



Kiseet v Moi & another (Being Sued as Administrators of the Estate of the Late Jonathan Kipkemboi Moi) & 2 others; Kabogo (Interested Party) (Environment & Land Case 7 of 2021) [2025] KEELC 3025 (KLR) (1 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3025 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE 7 OF 2021
MN MWANYALE, J
APRIL 1, 2025**

BETWEEN

PARMET OLE KISEET APPLICANT

AND

SYLVIA MOI & CLINT MOI (BEING SUED AS ADMINISTRATORS OF THE ESTATE OF THE LATE JONATHAN KIPKEMBOI MOI) 1ST DEFENDANT

BEATRICE MBULI KIPKEMOI MOI 2ND DEFENDANT

FRANCIS KIMEMIA 3RD DEFENDANT

AND

NDEGWA KABOGO INTERESTED PARTY

RULING

1. This Ruling is in relation to the application dated 18th December 2024 by the Interested Party/Applicant seeking the following orders; -
 - i. Spent
 - ii. Spent
 - iii. That pending the hearing and determination of this suit, a temporary order of injunction do issue restraining the Respondents whether by themselves, their employees, servants and all such persons acting on their behalf from selling, transferring, tilting, charging, alienating or otherwise howsoever interfering with suit property being all that parcel of land known as Transmara/Kimintet/C1/13.
 - iv. Any orders that the court may deem fit to grant in the circumstances.



- v. The costs of this application be provided for by the defendant.
2. The grounds in support of the application are interalia; -
 - i. The interested party has learnt that the 2nd and 3rd Defendant/Respondents has illegally disposed part of the suit property herein to 3rd parties that are not part of the proceedings herein.
 - ii. The Interested Party upon visiting the suit property has found unknown parties who are in occupation of the suit property herein. The said individuals have fenced part of the suit property and are currently grazing their livestock therein.
 - iii. That upon interrogating the said individuals the interested party was informed by them that they had purchased part of the suit property specifically from the 2nd Defendant/Respondent herein.
 - iv. That the 2nd and 3rd Defendants/Respondents herein are currently in possession and occupation of the suit property herein. If not restrained, the two can proceed to dispose the suit property thereby rendering the subject matter herein nugatory.
 - v. That there is urgent need for this application to be heard on priority basis noting that the 2nd and 3rd Defendants have already disposed part of the suit property, if not checked they may dispose the entire suit property.
 - vi. That the court has unfettered discretion to ensure that the subject matter herein is protected pending the hearing and determination of the suit.
 3. The application is further supported by the Supporting Affidavit of Ndegwa Kabogo the Interested Party/Applicant who reiterates the grounds in support of the application in his affidavit, but has not exhibited any annexures.
 4. The Plaintiff through his advocate on record Mr. Otieno confirmed to the court on 13.01.2025 that he was not opposed to the application but had filed a Replying Affidavit dated 25.01.2025 while the 1st Defendant/Respondent represented by the Ms. Munene equally were not opposed to the application; and had not filed any Response.
 5. The 2nd Defendant/Respondent filed a Replying Affidavit deponed on 10th January 2025 together with a Notice of Preliminary Objection dated 27.01.2025 the court directed that the P.O be treated as a response to the application.
 6. The Applicant sought and was granted leave to file a Further Affidavit but he Instead filed a Replying Affidavit in opposition to the Preliminary Objection dated 27.01.2025.
 7. The 3rd Defendant Francis Thuita Kinemia opposed the application vide his Replying Affidavit dated 20.01.2025.
 8. Turning to the respective responses filed by the 2nd and 3rd Defendants, it is the 2nd Defendant's Response that: -
 - i. She is the joint registered proprietor of Transmara/Kimintet "C"155 and 156 measuring 118.36 Ha and 29.1 Ha respectively and has exhibited copies of the titles in respect of the said properties.



