



**Kiritu & another v Milele Ventures Limited; Two Zero Six Ruiru Developers Limited (Intended Interested Party) (Environment & Land Case 414 & 415 of 2010 (Consolidated)) [2025] KEELC 1091 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1091 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 414 & 415 OF 2010 (CONSOLIDATED)  
OA ANGOTE, J  
MARCH 6, 2025**

**BETWEEN**

**AGNES WAMBUI KIRITU ..... 1<sup>ST</sup> DECREE HOLDER**

**ALICE WANGUI MWANIKI ..... 2<sup>ND</sup> DECREE HOLDER**

**AND**

**MILELE VENTURES LIMITED ..... JUDGMENT DEBTOR**

**AND**

**TWO ZERO SIX RUIRU DEVELOPERS LIMITED .... INTENDED INTERESTED PARTY**

**RULING**

**Background**

1. Before the court is the Intended Interested Party's/Applicant's Motion dated 29<sup>th</sup> April, 2024 brought pursuant to the provisions of Order 1 Rules 10 and 15, Order 3(5) of the Civil Procedure Rules and all other enabling provisions seeking the following reliefs:
  - a. The Honourable Court be pleased to grant leave to allow the Intended Interested Party be enjoined as an Interested Party in this suit.
2. The application is based on the grounds on the face of the Motion and supported by the Affidavit of Benson Njuguna, the Intended Interested Party, of an even date, who deposed that he is one of the Directors of the Intended Interested Party/Applicant company and that the Intended Interested Party is the registered and legitimate owner of L.R. 28318/2243(I.R. 189973).



3. According to Mr. Njuguna, he has since become aware of the existence of two Motions dated 20<sup>th</sup> March, 2023 and another dated 26<sup>th</sup> April, 2023; that the Motion of 20<sup>th</sup> March, 2023 seeks to have the Intended Interested Party's proprietary interest over L.R 28318/2243(I.R 189973) revoked alleging that it was acquired unprocedurally through fraud, misrepresentation, illegality and through a corrupt scheme and that considering the fact that the Intended Interested Party procedurally acquired the property, it should be granted an opportunity to be heard as anticipated by Article 50 of the Constitution to enable it protect its constitutionally guaranteed right to property.
4. He deponed that it is apparent from the foregoing that the Intended Interested Party/Applicant has great interest in the matter and it is only fair that it is joined in the suit.
5. In response to the Motion, the 1<sup>st</sup> Decree Holder/Respondent, Alice Wambui Kiritu filed Grounds of Opposition on 22<sup>nd</sup> May, 2024 premised on the grounds that:
  - i. The subject matter of this Application is Res Judicata.
  - ii. The Application is frivolous, vexatious and otherwise an abuse of the process.
  - iii. The Decree Holder/Respondent prays that the Intended Interested Party's Notice of Motion dated the 29<sup>th</sup> April, 2024 be dismissed with costs to the Decree Holder/Respondent.
6. Together with the Grounds of Opposition aforesaid, she swore a Replying Affidavit on 23<sup>rd</sup> May, 2024. She deponed that the Intended Interested Party, relying on 106 fraudulently obtained title documents, moved this court vide a Motion dated 14<sup>th</sup> September, 2018 seeking to be joined in the matter which Motion was dismissed on 31<sup>st</sup> October, 2019.
7. It was deposed by the 1<sup>st</sup> Decree Holder that 28<sup>th</sup> September, 2018, the Intended Interested Party moved to the Court of Appeal in Civil Appeal 139 of 2014 similarly seeking to be joined in the matter, which Motion it subsequently withdrew on 2<sup>nd</sup> November, 2022 and that the Intended Interested Party applied for reinstatement of the said application on 8<sup>th</sup> December, 2022 which was heard and dismissed on the 12<sup>th</sup> April, 2024.
8. According to Ms Kiritu, the Judgment Debtor fraudulently and contrary to existing court orders registered against the suit property, caused its sub-division; that further, in defiance of the Amended Decree dated 26<sup>th</sup> September, 2017 and the subsequent execution order dated 1<sup>st</sup> February, 2018, the Judgment Debtor illegally took out sub-divided titles in the series of L.R No 28318/2113 to L.R No 28318/2243 which the Intended Interested Parties are using in seeking to be joined in this matter notwithstanding that this court and the Court of Appeal have already pronounced themselves and determined the Motions which were duly dismissed.
9. It was deposed that the present Motion is an abuse of process and should be dismissed.
10. The 2<sup>nd</sup> Decree Holder swore a Replying Affidavit on 19<sup>th</sup> July, 2024. She deponed that as advised by Counsel, the Intended Interested Party has not sufficiently proven the three conditions to be joined as an Interested Party, to wit, demonstration of a right to some relief against it in respect of the matter involved; its presence is necessary for the court to completely and effectually resolve the matter; there will be no prejudice to the adverse party beyond compensation in costs.
11. It is her position that the Intended Interested Party has no direct interest or stake in the suit property and as such, the application is an abuse of court process and that the Intended Interested Party bases its interest on a certificate of title illegally and fraudulently acquired in total disobedience of court orders



