



**Mutembei & another (Suing as the Administrators of the Estate of
Ardlin Kageni Njue alias Ardline Kageni Mutembei) v Kinyanjui & 3
others; Njoka & another (Interested Parties) (Environment & Land Case
E022 of 2022) [2022] KEELC 15446 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15446 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E022 OF 2022
LC KOMINGOI, J
DECEMBER 20, 2022**

BETWEEN

LEILA KATHURE MUTEMBEI 1ST PLAINTIFF

BELINDA KAIMURI 2ND PLAINTIFF

**SUING AS THE ADMINISTRATORS OF THE ESTATE OF ARDLIN KAGENI
NJUE ALIAS ARDLIN KAGENI MUTEMBEI**

AND

JOYCE NJAMBI KINYANJUI 1ST RESPONDENT

SAMUEL KIARIE MBURU 2ND RESPONDENT

NATIONAL LAND COMMISSION 3RD RESPONDENT

DISTRICT LAND REGISTRAR, KAJIADO 4TH RESPONDENT

AND

DR. DAVIS NYAMU NJOKA INTERESTED PARTY

BEATRICE WAIRIMU KAGIRI INTERESTED PARTY

RULING

1. This Ruling seeks to determine the applicants Notice of Motion dated August 15, 2022 and filed on 17th August, 2022. The Application which is brought under sections 1A, 1B, 3A and 63(e) of the [Civil Procedure Rules, 2010](#), Order 51 Rule 1 of the Civil Procedure Rules, 2010 and any other enabling provisions seeks for the following prayers;



- a. Spent.
 - b. That this honorable court do grant leave and allow the 1st and 2nd intended interested party to be enjoined in this suit.
 - c. Costs of the Application.
2. The Application is supported by Davis Nyamu Njoke affidavit sworn on August 15, 2022 and filed on August 17, 2022 who alleges as follows. On March 19, 2021, he entered into a sale agreement with the 2nd defendant for the sale of Kajiado/Kaputiel North/116443 to 116447 for Ksh.28,000,000/= . The parcels were resultant subdivisions of Kajiado/Kaputiel North/1792. Upon payment of Ksh.22,400,000/=, he obtained the requisite transfer documents for Plot No.116443 to 116446. In line with Clause 4 of the Agreement, he nominated the 2nd intended interested party to have Plot No.116443 and 116444 transferred and registered in his name.
 3. He claims that only Plot No.116443 and 116444 titles were issued and the 2nd defendant has refused to cause Plot.116446 and 116445 be transferred to his name. The 4 th defendant has refused to register the parcel in his name despite presenting all the requisite transfer documents. According to him, it is in the interests of justice they be enjoined in the suit failure to which to their proprietary rights shall be prejudiced considering the Plaintiff seeks to have Kajiado/Kaputiel North/116443 to 116447 titles deeds cancelled.
 4. The Application is opposed by the plaintiff who filed ground of opposition dated September 6, 2022 vstating that their presence is not required for determination of this suit because they claim is against the 2nd Defendant. Therefor they cannot get any relief.
 5. Samuel Kiarie Mburu, the 2nd defendant filed a replying affidavit dated September 8, 2022 on September 30, 2022 in response to the Application, He confirms that he was the registered owner of Kajiado/kaputiel North/1792 later subdivided into Kajiado/Kaputiel North/116443 to 116447 on March 11, 2021v which he sold to the 1st intended interested party on 9/03/2021 for Ksh.28,000,000/= . He affirms that he has no proprietary rights or interests over Parcel No.116443 to 116446 because he transferred it to the 2nd intended interested party upon receipt of Ksh.22,400,000. For that reason, theplaintiff should have discovered parcel 1791 was subdivided and transfer effected if indeed he conducted due diligence. According to him, the interested parties should be enjoyed as defendant in order to protect their interests.
 6. The notice of motion was canvassed by way of written submissions.
 7. I have considered the Notice of Motion and the affidavits in support. I have also considered the responses thereto, the written submissions and the authorities cited. The issues for determination is whether the intended interested parties ought to be enjoined in this suit.
 8. Order 1, Rule 10 of the [Civil Procedure Rules, 2010](#) provide that;

“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 and settle all questions involved in the suit, be added”.

The Supreme Court in *Francis Kariuki and another v Republic and 5 others*, set down the conditions under which a party may be enjoined in the suit. It was stated;

“(37) From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party: One must move the court by way of a formal application. Enjoinment 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. Page 4 of 4 (ii) The prejudice to be suffered by the intended interested party in case of nonjoinder, 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.”

9. Having laid down the appropriate legal basis, I shall proceed to determine whether the prerequisite conditions have been met. The Plaintiff contention is he is registered owner of Plot 1792 having acquired it in September 1, 2001 and as a result the title deed of its subsequent subdivisions should be cancelled.

These allegations are denied by the 2nd defendant who claims that he is the owner and that he subdivided it and sold the parcels to the 1st intended interested party. Therefore, if indeed the plaintiff conducted any due diligence before purchase he should have discovered that the Plot 1792 as already subdivided at the time of purchase.

On the other hand, the 1st intended interested party insists he legally purchased 116443 to 116447 from the 2nd defendant for value consideration. According to him, he is yet to be issued with title deed for some of the parcels despite having all the required transfer documents. He decries his property rights are at stake and will be prejudiced if the court cancels title deeds for the purchased parcels as sought by the plaintiff. This is notwithstanding the plaintiff contention that their presence is not required to determine this suit.

10. A perusal of the intended interested documents shows that he indeed purchased the parcels from the 2nd defendant and paid its consideration. The 2nd defendant and the plaintiff too have supporting documentation indicating their own the suit land.
11. The question as to who is appropriate registered owner of the Plot 1792 and its resultant subdivision cannot be determined at this preliminary stage but during the hearing and conclusion of this suit when the parties shall be expected to prove their case on a balance of probabilities.

Given the outcome of this decision will affected the intended interest parties, the suit cannot be effectively adjudicated in their absence. This is because they have a stake in the suit whose relevance they have demonstrated. Their proprietary rights will therefore be prejudiced if they are not enjoined. It is against this backdrop that the Notice of Motion is allowed. Costs shall be in the cause.

12. The interested parties are hereby directed to file their bundles of documents or interim statements within thirty (30) days from the date of this ruling.



The defendants shall have corresponding leave to file additional documents if need be.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20TH DAY OF DECEMBER, 2022.

L.C. KOMINGOI

Judge

IN THE PRESENCE OF;

Mr. Tebino for the 1st and 2nd Interested Parties

Court assistant- Mutisya.

