



Republic v Rift Valley Provincial Land Disputes Appeals Committee & another; Apollo & 2 others (Interested Parties); Esther Kiberenge a.k.a Esther Nasambu & 2 others (Exparte Applicants) (Environment and Land Miscellaneous Application 1 of 2022) [2025] KEELC 365 (KLR) (5 February 2025) (Ruling)

Neutral citation: [2025] KEELC 365 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 1 OF 2022**

CK NZILI, J

FEBRUARY 5, 2025

BETWEEN

REPUBLIC APPLICANT

AND

**RIFT VALLEY PROVINCIAL LAND DISPUTES APPEALS
COMMITTEE 1ST RESPONDENT**

CHIEF MAGISTRATE’S COURT, KITALE 2ND RESPONDENT

AND

EDOANI WANYONYI APOLLO INTERESTED PARTY

ELIJAH WASWA TABALIA INTERESTED PARTY

**SAMSON SHANGU WASWA A.K.A ELIJAH WASWA MUKITE INTERESTED
PARTY**

AND

ESTHER KIBERENGE A.K.A ESTHER NASAMBU EXPARTE APPLICANT

LEVI WASWA MUKHWANA EXPARTE APPLICANT

SIMON SIMIYU TOILI EXPARTE APPLICANT

RULING

1. This ruling relates to an application dated 20/12/2024 in which the 3rd Interested Party seeks a temporary injunction against the 1st Interested Party restraining him from interfering with parcel No. 49 Maeni Farm or the suit land herein by extracting or harvesting stones or wasting it. The grounds are



- set out on the face of the application and in a supporting affidavit sworn by Samson Shangu Waswa on the even date.
2. The 1st interested party opposes the application by a replying affidavit sworn by Edoan Wanyonyi Apollo on 30/12/2024. He avers that he is the owner of plot No. 49 Maeni Farm, as his name is in the area list as per Annexure EX-EWAI while awaiting issuance of the title deed. The 1st interested party denies that the applicant has ever owned or occupied the land, for his name is missing from the area list.
 3. The 1st interested party deposes that his ownership was also confirmed through Appeal No. 9 of 2009 at Rift Valley Province Appeals Committee, as followed by an eviction order in Kitale CMCLC No. 42 of 2008 as per annexures marked EX-EWA2 and EX-EWA3 respectively.
 4. The 1st interested party deposes that on 10/12/2021 and 17/1/2022, the County Surveyor visited the plot and actually established that he was in occupation of 4.79 acres and not 6 acres. Unfortunately, the 3rd interested party had been invited to the meeting but failed to attend, leading to a report marked as annexure EX-EWA4 dated 24/1/2022.
 5. The 1st interested party deposes that he has rights as the owner to harvest the stones and use his land as he wants to the exclusion of the applicant who possesses no ownership documents to the land. The 1st interested party deposes that the applicant is a son of the 2nd interested party, who is also not a shareholder of Maeni Farm. The 1st interested party deposes that the application has been brought 2 years since the suit was filed; it is bad in law and an abuse of the court process.
 6. The 1st interested party represented by Mr. Nyakundi Advocate similarly relies on a written submissions dated 8/1/2025, essentially reiterating the contents of his replying affidavit. When the matter came up for the interparty hearing on 20/1/2025, Miss Keya, holding a brief for Mr. Wanyonyi for the exparte applicant, supported the application.
 7. Further counsel for the 1st interested party urged the court to find that the applicant has annexed no documents to show his interest in plot No. 49 Maeni Farm, let alone to demonstrate why an injunction should be issued against a bonafide owner of the land, who has all the proprietary rights in law to use the land.
 8. Learned counsel submitted that the applicant and his father, though parties in this matter, have no substantive reliefs that they have sought in the matter.
 9. In a rejoinder, the applicant urged the court to find that in plot No. 49, he was given 3 ½ acres as per the eviction notice in 2015 and that though he concedes that he was evicted from 6 acres of land, his interest on 3 ½ acres of land against Mzee Appollo remains.
 10. On 9/2/2022, the court granted leave to the exparte applicant to file a notice of motion for certiorari and prohibition regarding a decision made by the Appeals Committee and adopted by Kitale in CMCC Land Case No. 42 of 2008 on 13/10/2021 ordering the eviction of the applicant from plot No. 49 Maeni Farm measuring 6 acres. Leave was to act as a stay of the decision. The substantive motion was filed on 28/2/2022 dated 28/2/2022. It is yet to be heard and determined. Parties have filed written submissions. The respondents entered an appearance on 15/6/2022, while the 1st interested party filed an application dated 5/5/2022 through M/S S. Nyakundi & Co. Advocates. Through the application dated 2/3/2023, the exparte applicant sought to have the 1st interested party committed to civil jail for contempt of court by ploughing the land. The application was dismissed by a ruling dated 28/11/2023.
 11. The 3rd interested party filed a replying affidavit dated 8/2/2024 opposing the notice of motion dated 28/2/2022. He says that he had sought and obtained eviction orders against the 1st and 2nd interested parties before the 2nd respondent as annexure SS'1' and SS'2', after which he evicted them from the