of 15<sup>th</sup> February, 2011 which were thereafter by consent registered as a caveat hence restraining any sub-division, sale, transfer or dealing in any other way with the suit property.

12. Despite the existence of the caveat aforesaid, she stated, the Intended Interested Party and by extension its members entered into an agreement for the transfer of the suit land with the Judgment Debtor and that an ongoing investigation by the Directorate of Criminal Investigation Inquiry No 311/2023 has revealed that the Judgment Debtor received payment for the full 10-acre piece of land that she was claiming in the suit and consequently, the titles held by the Intended Interested Party were from the onset not available for acquisition.
13. In a knee jerk reaction to this finding, she stated, the Judgment Debtor on 15<sup>th</sup> April, 2024 deposited Kshs 6, 272, 200, a clear demonstration that there is no land available for the Intended Interested Party and its participation would be merely academic; that jurisdiction to join a party post judgement should be exercised only in exceptional circumstances and that where it will lead to re-opening of a case, it will run contra to the principle of finality of litigation.
14. She urged that the presence of the Intended Interested Party is not necessary for complete expedition of this matter and intends to subject her to endless litigation; that the Decree Holders will suffer great prejudice that cannot be compensated by costs; that the Decree Holders are currently executing the Decree of the Court of Appeal and as such, joinder of the Intended Interested Party at this stage would be prejudicial to the parties.
15. Ms Mwaniki deponed that the Intended Interested Party has continuously mislead this court with the aim of deceiving it; that they have made previous attempts to be joined as Interested Parties through the Motion dated 14<sup>th</sup> September, 2018 before this court and 31<sup>st</sup> October, 2019 before the Court of Appeal and that the interests of justice dictate that the Motion be dismissed.
16. The 1<sup>st</sup> Decree Holder/Respondent filed a Further Affidavit on 30<sup>th</sup> October, 2024. She produced a report by the Chief Land Registrar, showing the title documents relied on by the Intended Interested Party have never been registered and are not in the records of the Central Lands Registry, Nairobi. The Judgment Debtor did not participate in the proceedings. The parties filed submissions and lists of authorities which I have considered.

### **Analysis and Determination**

17. Having considered the Motion, Affidavits in support and in opposition thereto and submissions, the issues that arise for determination are;
  - i. Whether the Motion is Res judicata? and if not?
  - ii. Whether the Intended Interested Party should be joined in these proceedings?
18. The substantive law on res judicata is found in Section 7 of the [Civil Procedure Act](#), which provides that:

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”



19. The Act has further expounded on the principle setting out under explanations 1-6 thus:

“Explanation (1) — The expression “former suit” means a suit which has been decided before the suit in question whether or not it was instituted before it.

Explanation (2) — For the purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court.

Explanation (3) — The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation (4) — Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation (5) — Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused.

Explanation (6) — Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.”

20. It is clear from the forgoing that this doctrine applies to bar subsequent proceedings where there has been adjudication by a court of competent and/or concurrent jurisdiction which conclusively determined the rights of the parties with regard to all or any matters in controversy. In the case of *John Florence Maritime Services Limited & another vs Cabinet Secretary Transport & Infrastructure & 3 Others* (Petition 17 of 2015) [2021] KESC 39 (KLR) (Civ) (6 August 2021) (Judgment), the Supreme Court delved into an in-depth discussion of the concept of *res judicata* thus:

“This court in the case of *Kenya Commercial Bank Limited v Muiri Coffee Estate Limited & another* Motion No 42 of 2014 [2016] eKLR (Muiri Coffee case) held as follows regarding the doctrine of *res judicata*:

“*Res judicata* is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights...The doctrine of *res judicata*, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.

