



Mbugua v Mbugua & 2 others; Mutwol (Proposed Interested Party) (Environment & Land Case 169 of 2007) [2022] KEELC 14442 (KLR) (26 October 2022) (Ruling)

Neutral citation: [2022] KEELC 14442 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 169 OF 2007
FO NYAGAKA, J
OCTOBER 26, 2022**

BETWEEN

MARY MUTHONI MBUGUA PLAINTIFF

AND

LILIAN WANGARE MBUGUA 1ST DEFENDANT

SARAH JEPTEPKENY BUSIENEI 2ND DEFENDANT

EMILY JEPKEMBOI MUTWOL 3RD DEFENDANT

AND

PHYLIS JEROTICH MUTWOL PROPOSED INTERESTED PARTY

RULING

The Application

1. One, Phylis Jerotich Mutwol, the proposed interested party, contended that she purchased the suit parcel of land namely Chepsiro/Kibuswa Block 1/Kelchinet/137 from the 2nd defendant on April 17, 2007. To her, following the purchase, she acquired the said parcel of land and subsequently took possession, occupation and use in December, 2007.
2. She asserted further that in spite of the above, she was not enjoined in the instant suit and only became aware of its existence recently when strangers informed her that they were intent on surveying the suit land in pursuance of a court order issued on January 27, 2021.
3. She was apprehensive that her proprietary rights would be jeopardized if implementation of the court orders was effected bereft of her participation in the proceedings. She accused the parties to the proceedings of mischief for failing to inform her of Kitale ELC No 37 of 2020 as well as the present



proceedings. She added that the court in Kitale ELC No 37 of 2020 injunctioned further dealings on the suit land, namely, Chepsiro/Kibuswa Block 1/Kelchinet/137.

4. The proposed interested party urged that her lack of participation will condemn her unheard and occasion a miscarriage of justice. She further decried that she would suffer irreparably and that if the court orders of January 27, 2021 were not varied, her application will be rendered nugatory.
5. Consequently, the proposed interested party invited this court by way of motion on notice dated February 8, 2022 to grant the following reliefs:
 1. ...spent
 2. ...spent
 3. The proposed interested party/applicant herein, Phylis Jerotich Mutwol, is hereby joined into the instant suit as an interested party;
 4. Costs of the application are awarded to the proposed interested party.
6. The application was supported by the grounds on the face of the motion and by the proposed interested party's deposition sworn on February 8, 2022. In addition, the applicant annexed the agreement of sale and marked it as PM1, a copy of the court orders of January 27, 2021 and a letter accompanying it as PM2 and PM3 respectively, the plaint in Kitale ELC No 37 of 2020 as PM4, the copy of title deed as PM5 and a copy of the ruling delivered on January 26, 2021 in Kitale ELC No 37 of 2020 as PM6.

Responses

7. The plaintiff opposed the application. In her replying affidavit sworn on February 21, 2022, she deposed that the applicant's participation in these proceedings could be dispensed with as the court could effectively and completely adjudicate upon the issues. She added that since ownership of the suit land is not in dispute, her participation in the proceedings was gratuitous. She clarified that the only issue for determination by the court was the establishment of the correct boundary. Finally, since the plaintiff had already testified and further noting that the suit spanned over fifteen (15) years, the plaintiff urged this court to disallow the application as that would serve the ends of justice.
8. On the part of the 3rd defendant, she deposed on July 4, 2022 in her replying affidavit that to allow the application would defeat the cause of justice and delay the conclusion of the dispute. She accused the applicant of laches for only instituting the present application fifteen (15) years later. She faulted the applicant for misleading the court as the facts deciphered in her application were marred with lies and misrepresentations. She urged this court to dismiss the application in totality.

