



**Mwaniki v Athi Water Works Development Agency Limited & another;
Gitina (Interested Party) (Environment and Planning Civil Case
E002 of 2023) [2025] KEELC 3020 (KLR) (2 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3020 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND PLANNING CIVIL CASE E002 OF 2023
MN GICHERU, J
APRIL 2, 2025**

BETWEEN

NAOMI WANJIRU MWANIKI PLAINTIFF

AND

ATHI WATER WORKS DEVELOPMENT AGENCY LIMITED 1ST DEFENDANT

THE CHIEF LAND REGISTRAR 2ND DEFENDANT

AND

NDUATI GITINA INTERESTED PARTY

RULING

1. This ruling is on the notice of motion dated 13-5-2024. The motion which is by the interested party, Nduati Gitina, is brought under Order 24 of the [Civil Procedure Rules](#) and all other enabling provisions of the law.
2. The motion seeks the following orders.
 - i. The Applicant to be joined as an interested party in this matter.
 - ii. The Applicant be allowed to file pleadings in this matter.
 - iii. The 1st Defendant be ordered to compensate the interested party any monies due in respect of compulsory acquisition of LR. No. Loc.2/Makomboki/180 which belongs to Nduati Gitina.
 - iv. An injunction restraining the 1st Defendant from paying any monies in respect of the suit land as the Plaintiff who is the mother of the Applicant does not own the land.
 - v. That the costs herein be borne by the intended Defendant.



3. The motion is based on six(6) grounds and is supported by an affidavit by the Applicant dated 13-5-2024 which has two (2) annexures which are a memorandum of appeal in Murang'a HCCA No. 13 of 2013 and a copy of certificate of official search dated 20-12-2011. The gist of the entire motion is as follows. Firstly, the Applicant is the legal and equitable owner of the suit land and therefore entitled to compensation. Secondly, there are active proceedings in respect to the suit in Murang'a HCCA No. 13 of 2013 which are yet to be finalized. Finally the proper party to be compensated by the 1st Defendant is the Applicant herein.
4. The motion is opposed by the Plaintiff who has sworn a replying affidavit dated 15th May 2024 in which she replies as follows. Firstly, the Applicant who is a son of the Plaintiff had illegally and criminally dealt with the suit land. Secondly, this fraud was discovered and addressed in Kigumo Succession Cause No. 20 of 2012. Thirdly, the appeal filed by the Applicant is frivolous and vexatious. Fourthly, the Applicant has sworn to frustrate the Plaintiff in getting her due entitlement as compensation despite her age and ill health. Fifthly, the prayers sought are untenable and not maintainable in law. For the above and other reasons, the Plaintiff prays for the dismissal of the motion.
5. The 1st Defendant, Athi Water Development Agency, has through its Legal Officer, Wendy Muchai, sworn a replying dated 28-6-2024. In the said affidavit, the prayer for joinder of the Applicant in the suit is not opposed. However, the other prayers are opposed. The 1st Defendant deposes that it is precluded from compensating the Plaintiff pending the hearing and determination of Appeal No. 13 of 2013 and unless the said appeal is heard and determined this case proceeds in futility. Further, the institution of this case is an abuse of the court process as the issue of ownership of the suit land is also pending in the appeal. For the above and other reasons, the 1st Defendant prays for the dismissal of this sit with costs to the 1st Defendant.
6. Counsel for the parties filed written submissions dated 29-8-2024, 3-9-2024 and 13-11-2024 respectively. The issues raised in the said submissions are as follows.
 - i. Whether the Applicant has made a good case for him to be joined in this case.
 - ii. Whether the 1st Defendant should be ordered to compensate the intended interested party/ applicant.
 - iii. Whether an injunction should issue restraining the 1st Defendant from paying any money to the Plaintiff.
 - iv. Who pays the costs.
7. I have carefully considered the motion dated 13-5-2024 in its entirety including the grounds, the affidavits, the annexures, the written submission and the law cited therein. I find as follows.

On the first issue, I find that the Applicant has made a good case for joinder as an interested party. As correctly submitted by the Counsel for the 1st Defendant, it is trite law that an interested party is a person or entity with an identifiable stake or legal interest or duty in proceedings before the Court but is not a party to the proceedings or may not be directly involved in the litigation. In this case, the Applicant is, *prima facie*, the registered owner of the suit land. Even if such ownership is under challenge in the succession Appeal pending before the High Court, the Applicant should not be locked out of this suit. Infact, it is all the more reason why he should be allowed into the suit. If he were locked out, he would stand prejudiced because this Court could find that he is not lawfully registered. If that happens, he will have been condemned unheard contrary to the rules of natural justice and Article 50(1) of the Constitution that guarantees a party to a dispute a fair hearing.



8. On the second issue, I find that the 1st Defendant should not be ordered to compensate the Applicant at this stage. The case has not been heard. The Applicant has not yet filed his pleadings. We do not know if the other parties will file further pleadings in reaction to the Applicant's pleadings. We have also been told there is an order in the succession cause precluding the 1st Defendant from paying compensation pending the determination of the ownership dispute. This is as per paragraph 12 of the affidavit dated 28-6-2024 sworn by the 1st Defendants' legal officer.
9. As for the third issue, I find that the order of injunction sought cannot be allowed at this interlocutory stage because it should await for evidence to be filed by the Applicant. Secondly and more importantly such an order could contradict an order issued in the succession cause.
10. Finally on costs, I find it is fair and just to order that they be in the cause because we do not know what the final outcome in this case will be.

In conclusion, the notice of motion dated 13-5-2024 of motion dated 13-5-2024 is allowed in terms of prayers 1 and 2 only. Prayers 3 and 4 are dismissed.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 2ND DAY OF APRIL, 2025.

M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiff's Counsel – Mr. Kirubi

1st Defendant's Counsel –

2nd Defendant's Counsel –

Interested party's Counsel – Mr. T.M. Njoroge