It emerges that, contrary to the respondent’s argument that this principle is not to stand as a technicality limiting the scope for substantial justice, the relevance of *res judicata* is not affected by the substantial-justice principle of article 159 of *the Constitution*, intended to override technicalities of procedure. *Res judicata* entails more than procedural technicality, and lies on the plane of a substantive legal concept.<sup>56</sup>The learned authors of Mulla, Code of Civil Procedure, 18th Ed 2012 have observed that the principle of *res judicata*, as a judicial device on the finality of court decisions, is subject only to the special scenarios of fraud, mistake or lack of jurisdiction (p 293):The principle of finality or *res judicata* is a matter of public policy and is one of the pillars on which a judicial system is founded. Once a



Judgment becomes conclusive, the matters in issue covered thereby cannot be reopened unless fraud or mistake or lack of jurisdiction is cited to challenge it directly at a later stage. The principle is rooted to the rationale that issues decided may not be reopened and has little to do with the merit of the decision.”

...Whenever the question of res judicata is raised, a court will look at the decision claimed to have settled the issues in question; the entire pleadings and record of that previous case; and the instant case to ascertain the issues determined in the previous case, and whether these are the same in the subsequent case. The court should ascertain whether the parties are the same, or are litigating under the same title; and whether the previous case was determined by a court of competent jurisdiction. This test is summarized in *Bernard Mugo Ndegwa v James Nderitu Githae & 2 others*, (2010) eKLR, under five distinct heads: (i) the matter in issue is identical in both suits; (ii) the parties in the suit are the same; (iii) sameness of the title/claim; (iv) concurrence of jurisdiction; and (v) finality of the previous decision...”

21. The Decree Holders contend that the present Motion is res judicata having already been canvassed vide the Motions of 14<sup>th</sup> September, 2018 before this court [Obaga J] and 28<sup>th</sup> September, 2018 before the Court of Appeal.
22. Beginning with the Motion for joinder filed before the Court of Appeal, while the same was for the joinder into the matter on account of interest in the suit property, the Motion was never canvassed. It was withdrawn and attempts to have it reinstated were unsuccessful. This means that while the Intended Interested Party herein also sought to be joined to the proceedings before the Court of Appeal, its plea was not heard nor finally determined by the court as anticipated by the doctrine of res judicata. This plea fails.
23. Moving to the Motion of 14<sup>th</sup> September, 2018, the same was for inter-alia, the joinder of 70 persons as Interested Parties, setting aside of the consent order dated 25<sup>th</sup> January, 2011 and all proceedings related to L.R 28318/15. Alternatively, the Intended Interested Parties sought to have the court inter-alia vary its judgment and have the land allocated to them.
24. In the said application, it was their case that they purchased plots within L.R 28318/15 after which they were granted possession and that in 2018, they were informed that their structures were demolished pursuant to a case filed by the Decree Holders.
25. Vide the present Motion, the Intended Interested Party seeks to be joined into the proceedings. It asserts that it is the legitimate proprietor of L.R 28318/2243 having acquired the same from the Judgment Debtor vide a transfer dated 13<sup>th</sup> March, 2019. It states that it recently learned of the Motions of 20<sup>th</sup> March, 2023 in which the Decree Holders seek to have the title to its property un-procedurally revoked.
26. Considering the two Motions, it is apparent that both of them involve joinder into the proceedings on account of interest in the suit property. However, the Intended Interested Party herein was not a party to the Motion of 14<sup>th</sup> September, 2018.
27. Whereas he also seeks part of the suit property, the subject of execution, he lays claim to L.R 28318/2243 which it acquired on 13<sup>th</sup> March, 2019, a distinct parcel of land that was not the subject of the previous Motion. Ultimately, the determination of the court did not apply to him. The plea of res judicata fails.



