



Kanyora & 2 others (Suing for and on behalf of themselves and the members of Maki Plot Owners Self Help Group) v Gachagua (Sued as the administrator/legal representative of the Estate of Mary Mweru Gachagua, the administrator of the Estate of John Gachagua Kibiru); Wangai & 104 others (Intended Interested Party) (Environment & Land Case 703 of 2014) [2022] KEELC 15206 (KLR) (8 December 2022) (Ruling)

Neutral citation: [2022] KEELC 15206 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 703 OF 2014**

**JO OLOLA, J
DECEMBER 8, 2022**

BETWEEN

**PETER MAHINDA KANYORA 1ST PLAINTIFF
DANIEL MUKUHA WAHOME 2ND PLAINTIFF
JOHN MIRING’U KIMANI 3RD PLAINTIFF
SUING FOR AND ON BEHALF OF THEMSELVES AND THE MEMBERS OF
MAKI PLOT OWNERS SELF HELP GROUP**

AND

**JULIUS MUGO GACHAGUA DEFENDANT
SUED AS THE ADMINISTRATOR/LEGAL REPRESENTATIVE OF THE
ESTATE OF MARY MWERU GACHAGUA, THE ADMINISTRATOR OF THE
ESTATE OF JOHN GACHAGUA KIBIRU**

AND

NICHOLAS WANGAI & 104 OTHERS INTENDED INTERESTED PARTY

RULING

1. By the notice of motion dated and filed herein on February 7, 2022, Nicholas Wangai Mwangi and 104 other persons urge the court to enjoin them in this suit as interested parties and to grant them leave to file their pleadings and submissions. The application which is supported by an affidavit sworn by one Henry Mulonga Lugadiru is based on the grounds, *inter alia*:



- (i) That the applicants are *bona fide* purchasers for value of different plots on LR No 10422/9 (the suit land) on which they have settled and developed;
 - (ii) That the applicants have just realized that they were not included in the list presented to the court by the plaintiffs;
 - (iii) That the orders that shall be granted in this suit shall greatly affect the applicants hence the need to have them granted an opportunity to be heard;
 - (iv) That the enjoinder of the applicants in this matter shall assist the court in arriving at a conclusive determination of the matter;
 - (v) That the applicants are ready and willing to comply with the directions of the court within the shortest time once enjoined as interested parties;
 - (vi) That it is in the interest of justice that the orders sought are granted as the applicants stand to suffer irreparable harm; and
 - (vii) That the respondents will suffer no prejudice should the orders sought be granted.
2. Julius Mugo Gachagua (the defendant) is opposed to the application. By their grounds of opposition dated and filed herein on February 16, 2022, the defendant states that:
1. The applicants are strangers and interlopers in the suit having failed to demonstrate that they gave instructions for the institution of the suit;
 2. The applicants have not demonstrated how they will adversely be affected by the outcome of the suit;
 3. It is open to the applicants to institute their own suit; and
 4. The application is being made too late, eight years after filing of the suit and when the plaintiff and the defendant have closed their cases and filed their respective submissions. They would be highly prejudiced by the joinder of the applicants as the decision in the case will inevitably be delayed for an unknown period of time.
3. I have carefully perused and considered the application as well as the grounds of opposition. I have similarly perused and considered the applicant's submissions and authorities thereon.
4. The applicants herein have sought orders to be enjoined in this suit as interested parties on account that they are *bona fide* purchasers of various plots within the suit land and that they have just realized that the plaintiffs herein did not include their names in the list that was presented to the court. The applicants assert that they are apprehensive that any orders issued by the court shall greatly prejudice them and hence they deserve an opportunity to be heard.
5. *Black's Law Dictionary*, 9th Edition at page 1232 defines an "interested party" as:
- "A party who has a recognizable stake (and therefore standing) in the matter."
6. As Mativo J (as he then was) explained in *Kenya Medical Laboratory Technicians and Technologists Board and 6 others -vs- Attorney General and 4 others* (2017) eKLR:
- "A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights. In determining whether or not an applicant has a legal interest in the subject matter of an action sufficient to entitle



him to be enjoined as an interested party the true test lies not so much in an analysis of what are the constituents of the applicant's rights, but rather in what would be the result on the subject-matter of the action if those rights could be established. It is apparent that a party claiming to be enjoined in proceedings must have an interest in the pending litigation, but the interest must be legal, identifiable or demonstrate a duty."

7. Considering a similar matter in *Communications Commission of Kenya and 4 others -vs- Royal Media Services Limited and 7 others* [2014] eKLR, the Supreme Court of Kenya held as follows:

"(22) In determining whether the applicant should be admitted into these proceedings as an interested party we are guided by this court's ruling in the Mumo Matemo case where the court (at paragraphs 14 and 18) held:

"(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 proceeding, and champions his or her cause..."

8. The suit herein was initially instituted on November 18, 2010 as Nyeri HCCC No 161 A of 2010. By their originating summons dated the same day Peter Mahinda Kanyora, Daniel Mukuha Wahome and John Miring'u Kimani suing on their own behalf and on behalf of members of Maki Plot Owners Self Help Group sought as against the defendant – John Mugo Gachagua, the following orders:

1. A declaration that the parcel of land LR No 10422/9 situated within Nanyuki Municipality is not part of the net estate of John Gachagua Kibiru;
 2. A declaration that the defendant being the administrator/legal representative of the estate of Mary Mweru Gachagua who at the time of her death was the administratrix of the estate of John Gachagua Kibiru should transfer the various plots within the suit land to the respective purchasers;
 3. A declaration that the list of members of Maki Plot Owners Self Help Group attached herein should be used to transfer various plots to their owners;
 4. A declaration that if the administrator/legal representative does not transfer these plots to their respective owners, the Deputy Registrar of the High Court be authorized to do so on his behalf; and
 5. An order that the defendant do pay the costs of this suit.
9. That suit arose from the plaintiffs claim that their members had bought various plots of land from John Gachagua Kibiru but he later died on April 20, 1997 before transferring the same to the members of the Maki Plot Owners Self Help Group.
10. The suit herein was heard and concluded on November 15, 2021. As the matter was awaiting the filing of submissions and issuance of a judgment date, the applicants instituted the present application stating that it had come to their attention that their names had not been included in the list presented to the court by the plaintiffs.
11. While it was not clear why it took the applicants forever to realise that their names had been omitted from the list of members submitted to court some 11 years back, it was apparent from the affidavit of



Henry Mulonga Lugadiru that the applicants had purchased various parcels of land under the umbrella of Maki Commercial Agencies.

12. To their application, the applicants have annexed various clearance certificates issued to them by Maki Commercial Agencies as well as receipts for payments made. Accordingly as this suit was filed on behalf of the Maki Plot Owners Self Help Group, I am satisfied that despite the delay in filing the application, the applicants had established that they had an identifiable stake in these proceedings on which they ought to be heard before these proceedings are closed.
13. In those premises I am satisfied that there is merit in the motion dated and filed herein on February 7, 2022. The applicants are hereby enjoined as plaintiffs in the suit and granted 21 days from this date to file their pleadings and/or any additional evidence they may wish to tender before further directions are issued herein.
14. The costs of this application shall be in the cause.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI
THIS 8TH DAY OF DECEMBER, 2022.**

In the presence of:

Mr. Gichuki for the Applicants

Mr. Muthee for 1st Respondent

No appearance for the 2nd Respondent

Court assistant - Kendi

J. O. Olola

JUDGE

