



REPUBLIC OF KENYA



KENYA LAW
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Ogonda v Sewe; Sewe (Intended Interested Party) (Environment & Land Case 577 of 2015) [2022] KEELC 14989 (KLR) (25 November 2022) (Ruling)

Neutral citation: [2022] KEELC 14989 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 577 OF 2015
E ASATI, J
NOVEMBER 25, 2022
FORMERLY BUSIA HCCC NO 51 OF 2011

BETWEEN

GEOFREY MARABULA OGONDA PLAINTIFF

AND

OWINO SEWE DEFENDANT

AND

ERICK OCHIENG SEWE INTENDED INTERESTED PARTY

RULING

1. By a Notice of Motion application dated October 21, 2022 Erick Ochieng Sewe, described in the application as the intended interested party, sought for orders that:-
 - a. The matter be certified as urgent and order number 2 be granted *ex parte*.
 - b. That pending hearing of this application *inter partes* a conservative order be issued staying the proceedings and execution of all decrees and orders in this subject title.
 - c. That after hearing this application interparty the court be pleased to join the applicant as an interested party to the subject suit.
 - d. That after hearing of this application *interparte* the court be pleased to transfer this file to Siaya Environment and Land Court for consolidation with ELC 9(OS) number E022 of 2022 which seeks to dispute title number North Ugenya/Sega/350 on grounds of adverse possession.
 - e. That after hearing the application *interparte* the court be pleased to stay proceedings and further execution of ELC Case no 577 of 2015 pending determination of ELC(OS) OF 2022



- f. That after hearing of the application interparte the court be pleased to order expedition of further proceedings.
 - g. That the costs of this application to abide the cause.
2. The application is stated to be brought pursuant to the provisions of rule 2 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, sections 1A, 1B, 3A of the [Civil Procedure Act](#) and article 159 of the [Constitution](#) of Kenya 2010. It is supported by the contents of the Supporting Affidavit sworn by the applicant on October 21, 2022 and the annexures thereto.
 3. The application was unopposed. An Affidavit of Service sworn by Clifford Obiero advocate on November 18, 2022 showed that the application dated October 21, 2022 and hearing notice for hearing on November 23, 2022 were served upon the plaintiff's advocates on November 18, 2022 and on the firm of M/S A O Oyalo & Co Advocates on the same date. In spite of being so served, the plaintiff and the defendant did not reply to the application or attend court on November 23, 2022 for the hearing. The application was thus heard *ex parte*.
 4. The grounds of the application are that the applicant has resided on the suit land for a period of over 12 years. That he has buried his relatives on the suit land. That the plaintiff sued only one person as the defendant herein and obtained an eviction order. That implementation of the eviction order means that he will also be evicted and the remains of his relatives exhumed from the land. That he has filed a suit at Siaya Environment and Land Court claiming ownership of the suit land herein by adverse possession and that if the eviction takes place then the suit at Siaya will be rendered moot. That he only learnt of the existence of the present case through a letter by the plaintiff to him dated October 19, 2022 asking him to vacate the land or face eviction.
 5. The first and second prayers in the application are spent. The substantive prayer is a prayer for joinder of the applicant as an interested party in the suit. The outcome of this prayer will determine whether the applicant has *locus standi* to canvass the remainder of the prayers in the application. The law governing joinder, misjoinder and non-joinder of and parties to suits generally is found in order 1 of the [Civil procedure Rules](#). Under rule 2 thereof joinder of a party may be refused where the effect thereof is to embarrass or delay trial of the suit. Rule 8 provides that one person may sue or defend a suit on behalf of others who have the same interest in the suit. The intended interested party is seeking to be joined in this suit herein at the stage where the suit is already finalized save for implementation of the eviction order. The eviction order is already issued and an order for police escort during implementation of the exercise given.
 6. Interested party is defined in rule 2 of the [Constitution of Kenya \(Protection of rights and Fundamental Freedoms\) Practice and Procedure Rules](#) as

“a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation.”

I have read the application and the pleadings in the court record particularly the Defence filed by the defendant and the defendant's evidence in court. The intended interested party is a brother of the defendant. The interest of the intended interested party in the suit is contained in his grounds of the application. In my view, the said grounds are the issues that the defendant raised in his defence and canvassed in his case herein and were decided upon in the judgement. These issues are that the defendant and members of his family had inherited the suit land from their father. That they have been



on the land for a period of more than 12 years and have buried their relatives on the suit land. There is no dispute that the applicant herein is a member of the defendant's family; his brother.

7. In the case of *Francis K Muruatetu & Another vs Republic & 5 others* [2016] eKLR the Supreme Court set out key elements for consideration in an application for joinder as an interested party. One of these elements is that the applicant must in its application set out the case and/or submissions it intends to make before the court to demonstrate the relevance of those submissions. That it should also be demonstrated that these submissions are not merely a replication of what the other parties will be making before the court. In my view, in the present case the intended interested party's grounds of the application are a replication of the case fronted, canvassed and submitted on by the defendant herein. I find that the application for joinder is not merited.
8. Having found that the prayer for joinder of the intended interested party as a party in this suit is not merited, the rest of the prayers in the application in my view are not sustainable as the applicant is not a party in the proceedings. There must be finality to litigation. In the premises, I find that the application lacks merit and hereby dismiss it. No order as to costs.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT KISUMU VIRTUALLY THIS 25TH DAY OF NOVEMBER, 2022 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM.

E ASATI,

JUDGE.

In the presence of:

Maureen: Court assistant.

Otieno obiero Advocate for the applicant/intended interested party.

No appearance for the plaintiff.

No appearance for the defendant.

E ASATI,

JUDGE.

