



**Njuguna v Karura Farmers Company Limited & 2 others; Mwiki
Secondary School (Proposed Interested Party) (Environment & Land
Case 545 of 2013) [2025] KEELC 447 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 447 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 545 OF 2013
OA ANGOTE, J
FEBRUARY 6, 2025**

BETWEEN

MARY WANJIRU NJUGUNA PLAINTIFF

AND

KARURA FARMERS COMPANY LIMITED 1ST DEFENDANT

CHIEF LAND REGISTRAR 2ND DEFENDANT

NAIROBI CITY COUNCIL 3RD DEFENDANT

AND

MWIKI SECONDARY SCHOOL PROPOSED INTERESTED PARTY

RULING

1. The Applicant/Proposed Interested Party has filed a Notice of Motion dated 17th November 2023, pursuant to Article 159(2)(d) of the *Constitution*, Order 1 Rule 10(2), Order 22 Rule 25, 51,52, Order 51 Rule (1) and (3) of the *Civil Procedure Rules 2010* and Sections 1A, 1B & 3A, 63(e) of the *Civil Procedure Act*. The Applicant has sought for the following orders:
 - a. That Mwiki Secondary School being the intended proposed Interested Party herein be enjoined in these proceedings as an Interested Party.
 - b. That this Honourable Court be pleased to grant a stay of execution of the decree that was delivered on 14th May 2018 pending the hearing and determination of this suit.
 - c. That this Honourable Court be pleased to set aside the interlocutory judgment against the Intended Proposed Interested Party that was passed on 26th April 2018, the ex-parte



proceedings and all consequential orders as against the suit land wherein the intended proposed party has an ownership claim.

- d. That this honourable court be pleased to grant leave to the Intended Proposed Interested Party upon being enjoined as a party to file a Defence as set out in the Draft Defence herein annexed.
 - e. That upon the grant of prayer (6) above, the Honourable court be pleased to order that the matter be set down for hearing afresh.
2. The application is supported by the Affidavit sworn by Anne Matete, the Principal of Mwiki Secondary School. The Applicant deponed that interlocutory judgment was entered irregularly as the Intended Interested Party, who owns the suit property was not joined as a party to this suit and that there was need to request for judgment in default of Defence by the Intended Proposed Interested Party which was required to be served upon them.
 3. The Proposed Interested Party's Principal deposed that the Plaintiff failed to serve upon the Proposed Interested Party/Applicant a notice to show cause why execution should not issue as required under Order 22 Rule 18(1) of the Civil Procedure Rules and that the Proposed Interested Party has a good defence that raises triable issues.
 4. It was deposed that the Applicant is apprehensive that the Plaintiff will execute the decree against the Defendants anytime since the Plaintiff has already applied for and obtained a decree.
 5. Ms. Matete deponed that Mwiki Secondary School is a public mixed day secondary school situated in Kasarani Sub-County in Nairobi County, which stands on a 3.3acre piece of land which is known as parcel number 141/94 and that the land on which the school sits on was set aside as a public utility plot by Karura Farmers company Limited.
 6. This, she contended, was as per the Ministry of Land's letter to the company's Chairman dated 10th March 2008; that the ownership of the land is further confirmed by the letter from the Chairman of Karura Farmers Company Limited to the Chairman CDF Kasarani Constituency, confirming that indeed Parcel No. 141/94 is on the ground, and was set aside for public utility and earmarked for a school.
 7. Ms. Matete stated that on 25th January 2020, the then Principal, Ms. Elizabeth Kituku, wrote to the Chairman, National Land Commission, requesting to be issued with the title deed for parcel of land Nairobi/ Block 141/94; that the National Land Commission issued a letter of allotment to the school in the name of the Cabinet Secretary to the Treasury as trustee for Mwiki Secondary School dated 23rd February 2021, upon payment of the sum of Kshs. 6,910.00 and that the school was issued with a lease certificate on 1st March 2021 for Parcel Number Nairobi/ Block 141/91 for a term of 99 years.
 8. She asserted that the Member of Parliament, Kasarani Constituency, wrote a letter to the Chairman, Karura Farmers Association on 5th June 2015 asking him to relocate two residents, Martha Wanjiru and Hellen Moraa Nyandoro from Plot Numbers 90 Block 141 and 87 Block 141 respectively from the school property to any other place.
 9. It was deponed that the Chairman, Karura Farmers Association on 10th August 2015 then wrote a letter to the Chairman National Land Commission asking for his advice in the relation of the two residents and that in response, the Chairman National Land Commission approved the same, through a letter dated 9th November 2015, subject to some conditions.