- ii. That she had not sold any of the said properties, which properties were as a result of subdivision of Transmara/Kimintet “C” 13 initially registered in the name of the late Jonathan Kipkemboi Moi.
 - iii. The said property Transmara/Kimintet “C”/13 had initially being sold in or about 2009 to Kapkatet self Help Group who did not complete the payment of purchase price and the 2nd Defendant refunded them the monies in 2013 via an Agreement dated 15.01.2013 and she took possession of the property; whereafter the property was transferred to her.
 - iv. That the property belongs to the 2nd Defendant and the Interested Party is attempting a refund from the Estate of Jonathan Moi through the suit.
 - v. That no prima facie case has been established, no irreparable damage established and the balance of convenience tilts in favour of the 2nd and 3rd Respondents.
9. Further in the Notice of Preliminary Objection dated 27th January 2025, the 2nd Defendant raised the issue that the Applicant lacked locus standi to file the application before the Honourable Court.
10. The 3rd Defendant in his Replying Affidavit deposed that: -
- i. Applicant lacks locus standi to seek the orders sought having no demonstrable interest in the suit.
 - ii. Applicant has not met the conditions set for grant of injunctive orders, as he has not filed any evidence to proof that the 2nd and 3rd Defendants have illegally disposed of part of suit property.
 - iii. That he is the registered owner of Transmara/Kimintet “C”/154 holding an indefeasible title and has not sold any part of the said title.
11. In his Replying affidavit to the Notice of Preliminary Objection, the Applicant deposes that
- i. The Preliminary Objection is baseless abuse of the court process,
 - ii. That he was enjoined in this suit vide the Ruling dated 30th November 2021 by Hon. Justice Mohammed Kullow and as an interested party he had the right to protect his interest in the suit by not being a bystander as was stated in Communications Commission of Kenya and 4 Others Petition No. 15/2014 (eKLR).
 - iii. That his involvement is to assist court in settling of issues and hence the need for the injunction, and he needs to advance his case as was noted in the case of Skov Estate Limited and 5 Others Vs. Agricultural Finance Corporation and Another (2015) eKLR.
12. The matter proceeded by way of oral submissions; the court did not hear the Advocates for the parties that were not opposed to the application but heard Mr. Haggai who argued the application on behalf of the Interested Party/Applicant and Mr. Ngeno who opposed the application on behalf of the 2nd Defendant/Respondent and Mr. Mumo who argued the application on behalf of the 3rd Defendant/Respondent.
13. The parties’ submissions are summarised as follows; - On behalf of the Applicant it was Mr. Haggai’s submission that the Applicant has locus standi to institute the application as he was a rightful party to the suit by virtue of joinder as an interested party and he could not be a spectator in the matter. To buttress this position the Applicant placed reliance on the decision in the case of Communications Commission of Kenya and 4 Others Vs. Royal Media Petition No. 15/2014, a Supreme Court of Kenya decision; and that as an Interested Party he had a right to advance his claim in the matter and



- reliance was placed in the decision in the case of Skov Estate Limited and 5 Others Vs. Agricultural Development Corporation and Another; Thus the Interested Party has proper locus to assist court he submitted.
14. On the injunction, the Applicant placed reliance on decision in the case of Giella Vs. Cassman Brown, and submitted that having being joined as an Interested Party means the Applicant has a prima facie case, and that damages are not sufficient to compensate the Applicant; and that he resides near the property; and the 2nd and 3rd Defendant has begun alienating the land yet the Estate of the deceased was only 30 million.
 15. That the balance of convenience tilts in favour of the Applicant. He thus urged the court to allow the Application.
 16. In opposition to the application, Mr. Mumo for the 3rd Respondent, submitted that the Interested Party had not demonstrated any interest in the matter, that the interested party could not have paid 23,750,000/= yet the purchase price vide the agreement of sale he exhibited was indicated as Kshs.25,000,000/=, a deposit of Kshs. 2,000,000 having been paid left only Kshs.23,000,000 thus showing the interested party could not have paid Kshs.23,750,000 in the transaction as he alleged.
 17. Mr. Mumo further submitted of the existence of variance in the witness statement where he indicated to have paid Kshs. 25,000,000 vide the Agreement dated 25.10.2011, yet the plaintiff alludes in the same agreement to have purchased the suit property together with Mr. Sengeyai Ole Wasesi.
 18. That the sentimental value of a neighbour is not sufficient proof of locus standi. The interested party documents are forgeries and related to a different parcel.
He urged court to dismiss the application and relied on the decision in the case of LSK Vs. Commissioner of Lands and 2 Others.
 19. Mr. Ngeno for the 2nd Interested Party submitted that
 - i. The interested party had no interest in the matter had no prima facie case, as his interest is pegged on the Principal party's case, as was held in the decision in Francis Mureatetu (2016) eKLR.
 - ii. No Agreement was filed to show the interested party as a purchaser, the Agreement dated 25.10.2011 filed by the plaintiff was between the plaintiff, Mr Sankenyai Ole Wasesi and Jonathan Kipkemboi, and that at paragraph 6(a) of the Amended Plaint the interested party is only said that "to have been part of the transaction as the payments were made through him."
 - iii. That no evidence of sales or new structures were brought before court and the injury is thus speculative.
 - iv. That the 2nd and 3rd Defendants are not only the registered owners but also in use and occupation of the suit and having acceded to get replacement parcel of land in Karen, the recourse for plaintiff and defendant lay in claiming from the Estate hence no irreparable injury and that the balance of convenience tilts in favour of those who are in occupation and use of the property.
 20. He urged the court to dismiss the application.
 21. In a brief rejoinder, Mr. Haggai referred to the court on the definition of a prima facie case as defined in the Nguruman case.
 22. The court has noted the following undisputed facts in relation to this application.



