering the application and the response thereto, it is this court's view that the only issue that arises for determination is whether the applicants should be joined as interested parties in this suit.



9. 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.

10. 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.”

(24) We ask ourselves the following questions: (a) what is the intended interested party’s stake and relevance in the proceedings? and (b) will the intended interested party suffer any prejudice if denied joinder?”

11. Further the court in the case of [SKOV Estate Ltd & 5 others v Agricultural Development Corporation and another](#) [2015] eKLR held as follows:

“18. In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party. In



other words, there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.”

12. The *Black's Law Dictionary* defines an interested party as "A party who has a recognizable stake (and therefore standing) in the matter." It also defines a “necessary party” as “a party who being closely connected to a lawsuit should be included in the case if feasible but whose absence will not require dismissal of proceedings.”
13. The applicants seek to be joined in this matter as interested parties. The 1st applicant alleges that he purchased 10 acres of the suit property from the 2nd defendant and paid kshs 1,850,000/= but has not been able to take occupation. The 1st applicant further alleges that thereafter he realized that the defendants had issues with the plaintiff who also claim to have an interest in the suit property.
14. The 1st applicant also alleges that when these facts were revealed to him, he reported the incident at the police station and the defendants were arrested and charged with obtaining money by false pretense and that the case is still pending in court. The 1st and 2nd defendants on the other hand allege that the 1st applicant never finalized payments as per the agreement and that the agreement between them contained remedies which are available and have not been invoked.
15. In the instant case the plaintiff has admitted expressly in his pleading that he retained the 1st defendant who was then operating under the name of the 2nd defendant to source for buyers to his parcels of land. His claim is that the 1st defendant fraudulently transferred part of the land to the 2nd defendant who proceeded to dispose of the same to some third parties. This court is convinced that the applicants are some of those third parties.
16. An issue will arise at the hearing of the suit between the plaintiff and the 1st and 2nd defendants as to whether the purported transfer to the 2nd defendant was procedural and authorized by the plaintiff.
17. An act of an agent can effectively and legally bind a principal to obligations to third parties in certain circumstances.
18. In other circumstances they may be personally liable. Chitty on *Contracts Volume II Sweet and Maxwell*, 32nd Edition, it para 31-070 states as follows:

“Effect of judgment on agent. Where the agent, having made a contract in such terms that he is personally liable, has been sued on it to judgment, it appears that no action is maintainable against the principle on the same contract. This rule is based on the notion that there can not be two judgments on the same debt...”



19. The legality of the authority of the 1st and 2nd defendants as agents of the Plaintiff in the purported sale of part of the subject land to third parties will clearly be in issue in the present suit.
20. Consequently, the issue will arise as to whether any third party who purported to purchase any part of the suit land from the 2nd defendant has legally acquired any interest therein, and who between the plaintiff on the one hand and the 1st and 2nd defendants, individually or jointly, on the other is liable for any remedy available to the applicants. Perchance the 1st and 2nd defendants are to found to be finally liable to either the plaintiff or the applicants herein, and the liability question involves sale that affects all the three sides, there is no better course of action than to have the triable issues arising between all the parties tried in one litigation.
21. Consequently, this court is persuaded that the applicants have demonstrated that they ought to be joined to the suit.
22. However, in the case of *Cyrus Wamboka Nyaga Njue v Lucy Kanyua Nyamu* [2019] eKLR it was observed as follows by Hon Justice Gitari, which position I also espouse:
 - “ 10. It should be appreciated that an interested party is not strictly plaintiff or defendant. The contest in a suit is between plaintiff and defendant and if any person has a claim over the subject matter, then such party needs to apply to be enjoined and considered as plaintiff or defendant, and not as interested party. An interested party would be a person who has a close connection to the subject matter of the suit yet not claiming any rights over it...
 11. It follows therefore that applications seeking to join proceedings as interested parties ought to be handled with caution so that a person does not come to a suit, disguised as an interested party, while all along he/she wishes to agitate rights of his/her own over the subject matter of the suit.”
23. Having regard to the foregoing, it is proper therefore that the applicants be joined not as interested parties but as substantive defendants in the suit. I therefore allow their application dated May 31, 2022 and I issue the following orders:
 - a. The applicants herein James Mwangi Gatitu and George Kinuthia Njuguna, are hereby joined to the instant suit as the 4th and 5th 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 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 will 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