10. She confirmed that the Chairman Karura Farmers Association complied with the set conditions and on 10th February 2020, the school sent data of the suit land to the Regional Director Nairobi confirming its status.
11. According to the deponent, there is a family that has encroached on the suit land and has occupied a portion of it; that the Plaintiff has continued to interfere and cause nuisance in the school compound on several instances; that the Plaintiff has constructed a side-gate facing the students' demonstration/practicals farm which they use to access the school, which poses a security threat to the students, staff and school properties.
12. It was contended that the Board of Management of the Proposed Interested party later found out that there have been court cases concerning the school land since 2003, including Nairobi Chief Magistrates Court Case Number 7722 of 2003 and Nairobi ELC Case Number 545 of 2013 and that they also learnt that the City Council of Nairobi denied having any knowledge of the school despite it being duly registered and having been operational since February 2015. She asserted that Mwiki Secondary School was neither notified of these cases nor joined as an interested party.
13. She highlighted that in the Judgment delivered on 26th April 2018, the court identified the school land parcel as Number 141/94 and found that the purported parcel Number 141/88 is not in the Land Registrar's records and map.
14. It was asserted by the Applicant's Principal that despite the judgment and decree having been made and signed on 26th April 2018 and 14th May 2018 respectively, none of the parties to this suit bothered to check whether the school existed and failed to bring it on board.
15. The Plaintiff opposed the application through a Replying Affidavit sworn on 6th March 2024. She averred that this matter has been concluded and the application for joinder has been brought late in the day and that there will be no prejudice to the Applicant if the decree is enforced and the map restored to its original status.
16. The Plaintiff deponed that the proposed Interested Party has not demonstrated its interest in the land; that the matter was heard to its conclusion with the participation of the 1st Respondent, who sold the title to the Plaintiff and the proposed Interested Party; that Folio No. 273 Register No. 60 indicates that Parcel No. 94 measures 0.6735Ha which is contrary to the lease which indicates that the said parcel now measures 1.153Ha in the purported amended map, which is the gist of the decree herein and that the lease as issued is contemptuous of the decree.
17. The Plaintiff asserted that the account of events by the proposed Interested Party was done when the decree had been issued herein. She denied that the family referred to by the Interested Party's Principal is not hers, and that she has never interfered with the operations of the school.
18. She contended that it is the school that encroached on her property by dumping soil onto her property and that the proposed Interested Party does not appreciate the contents of the decree. The application was canvassed by way of written submissions which I have considered.

Analysis and Determination

19. This court has considered the application by the proposed Interested Party, the response by the Plaintiff and the submissions filed thereto. The issues before this court for determination are:
 - a. Whether the proposed Interested Party should be joined to this suit.
 - b. Whether this court should set aside the interlocutory judgement made on 26th April 2018.



- c. Whether this court should grant a stay of execution of the decree that was delivered on 14th May 2018 pending hearing and determination in this suit.
20. The Applicant, which is a public secondary school, has sought to be joined in this suit, as it asserts that it is the registered proprietor of a 3.3 acre piece of land which is known as parcel number 141/94. The school was registered as a public school in 2015 and has been in possession of parcel number 141/94 since then.
21. The Applicant contends that it was unaware that there were pending suits concerning the land registered in favour of the school, including Nairobi Chief Magistrates Court Case Number 7722 of 2003 and Nairobi ELC Case Number 545 of 2013, the matter herein. The Applicant's Principal asserted that Mwiki Secondary School was neither notified of these cases nor joined as an Interested Party.
22. The Applicant argues that this court's judgment dated 26th April 2018 is interlocutory in nature and was entered irregularly as the Intended Interested Party, who owns the suit property was not joined as a party to this suit. It is the Applicant's contention that that Parcel Number 141/88, as claimed by the Plaintiff does not exist at the Ministry of Lands office, and that the Plaintiff has trespassed onto the suit property and should be evicted.
23. The Applicant, on this basis, seeks to be joined in this suit as an Interested Party, and further seeks to set aside the judgment of this court dated 26th April 2018, as well as to stay the execution of the resultant decree, pending hearing and determination of this suit.
24. The Plaintiff has opposed the application on the grounds that it is too late in the day to allow the joinder of the Interested Party; that there is no conflict or effect if the decree is enforced and the map is restored to its original status and that the matter was heard to its conclusion with the participation of the 1st Defendant, who sold the land to the Plaintiff and the proposed Interested Party.
25. Under Order 1 Rule 10 (2) of the [Civil Procedure Rules](#), a court may allow joinder of a party at any stage of the proceedings. The said Order states 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 and settle all questions involved in the suit, be added.”
26. The Applicant has sought to be joined in this matter as an Interested Party. The term ‘interested party’ is defined in the [Constitution of Kenya \(Protection of Rights and Fundamental Freedoms\) Practice and Procedure Rules, 2013](#), Legal Notice No. 117 of 2013 as a person or an entity that has an identifiable stake or legal interest or duty in the proceedings and may not be directly involved in the litigation.
27. Equally, the [Black's Law Dictionary](#), 9th Edition defines an interested party as a party who has a recognizable stake (and therefore standing) in the matter.



