



**Okoth v Ministry of Lands Siaya County Surveyor & 2 others;
Orwa (Intended Interested Party) (Environment & Land Case
E007 of 2022) [2022] KEELC 15244 (KLR) (8 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15244 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT & LAND CASE E007 OF 2022
AY KOROSS, J
DECEMBER 8, 2022**

BETWEEN

JAMES OKOTH PLAINTIFF

AND

MINISTRY OF LANDS SIAYA COUNTY SURVEYOR 1ST DEFENDANT

SIAYA COUNTY LAND REGISTRAR 2ND DEFENDANT

AREA ASSISTANT CHIEF MARENYO SUBLOCATION 3RD DEFENDANT

AND

SAMWEL ORWA INTENDED INTERESTED PARTY

(From the plaintiff's pleadings, it is evident that the plaintiff intends to thwart the defendants' enforcement of the decision of Siaya PM ELC Civil Suit No 186 of 1997. From the lower court record, it is evident that this judgment was rendered on February 19, 1998 in favour of the intended interested party and other parties. This was close to 24 years ago.)

RULING

1. The application for consideration is the intended interested party's notice of motion dated June 23, 2022. The motion has been moved pursuant to the provisions of section 3 of the [Civil Procedure Act](#) and orders 1 rule 8 and 51 rule 7 of the [Civil Procedure Rules](#). The intended interested party sought the following reliefs;
 - a. That honourable court be pleased to allow the intended interested party to come on record as an interested party;



- b. Upon prayer (a) above being granted, the intended interested party be allowed to file his pleadings; and
 - c. That costs of the application be provided for.
2. The motion is based on the grounds set out on its face and on supporting affidavit of the intended interested party Samuel Orwa.
 3. He deposed *inter alia*, he had been a claimant in the proceedings before the Siaya Land Disputes Tribunal ['tribunal'] which rendered its decision on land parcel numbers North Gem/Marenyo 89, 90, 91, 92 and 93 where the plaintiff's father Livingstone Okoth was the objector; the court issued an order dated May 10, 2022 that emanated from the said tribunal's decision; he would be adversely affected by the decision of this court and none of the parties would be prejudiced.

Plaintiff's Case

4. In opposition, the plaintiff James Kweto Okoth filed a replying affidavit dated June 24, 2022 in which he deposed *inter alia*; he was a beneficiary of the estate of Livingstone Okoth; the intended interested party was not a party to the tribunal's proceedings and the then claimants were all deceased; the intended interested party ought to have instituted suit instead of being joined in these proceedings; the intended interested party's cause of action was 12 years too late and it was not feasible that Livingstone Okoth participated in the tribunal's proceedings because he died in the year 1986 yet the tribunal's proceedings took place in 1997.
5. The defendants who were represented by the Attorney General neither filed a response to the motion nor written submissions.

The Intended Interested Party's Rebuttal

6. By a further affidavit deposed on August 3, 2022 the applicant swore *inter alia*; he was a party to the tribunal's proceedings; filing a fresh suit would render it *res judicata* and Livingstone Okoth's death certificate had not been tendered to this court.

Parties' Submissions

7. As directed by the court, counsel disposed of the motion by written submissions.
8. Mr Ooro F, counsel for the intended interested party filed his undated written submissions on August 3, 2022. Counsel submitted that rule 2 of the [Constitution of Kenya Protection of Rights and Fundamental Freedom\) Practice and Procedure Rules](#) 2013 defined an interested party as follows;

"interested party" means 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"
9. Counsel placed reliance on the decision of [Justin Kithinji Nderi & 2 others v Director of Public Prosecutions & another; Njiru Micheni Nthiga \(Interested Party\)](#) [2020] eKLR where Munyao J held as follows;

'In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined



in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation.’

10. Counsel reiterated the averments made in the intended interested party’s affidavits and urged the court to allow the motion.
11. Mr Odhiambo, counsel for the plaintiff filed his written submissions dated August 20, 2022. Counsel identified 2 issues for this court’s determination; (i) whether the intended interested party was evading the doctrine of *res judicata* and (ii) whether joining the intended interested party to the suit would assist the court to adjudicate and settle the issues in dispute.
12. On the 1st issue, counsel submitted the intended interested party was estopped from evading the doctrine of *res judicata* by conjuring parties or issues with the intent of giving the suit a different complexion. Counsel placed reliance on the case of *ET v Attorney General & another* [2012] eKLR where Majanja J expressed himself thus on this issue: -

‘The courts must always be vigilant to guard against litigants evading the doctrine of *res judicata* by introducing new causes of action so as to seek the same remedy before the court.’