- land, to which afterward, the 1st interested party filed case No. 32 of 2011 against the 2nd interested party and himself, which suit was dismissed on 4/11/2021 as per annexure marked SS'3'.
12. The 3rd interested party deposed that without appealing or setting aside the dismissed orders, the 1st interested party filed an application dated 26/2/2021 and obtained a court order against them as per annexure SS'4'. The 3rd interested party, therefore, avers that the orders sought to be quashed herein were made without jurisdiction or were res judicata in view of Land Case No. 32 of 2011 to which the 1st interested party was a party.
 13. The 3rd interested party termed the eviction orders against him as baseless, made by a court without jurisdiction, and that this court exercising its jurisdiction under Section 165(6) of *the Constitution* should vacate them; otherwise, they are illegal and contrary to Section 3(1) of the Land Disputes Act 1990.
 14. Having set the contextual background in this matter, can the application by the 3rd interested party be merited? To start with, an interested party is someone who has a stake in a matter as held in *Muruatetu Francis -vs.- A.G.* He is neither a respondent nor an applicant. He cannot frame separate issues for determination by the court apart from those of the substantive parties to the matter. See *Osugo Paul Kamombi -vs.- Britam General Insurance Co. (K) Ltd* [2021] eKLR, *Departed Asians Property Custodian Board -vs.- Jaffer Brothers Ltd* [1999] IEA SS. See *C.C.K. & Others -vs.- Royal Media Services Ltd & Others* [2014] eKLR.
 15. In *Methodist Church of Kenya -vs.- Mohammed Fugicha & Others* [2019] eKLR, the court said that whether some parties have been joined as interested parties or not, the issues to be determined by the court will always remain the ones raised by the principal parties, or as framed by the court from the pleadings, and the submissions of the principal parties. The court said that an interested party may not frame its fresh issues or introduce new issues for determination by the court.
 16. In *Republic -vs.- Public Procurement Administration Review Board: Rhombus Construction Co. Ltd (IP) Exparte K.P.A. & Others* [2021] eKLR, the court cited *Francis Muruatetu & Others -vs.- Republic (Supra)*, that 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. In *Mumo Matemu -vs.- Trusted Society of Human Rights Alliance & Others (Civil Appeal No. 290 of 2012)*, the court said that the parties solely own a suit before the court.
 17. What arises from the foregoing case law is that the main reliefs before the court are those sought by the Exparte applicant against the respondents.
 18. The applicant herein was sued as an interested party and not as a respondent in the matter. After he was joined, he did not file and seek substantive relief against the co-interested parties. He now seeks a temporary injunctive order against the co-interested parties. Even if there was a substantive claim against the co-interested parties, still the 3rd interested party has to meet the conditions of granting a temporary injunction, namely, a prima facie case with a probability of success at the hearing, irreparable damage, and the balance of convenience.
 19. A prima facie case was defined in *Mrao Ltd -vs.- First American Bank of Kenya Ltd & Others* [2003] KLR 125 as a genuine case, where on the material presented before a court, it will be concluded that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the later. Irreparable loss, as per *Pius Kipchirchir Kogo -vs.- Frank Kimeli Tenai* [2018], eKLR is an injury that cannot adequately be compensated for in damages or where there is no other remedy open to the applicant to protect him from the consequences of the impending injury.



20. Balance of convenience, on the other hand, is that if the injunction is not granted and the suit is ultimately decided in favor of the applicant, the inconvenience caused to the applicants would be granted that which would be caused to the opposite party if the suit is ultimately dismissed, where the injunction had been granted.
21. The burden was on the applicant to prove the three elements sequentially and logically. The material before the court falls short of the applicant establishing any known, defined, and recorded proprietary interest or rights over plot No. 49 Maeni Farm. Without surmounting the hurdles, the court finds the application lacking merits. See Kenya Commercial Finance Co. Ltd -vs.- Afraha Education Society [2001] Vol. 1 EA 86 and Nguruman Ltd -vs.- Jan Bonde Nielsen & Others Civil Appeal No. 17 of 2012. The same is dismissed with costs.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 5TH DAY OF FEBRUARY 2025.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence:

Court Assistant - Chemutai

Mr. Nyakundi for the 1st Interested Party/Respondent

Miss Keya for Exparte Applicant

Miss. Odeyo for the Respondent

2nd Interested Party (Deceased)

3rd Interested Party present