28. In the *Trusted Society of Human Rights Alliance vs Mumo Matemu & 5 Others*, Supreme Court Petition No. 12 of 2013, [2014] eKLR, the Supreme Court held as follows with respect to joinder of an interested party:

“... 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 proceedings, and champions his or her cause...”

29. A similar finding was made in *Judicial Service Commission vs Speaker of the National Assembly & Another* [2013] eKLR where the court held as follows:

“the *Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2012, defines an interested party as “a person or entity that has an identifiable stake or legal interest in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation”. 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.”

30. Some grounds for joinder of an interested party are set out in *Meme vs Republic*, [2004] 1 EA 124, as quoted with approval by the Supreme Court in *Communications Commission of Kenya and 4 Others vs Royal Media Services Limited & 7 Others* P [2014]eKLR ” as follows:

“Similarly, in the case of *Meme v. Republic*, 2004 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- i. Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
- ii. Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- iii. Joinder to prevent a likely course of proliferated litigation.

We ask ourselves the following questions: what is the intended party's state and relevance in the proceedings and will the intended interested party suffer any prejudice if denied joinder?”

31. The apex court in *Francis Kariuki Muruatetu & Another vs Republic & 5 Others* Petition No 6 of 2016; [2016] eKLR has authoritatively articulated the elements to be considered in an application for joinder of an interested party:

“Enjoinment is not a 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:

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. The prejudice to be suffered by the intended



interested party in case of non-joinder must also be demonstrated to the satisfaction of the court. It must also be clearly outlined and not something remote. Lastly, a party must, in its participation, 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.

...

Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed by the Court from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues, or introduce new issues for determination by 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. ... Any interested party or amicus curiae who signals that he or she intends to steer the Court towards a consideration of those 'new issues' cannot, therefore, be allowed."

32. Duly guided by the precedents quoted above, this court turns its attention to the application for joinder by the Applicant. The Applicant has asserted that it has a recognizable stake in this matter because it is the registered proprietor of Parcel No. 141/94, which is the subject matter of the suit before this court. The Applicants contend that the Plaintiff has trespassed on the school's land and that the school will be prejudiced and will incur injury if the decree issued pursuant to this court's judgment is executed.
33. It is not disputed that in this matter, judgment was entered in favour of the Plaintiff on 26th April 2018. The 1st Defendant and the 3rd Defendant entered appearance and filed defences. The Plaintiff and the 1st and 2nd Defendants presented their evidence in court on 24th May 2017 and judgment was thereafter delivered by Lady Justice LN Mbugua.
34. The issues that were before the court were, inter alia, whether the Plaintiff was the legal owner of Nairobi/Block 141/88; whether there was fraud in the registration of the suit land in favor of the 3rd Defendant, the Nairobi City County, and whether the registry index map should be amended to reflect that the Plaintiff is the owner of the suit land.
35. To the question of whether the Plaintiff was the owner of Parcel 141/88, the court found in the affirmative, and upheld the finding made in Nairobi CM Case No. 7722/03, which judgment had neither been set aside nor appealed. The court did not find that there was any fraud in the registration of land in the 3rd Defendant's favor, because there was no evidence to show that the land was registered in the 3rd Defendant's name.
36. On the issue of amendment of the registry index map, the court noted that the 1st Defendant, Karura Farmers, claimed that the registry index map was amended whereby the Plaintiff's land No. 141/88 became 141/94 belonging to a school. The court however found that this claim was unsubstantiated by the Chairman of Karura Farmers. The court further noted that the 3rd Defendant indicated that it came to learn about the school during these proceedings, and that the Plaintiff was the owner of the suit land.
37. The court held that Karura Farmers was behind the historical mess which has defied the implementation of a lawful court order. The court concluded that there are no plausible reasons as to why the Plaintiff's land was taken away and given to a public school, considering that the 3rd Defendant had disowned the school. The court held that the registry index map should be amended accordingly



to reflect that the Plaintiff is the owner of the suit property and the suit land to revert back to Nairobi Block 141/88.