Submissions

9. Pursuant to the court's directions, parties were directed to dispose of the application by way of written submissions. According to the applicant's submissions dated June 3, 2022 and filed on June 6, 2022, the application was merited. She submitted that the application invoked articles 40, 48 and 50 (1) of the [Constitution](#), section 1A and 3A of the [Civil Procedure Act](#) and order 1, rule 10 of the [Civil Procedure Rules](#) thereby bearing a legal basis. Relying on the definition of interest under [Barron's Dictionary of Legal Terms](#), she submitted that she had demonstrated sufficient interests to warrant her joinder in the suit. Since no party would suffer injustice if the orders sought were granted, the applicant beseeched this court to allow the motion as prayed.



10. The plaintiff's submissions filed on June 8, 2022 reemphasized the grounds espoused in her replying affidavit. She urged that this was an application for dismissal.

Analysis and Disposition

11. The applicant seeks to be enjoined in these proceedings as an interested party. The principles set out for the grant or refusal to enjoin a party were well articulated by the Supreme Court of Kenya in *JOO v MBO; Federation of Women Lawyers (Intended Interested Party); Law Society of Kenya & 3 others (Amici Curiae)* [2021] eKLR. The apex court stated thus:

“(14) This court has laid down the principles for enjoinder as an interested party in the case of *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others*, SC Petition (Application) No 12 of 2013; [2014] eKLR where it was stated:

“[17] Suffice it to say that while an interested party has a ‘stake/interest’ directly in the case, an amicus’s interest is its ‘fidelity’ to the law: that an informed decision is reached by the court having taken into account all relevant laws, and entertained legal arguments and principles brought to light in the courtroom.

[18] Consequently, 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.”

- (15) Similarly, in the case of *Francis Kariuki Muruatetu & another v Republic & 5 others*, SC Petition No 15 as consolidated with SC Petition No 16 of 2013 [2016] eKLR (*Muruatetu* case) at paragraph [37], the court set out applicable principles where a party seeks to be enjoined in proceedings as an interested party as follows:

“...one must move the court by way of a formal application. Enjoinder is not as of right, but is at the discretion of the court; hence, sufficient grounds must be laid before the court, on the basis of the following elements:

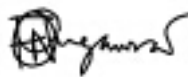
- i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
- ii. The prejudice to be suffered by the intended interested party 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.
- iii. Lastly, a party must, in its application, 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.”

12. The question then before me is simple: is the application merited? In order to be merited the applicant ought to have brought out or before me evidence or facts which place her within the parameters above enunciated. These are the ones I will consider vis-à-vis the law as clearly restated by the Supreme Court.
13. The proposed interested party maintained that she purchased the suit land from the 2nd defendant on April 17, 2007. Following that purchase, she acquired the said parcel of land and subsequently took possession, occupation and use in December, 2007. She maintained that she was only aware of the proceedings herein following the court order issued on January 27, 2021. It is for these reasons that she filed the application this year. She submitted that her participation in the proceedings will safeguard her proprietary interest.
14. I have looked at the application and the responses thereto. It cannot be gainsaid that the proposed interested party bears, and it is admitted by the respondents in their replying affidavits, proprietary interests over the suit land. To be clear on this, in fact, the plaintiff and 3rd defendant confirm that state of facts. Notably, the dispute herein lies in boundary ascertainment and not ownership. So that all along, nobody as a party herein or indeed any other person in so far as the instant suit is concerned has laid credence or claim to the proposed interested party’s title since inception of this matter. In short, no party is arrogating themselves the ownership of the proposed interested party’s title. Before me is only simply a boundary dispute.
15. Flowing from the above, I find that the apprehensions laid out by the applicant uncorrelated with the dispute herein. Her personal interest is not the issue in dispute herein. She would thus not suffer any prejudice if she is not joined. Her participation in this matter, as pointed out by her ‘adversaries’, will only serve to protract the present dispute. Consequently, I am not satisfied that the application is merited. It is hereby dismissed with costs.
16. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIA ELECTRONIC MAIL THIS 26TH DAY OF OCTOBER 2022



HON DR. *IUR* FRED NYAGAKA
JUDGE, ELC KITALE