28. The Intended Interested Party seeks to be joined into these proceedings. It opines that vide the Motion of 20<sup>th</sup> March, 2023, the Decree Holders have sought to have its title revoked and that it should be granted an opportunity to defend its title.
29. Conversely, the Decree Holders contend that the aforesaid title was fraudulently acquired in breach of the Judgment of the court and that they are entitled to the fruits of their judgment which the Intended Interested Party seeks to impede.
30. Black's Law Dictionary defines an Interested Party as:
- “a party who has a recognizable stake (and therefore standing) in the matter.”
31. Similarly, the Supreme Court in *Trusted Society of Human Rights Alliance vs Mumo Matemu* [2015] eKLR defined an Interested Party stated thus:
- “...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.”
32. While there is no specific provision for the joinder of an Interested Party into a suit, Order 1 Rule 10(2) of the Civil Procedure Rules gives the court wide discretion to join parties whose presence is necessary for complete adjudication of all questions before it. It provides 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.”
33. In the case of *Francis Kariuki Muruatetu & Another vs Republic & 5 Others* [2016] eKLR, the Supreme Court set out the principles applicable in considering the question of whether a person qualifies to be joined as an Interested Party as follows:
- “From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party:
- i. One must move the Court by way of a formal application. Enjoinment is not as of 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:
  - ii. 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.
  - iii. 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.



iv.. Lastly, a party must, in its application, 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.”

34. As to joinder after judgment, courts have held that the same is only permissible in exceptional and justifiable circumstances. In *Merry Beach Limited vs Attorney General & 18 Others* [2018] eKLR, the Court of Appeal outlined the relevant principle as follows:

“However, there are exceptional circumstances that could justify a court to enjoin a party even after judgment has been passed. One such exception is where a matter has been determined and adverse orders have been issued against a party who was neither given notice of the suit nor heard on the issue in dispute. Enjoining such a party a court would also have to set aside the judgement entered to give him/her an opportunity to be heard.”

35. By way of brief background, the Decree Holders instituted this suit against the Judgement Debtor claiming portions of the suit property by way of purchase. The court found in their favour granting them 5 acres and 35 acres respectively to be carved out of the suit property. This decision was ultimately upheld by the Court of Appeal on 13<sup>th</sup> May, 2016 which held that the portions be carved out of L.R No 28318/15.

36. The aforesaid decision has not been set aside and currently, the proceedings before this court are for execution. On 25<sup>th</sup> January, 2018, the court ordered the Judgment Debtor to excise the property-L.R 28218/15 and sign all the requisite documents in compliance with the aforesaid Decree failure to which the Land Registrar was to execute the same. The judgement of the Court of Appeal as well as the orders of 1<sup>st</sup> February, 2018 were duly registered as against the title to the suit property.

37. Vide the Motion of 20<sup>th</sup> March, 2023, the 1<sup>st</sup> Decree Holder seeks, inter-alia, to have titles, including the Intended Interested Party’s alleged title revoked, demolition of illegal structures on the property and eviction of any persons thereon.

38. The Decree Holders contend that the sale of the aforesaid properties was fraudulent having been carried out in breach of the judgments of the court and during execution. The Motion of 26<sup>th</sup> April, 2023 also sought inter-alia, revocation of all titles arising from L.R 28318/15.

39. The Intended Interested Party has adduced a copy of the title to L. R 28318/2243, a sub-division of L.R 28318/15, indicating that the same was issued to it on the 13<sup>th</sup> March, 2019. It is quite evident that at the time the Intended Interested Party obtained its title, this matter was active in this court. Therefore, the issue as to whether was available for sale or not can be answered by the Judgment Debtor, and not the Intended Interested Party.

40. Indeed, joining the Intended Interested Party in this suit will inevitably mean that the judgment of this court, and the Court of Appeals have to be set aside, which will entail re-litigation of the matter, a situation this court is unlikely to do in the circumstances of this case.

41. In the end, the Motion dated 29<sup>th</sup> April, 2024 is dismissed with costs to the Decree Holders.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 6<sup>TH</sup> DAY OF MARCH, 2025.**

**O. A. ANGOTE**

**JUDGE**



In the presence of;

Mr. Jaleny for 1<sup>st</sup> Decree holder

Mr. Ochieng for Okore for 2<sup>nd</sup> Decree holder

Mr. Wachira for Intended Interest Party/ Applicant

Mr. Thuita for Defendant

Court Assistant: Tracy