13. On the 2nd issue, counsel submitted that for a person to be joined as a party, he must demonstrate that the outcome of the suit would affect his interests or he qualifies to be joined. In support of his argument he placed reliance on the case of *Joseph Njau Kingori v Robert Maina Chege & 3 others* [2002] eKLR where the court laid out the criteria for joinder of a party as follows;

‘it is clear that the guiding principles when an intending party is to be joined are as follows:

1. He must be a necessary party
2. He must be a proper party.
3. In the case of a defendant there must be a relief flowing from that defendant to the plaintiff.
4. The ultimate order or decree cannot be enforced without his presence in the matter.
5. His presence is necessary to enable the Court to effectively and completely to adjudicate upon and settle all questions involved in the suit.’

Analysis And Determination

14. On the basis that both the plaintiff and the intended interested party had alluded that the suit that is the subject of this ruling had emanated from the decision of Siaya PM ELC Civil Suit No 186 of 1997, this court called for the lower court record on November 9, 2022.
15. I have carefully considered the motion, parties’ affidavits, rival submissions and the lower court record and, the single issue for determination is whether the motion is merited.
16. Joinder of a party to a suit is grounded on order 1 rule 10(2) of the *Civil Procedure Rules* which stipulates as follows;

‘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 or settle all questions involved in the suit, be added.’

17. From the plaintiff’s pleadings, it is evident that the plaintiff intends to thwart the defendants’ enforcement of the decision of Siaya PM ELC Civil Suit No 186 of 1997. From the lower court record, it is evident that this judgment was rendered on February 19, 1998 in favour of the intended interested party and other parties. This was close to 24 years ago. The file went into a slumber before the intended interested party through his counsel sought to extract the decree on September 16, 2021 which was 23 years post judgment. The intended interested party’s judgment may very well have been caught up by section 4 (4) of the [*Limitation of Actions Act*](#).
18. From the lower court record, the intended interested party was a defendant while Livingstone Okoth who is allegedly the plaintiff’s father was one of the 5 plaintiffs. The proceedings of the lower court adopted the decision of the tribunal as a judgment of the court.
19. In my considered view, the intended interested party who has moved the court has a subsisting substantive interest in the issues that will emanate from the ultimate determination of this court because he, together with other parties who have not been joined in this suit were parties in Siaya PM ELC Civil Suit No 186 of 1997. See [*Joseph Njau Kingori v Robert Maina Chege \(supra\)*](#) and [*Justin Kitbinji Nderi & 2 others v Director of Public Prosecutions \(supra\)*](#).
20. The plaintiff’s counsel argued that the intended interested party was evading the doctrine of res judicata. This court has taken cognizance that the intended interested party had already litigated over the disputed parcels of land known as North Gem/ Marenyo 89,90,91,92 and 93 and there is high likelihood that he did not execute the judgment within the statutory period. This court frowns upon a party seeking a second bite of cherry and will not allow the intended interested party to relitigate over the said parcels of land.
21. I am satisfied the intended interested party has laid a stake and established a personal interest that is proximate enough and failure to join him in these proceedings will prejudice him but will not allow him to relitigate over the same issues that were the subject of Siaya PM ELC Civil Suit No 186 of 1997.
22. The intended interested party has disclosed he intended to file pleadings. He has to be cautious that he is neither a plaintiff nor a defendant and by virtue of section 7 of the [*Civil Procedure ACT*](#), he is refrained from relitigating his case. The ultimate determination of the court shall be pegged on the pleadings and submissions of the principal parties to the suit; the plaintiff and defendants. The intended interested party has neither been joined as a defendant nor a plaintiff. He is restricted and he has to grapple with this fact as he ponders on the nature of the documents he intends to file before the court. See the decision of the Supreme Court of Kenya in [*Francis Karioko Muruatetu & another v Republic & 5 others*](#) [2016] eKLR which stated as follows;

‘Third parties admitted as interested parties may only be remotely or indirectly affected, but the primary impact is on the parties that first moved the court ...One of the principles for admission of an interested party is that such a party must demonstrate that he/she has a stake in the matter before the court. That stake cannot take the form of an altogether a new issue to be introduced before the court’.
23. It is the considered view of this court that it would be proper if the court that handled PM ELC Civil Suit No 186 of 1997 do hear and determine this suit. I hereby invoke the provisions of section 18 (1) of the [*Civil Procedure Act*](#) and hereby transfer this suit to the lower court for hearing and final determination.



24. For the reasons stated above, it is my ultimate finding that the motion is merited and in upshot, I hereby allow the motion on the following terms;
- a. Leave is hereby granted to Samuel Orwa to join in these proceedings as an interested party;
 - b. The plaintiff do serve the interested party with all pleadings within the next 14 days from today;
 - c. Upon service, the interested party is at liberty to file appropriate documents within 14 days;
 - d. This suit is hereby transferred to the subordinate court for hearing and final determination; and
 - e. The costs of this motion shall abide the outcome of the main suit.

DELIVERED AND DATED AT SIAYA THIS 8TH DAY OF DECEMBER 2022.

HON AY KOROSS

JUDGE

December 8, 2022

**RULING DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO
CONFERENCING PLATFORM IN THE PRESENCE OF:**

Mr Odhiambo for the plaintiff

Mr Ooro F for the intended interested party

Court assistant: Ishmael Orwa