38. Consideration the said judgment, it is undisputable that the Applicant has a stake in this matter, being the registered proprietor of parcel number 141/94, part of which is claimed to be the Plaintiff's land, parcel number 141/88, pursuant to a surrender by the 1st Defendant to the 3rd Defendant.
39. The Plaintiff has opposed the joinder application on the grounds that it is too late in the day to allow joinder, as judgment has already been entered. The Plaintiff's Counsel relied on the dicta of the court in *Fredrick Ngari Muchira, Howard Kipkoeb Korir & 98 vs Pyrethrum Board Of Kenya* [2013] KEELRC 828 (KLR) where the court was of the view that there cannot be a useful role of a purported interested party to play after judgment has been delivered in a suit. In the court's words:

“The court further holds that an interested party in a suit is a secondary or collateral party whose presence and participation will aid the court one way or the other to resolve the dispute between the primary parties being the plaintiff or claimant on the one part and the defendant or respondent on the other. In the court's opinion, there cannot be a useful role by a purported interested party long after the hearing and determination of the suit like in the instant case where the judgment has already been delivered by the court. In the opinion of the court, an interested party must, when admitted in the proceedings, have a chance to file pleadings and fully participate in the hearing. It is the further opinion of the court that allowing an alleged interested party claiming substantive remedies long after the hearing and like in this case, after judgment, would culminate into irregularly allowing a new cause of action; a new or fresh suit for which the original parties in the suit would not be able to have a fair chance to state their respective cases. The court holds that there shall be no addition of a purported interested party after the hearing of the suit and is misconceived for a person to apply for such addition after delivery of the judgment or otherwise determination of the suit.”

40. The Plaintiff also relied on the case of *Lilian Wairimu Ngatho & Elizabeth Murungari Njoroge vs Moki Savings Co-Operative Society Limited & Lucy Wanjiru Kirubi* [2014] KEHC 7224 (KLR) which similarly held that:

“The provisions of Order 1 Rule 10(2) state that joinder of a party can be made “at any stage of the proceedings”. “Proceedings” are defined in Black's Law Dictionary Ninth Edition at page 1324 as “the regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment”. A party can therefore only be joined to a suit at any time during the pendency of the suit, but not after the same has been concluded. This finding is premised on the basis that the purpose for joinder is to enable the court effectually and completely adjudicate upon and settle all questions involved in a suit. It is therefore of no use if a party seeks to be joined when the court has already made its findings on the issues arising.

Similarly, the main purpose for joining a party as a Defendant under Order 1 Rule 3 of the Civil Procedure Rules is to claim some relief from the said party, and therefore such joinder can only be made during the pendency of a suit. As this court has declined to set aside the judgment herein, there is no suit pending before this court, and the Applicants cannot therefore be joined as parties at this stage.”

41. Some courts have conversely held that joinder of parties after judgment is indeed possible. For instance, in *Bellevue Development Company Limited vs Vinayak Builders Limited & another* [2014] KEHC



- 5507 (KLR) the court was of the view that joinder can be permitted in representative suits, substitution of one of more parties, for instance in the case of death or in the execution process.
42. The Court of Appeal in *JMK vs MWM & Another* [2015] eKLR was also of the view that joinder can be done post-judgment and even at the appellate stage.
43. Similarly, in *Teachers Service Commission vs Kenya National Union of Teachers; Secretary/Chief Executive Officer, Teachers Service Commission & Another (Contemnors); Cabinet Secretary for Labour and Social Protection & 2 Others (Interested Parties)* [2021] eKLR the court held that there are circumstances in which it would be necessary to join an interested party at the post-judgment stage, as in interpreting or executing a Judgment, a party may affect the rights and interests of non-parties.
44. The circumstances in this case are that the Plaintiff is in the process of execution of the decree. From the tenor of the application for joinder and the proposed Defence by the Applicant, the Applicant's interest will be affected, especially considering that the amendment of the registry index map may affect its parcel of land.
45. Having not participated in the proceedings, and considering that every party whose legal interests are likely to be affected by a decision of the court has a right to be heard, this matter should be re-opened to allow the proposed Interested Party to be heard.
46. For those reasons, the application dated 17th November 2023 is allowed as follows:
- a. Mwiki Secondary School, through its Board of Management, be joined in these proceedings as an Interested Party.
 - b. The judgment delivered on 26th April 2018, the proceedings and all consequential orders be and are hereby set aside.
 - c. The Interested Party is granted leave to file a Defence as set out in the Draft Defence within 14 days.
 - d. Each party to bear his/its own costs.

DATED, SIGNED AND DELIVERED IN NAIROBI VIRTUALLY THIS 6TH DAY OF FEBRUARY, 2025.

O. A. ANGOTE

JUDGE

In the presence of;

No appearance for Plaintiff

Mr. Ngugi for proposed interested party

No appearance for Defendant

Court Assistant: Tracy

