



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAKAMEGA**

**ELC CASE NO. 257 OF 2015**

**DAVID KELI KIILU**

**NELSON N. OGOMBE.....PLAINTIFFS**

**VERSUS**

**MASINDE MULIRO UNIVERSITY OF SCIENCE**

**AND TECHONOLOGY**

**THE COMMISSIONER OF LANDS**

**LAND REGISTRAR, KAKAMEGA**

**CHURCH COMMISSIONERS FOR KENYA)**

**INNOCENT MARREN NGAYI**

**ALLAN NOAH MUSUNDE**

**BALDINA LIHAVI**

**BRENDA MAKUNGU**

**CHRISTINE ATAMBA**

**GLADYS KHATONDE**

**FRED MUTSAMI**

**SILVANUS O. OTIENDE.....DEFENDANTS**

**AND**

**THE COUNTY GOVERNMENT OF KAKAMEGA..... INTERESTED PARTY**

**RULING**

The application is dated 27<sup>th</sup> February 2020 and is brought under Order 1 Rule 8 (3) (4) of the Civil Procedure Rules Cap 21 Laws of Kenya seeking the following orders;

1. That the County Government of Kakamega be enjoined in this suit as interested party.
2. That the plaintiff and all relevant pleadings to this suit be served upon the enjoined intended interested party to Enter Appearance and respond to the suit accordingly.

3. That the costs of this application be provided for.

It is based on the grounds that the intended interest party has an interest of 5 acres which was allocated to them by His Excellency the President in 2010. That the plaintiff has failed to recognize the interests of the intended party in this suit when they are well aware of their claim. That the interested party by this application seek to enforce their claim of 5 acres through this suit hence need for this application. That no prejudice will be occasioned to any party in this suit if this application is allowed.

The 1<sup>st</sup> defendant opposed the application by the intended interested party herein dated 27<sup>th</sup> February, 2020 on the grounds that the application is lacking in merit and the same should be struck out with costs. That the application is bad in law, misconceived, does not disclose a reasonable cause of action and is an abuse of the due process of the court. That the intended interested party has not acted within reasonable time in lodging this application. That the documents lodged in support of the intended interested party's application do not support the prayers sought.

This court has considered the application and the submissions therein. The appropriate provision is Order 1 Rule 10(2) which provides as follows:

***“(2) 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 to effectually and completely to adjudicate upon and settle all questions involved in the suit, be added”.***

In *Skov Estate Limited & 5 others v Agricultural Development Corporation & another* (2015) eKLR the court stated that;

***“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. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party.***

***In other words, there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case”.***

In the case of *Judicial Service Commission vs Speaker of the National Assembly & Another* (2013) eKLR, the court defined an interested party as:

***“From the foregoing it is clear that an interested party as opposed to an amicus curiae or a friend of the court may not be wholly indifferent to the outcome of the proceedings in question. He is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non partisan as he is likely to urge the court to make a determination favourable to his stake in the proceedings.”***

Further in the case of *Civicon Limited vs Kivuwatt Limited & 2 Others* (2015) eKLR the court while observing that exercise of discretion is called for in applications for joinder stated as follows:-

***“Again the power given under the rules is discretionary which discretion must of necessity be exercised judicially. The objective of these rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party and should be enjoined.”***

***From the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order 1 Rule 10(2) bearing in mind the unique circumstances of each case with regard to the necessity of the party, in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit, and the interest need not be the kind that must succeed at the end of the trial.”***

Looking at the instant case and at **Order 1 rule 10(2)** of the CPR, the question is whether the applicant has demonstrated that their presence before the court will be necessary to enable the court determine the issues therein effectively and completely. The interested party has stated that they were the original owners of the suit land and they had reserved 5 acres for their use. In this case having analyzed the pleadings, submissions of counsel and the authorities they cited in support of their arguments, I find that the presence of the interested party before the

court will be necessary to enable the court determine the issues therein effectively and completely. I find the application is merited and I grant the same. Costs to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 23<sup>RD</sup> MARCH 2021.**

**N.A. MATHEKA**

**JUDGE**