



Aiska & another v Oyenga & 3 others; Asika (Interested Party) (Environment & Land Case 76 of 2014) [2022] KEELC 15020 (KLR) (25 November 2022) (Ruling)

Neutral citation: [2022] KEELC 15020 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE 76 OF 2014
BN OLAO, J
NOVEMBER 25, 2022**

BETWEEN

CHRISTOPHER JAKOYA AISKA 1ST PLAINTIFF

BENJAMIN ODERA ASIKA 2ND PLAINTIFF

AND

CHARLES OPONDO OYENGA 1ST DEFENDANT

GEORGE OTAKO OYENGA 2ND DEFENDANT

CHARLES OTAKO 3RD DEFENDANT

FRANCIS OTAKO 4TH DEFENDANT

AND

GODFREY OGUDE ASIKA INTERESTED PARTY

RULING

1. By a notice of motion dated March 10, 2020, Charles Opondo Oyenga (the 1st defendant) jointly with George Otako Oyenga, Charles Otako And Francis Otako(the 1st, 2nd and 3rd applicants) citing the provision of order 1 rule (1) (2) and order 8 rule 3 of the [Civil Procedure Rules](#), sought the following orders:
 1. Godfrey Ogude Asika and the estate of Charles Omollo Asika (deceased) represented by Christopher Jakoya Asika be enjoined in this suit as the 3rd and 4th plaintiffs
 2. George Otako Oyenga, Charles Otako and Francis Otako be enjoined in this suit as the 2nd, 3rd and 4th defendants.



3. That upon grant of prayers (1) and (2) above, the plaintiff, defence and counter-claim filed herein be amended in such a manner as is necessary to accommodate the addition of the parties.
2. The application was opposed by the plaintiffs and came up for hearing before Hon P Y Kulecho deputy registrar.
3. In a ruling delivered on September 23, 2020, the deputy registrar dismissed the application with costs.
4. That ruling prompted an appeal to this court. Upon hearing the appeal, Omollo J made the following orders *vide* a judgement delivered on April 29, 2021.

“In light of the analysis herein above, I conclude that this appeal partially succeeds. Consequently, I set aside the deputy registrar’s order dismissing the application dated March 10, 2020 in its entirety and substitute it with an order allowing the said application in terms of paragraph 2 enjoining George Otako Oyenga, Charles Otako And Francis Otako as the 2nd, 3rd and 4th defendants in this suit respectively. Prayer (3) is allowed that leave is granted to amend the plaint and defence and counter-claim to reflect the changes. Each party to meet their respective costs both of this appeal and the application dated March 10, 2020.

These shall be the orders of the court.”

5. I now have for my determination a notice of motion by Godfrey Ogude Asike (applicant) who is acting in person and describes himself as an interested party in which he seeks the following orders:
 - a. That time be granted to the interested party to file the present application out of time and the application so far filed be deemed to have been filed within time with leave of the court.
 - b. That the amendment which enjoined godfrey ogude asika as an interested party in the suit herein and included land parcels No Marach/Esikoma/1688, 1310 and 1311 be disallowed and the amended counter-claim be struck off in its entirety as against the interested party with costs.
 - c. That costs of the application be paid by the defendants.

The application is premised upon the provisions of sections 1A, 1B and 3A of the [Civil Procedure Act](#), order 49 rule 6 and order 8 rule 2 of the [Civil Procedure Rules](#). It is supported by the affidavit of Godfrey Ogude Asika also dated May 17, 2022.

6. The gravamen of the application, which I have struggled to understand bearing in mind that the applicant is acting in person, is that he is aggrieved by the defendants’ decision to enjoin him in these proceedings as an interested party yet he has never been a party to the dispute involving the land parcel No Marach/Esikoma/1310 and 1311. That the defendants seek to enjoin him in these proceedings by dragging him into this litigation.
7. The following documents are annexed to the supporting affidavit:
 1. Copy of the notice of motion dated March 10, 2020.
 2. Ruling by Hon P Y Kulecho delivered on September 23, 2020.
 3. Judgement by Hon Omollo J delivered on April 29, 2021.
8. The application is opposed and the defendants filed grounds of opposition citing the following:



1. The application is misconceived and an abuse of the process of this court since the interested party has already been enjoined in these proceedings.
 2. The application is bad in law and is not provided for.
 3. The application is brought in bad faith and after undue delay.
9. When the application was placed before me on October 18, 2022, I directed that it be canvassed by way of written submissions. However, only Mr Omondi Counsel for the defendants filed his submissions. No submissions have been filed by Godfrey Ogude Asika the applicant who has also described himself as an interested party in his notice of motion.
10. I have considered the application, the grounds of opposition and the submissions by counsel.
11. As stated earlier in this ruling, the applicant is acting in person and therefore has challenges in setting forth the remedy which he wants from this court. The court must however do the best it can to address his grievance.
12. It is clear from the judgment by Omollo J delivered on April 29, 2021 that the judge allowed George Otako Oyenga, Charles Otako And Francis Otako to be enjoined in their proceedings as the 2nd, 3rd and 4th defendants respectively. Leave was also granted to the plaintiffs to amend their plaint. At no time was an order made by Omollo J enjoining the applicant as an interested party in this suit. The only prayer sought by the defendants in their notice of motion dated March 10, 2020 and which touched on the applicant herein was seeking to enjoin him as a plaintiff in this case was dismissed alongside other prayers. On appeal, however, Omollo J allowed the joinder of George Otako Oyenga, Charles Otako And Francis Otako as the 2nd, 3rd and 4th defendants. There is no mention of the applicant having been enjoined in these proceedings. Clearly, his application is a misapprehension of the judgement delivered on Omollo J on April 29, 2021.
13. The up-shot of all the above is that the notice of motion dated May 17, 2022 is devoid of merit. It is dismissed with costs to the defendants.

BOAZ N. OLAO

JUDGE

24TH NOVEMBER 2022

Ruling dated, signed and delivered at **BUSIA** on this 25TH day of November 2022 by way of electronic mail as was advised to the parties on October 18, 2022.

BOAZ N. OLAO

JUDGE

24TH NOVEMBER 2022