- i. That vide the ruling dated 30th November 2021, an application for joinder of the Interested Party/Applicant was allowed.
- ii. That paragraph 6(a) of the Amended Plaintiff describes the Interested Party as having been part of the transaction of purchase of the suit property specifically the payment transaction for the purchase was done through him.
- iii. That the Amended plaintiff sought a permanent injunction restraining the Defendants by themselves, their servants and/or agents from interfering with the plaintiff's quiet possession and enjoyment of the suit property known as Transmara/Kimintet "C" 13.
- iv. That the 2nd and 3rd Defendants are in occupation of the suit property.

Issues For Determination

23. Having considered the application before court, the affidavits in support and in opposition the rival submissions and the law the court frames the following as issues for determination?
 - i. Whether or not the Applicant as an interested party in the suit has the requisite locus standi to file the application?
 - ii. Whether or not the application is merited?
 - iii. What orders ought to issue?
 - iv. Who bears the cost of the application?

Analysis And Determination

24. With regard to issue number 1 on the lack of locus standi on the part of the Applicant, as raised in the Notice of Preliminary Objection by the 2nd Defendant and as equally raised by the 3rd Defendant, the Applicant in submitting that he has the requisite locus standi places reliance on the Supreme Court decision in the case of Communications Commission of Kenya and 4 Others Vs. Royal Media Services Limited and 7 others Petition No. 15 of (2014) eKLR which defined an interested party "...is one who has a stake in proceedings, though he or she was not a party to the case abinitio...."
25. In submitting that the interested party could not file the present application the 2nd Defendant placed reliance on paragraph 42 of the decision in the case of Francis Mureatetu (2016) eKLR where the Supreme Court pronounced itself as follows; -

“42 Therefore in every case, where 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 court. That stake cannot take the form of an altogether a new issue to be introduced before the court.”
26. From above Whereas the Applicant is right on the need to protect his stake in the matter but the locus standi challenged by the 2nd Defendant as understood by the court is not that right but the scope of an interested party's participation in a suit and whether the interested party could file the present application?



27. The position with regard to this issue was discussed by the High Court in its decision in the case of Philemona Mbete Mwilu Vs. Director of Public Prosecutions and 3 Others; Stanley Muluvi Kiima (interested party) 2019 eKLR, whereat the court considered paragraph 42 of the Supreme court decision in Francis Mureatetu 2016 as well as the Supreme court decision in Methodist Church in Kenya Vs. Mohammed Fugicha at paragraphs 413 and 414 of the said decision. At paragraph 415 of the Philemona Mwilu decision the learned judges spelt out the scope of an interested parties participation in a case as they observed as follows; -

“

“415. what emerges from the above decisions is that an interested party is a peripheral party and cannot introduce new issues for determination by court. Further that in determining the matters before it, the court will only consider the issues raised in the pleadings by the principal parties. This rule will be particularly unyielding when the matter before court is a private as opposed to a public interest claim.

“416 Notwithstanding that the interested party before us was joined in the matter from the outset by the petitioner. He is still only an interested party within the meaning ascribed to that phrase by the law and judicial precedents which he has set out above. His joinder ab initio does not elevate his position in the matter. The court can only grant reliefs as sought by the petitioner or as it deems appropriate as provided under Article 23(3) of *the Constitution*”

28. Turning to the pleadings in this matter the Plaintiff had sought for a permanent injunction in the Amended Plaint specific to restrain the Defendants by themselves, their servants and/or agents from interfering with the plaintiff's quiet possession and enjoyment of the suit property known as Transmara Kimintet C13, and as set out at paragraph 22 (iii) of this Ruling.

29. The substantive order sought by the interested party set out of paragraph 1 of this Ruling seeks temporary injunction from selling, transferring, letting, charging or alienating or otherwise interfering with the suit property.

30. The prayer sought by the Applicant is different from the prayer in the pleading and it raises and introduces new issues that were not framed by the principal parties.

31. It follows from the decisions cited that the Applicant an interested party cannot introduce new issues not framed by the Principal Parties and in answer to issue number 1 the court finds that the interested party had no locus to file this application and answers issue No.1 in the affirmative.

32. That issue is sufficient to dispose of the application but should I be wrong on the same, which I am not, I shall now dwell into issue No. 2 as to whether the Application is merited.

33. In order to determine whether the Application is merited, the court shall now examine whether the application meets the conditions in *Giella Vs. Cassman Brown*.

1. On a prima facie, the court of Appeal in *Mrao Limited Vs First American Bank Limited and 2 Others* (2003) KLR as follows;

“a prima facie case in a civil includes but is not confined to a genuine and arguable case. It is a case on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has been apparently been infringed by the opposite party so as to call for an explanation or rebuttal from the later”. The court later in the said decision stated as follows “.....a prima facie case is more



than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right and the probability of success of the Applicants case upon trial. That is clearly a standard which is higher than an arguable case....’

34. Has the Applicant herein demonstrated a prima facie case. The Applicant submits that having being enjoined in the suit as an interested party demonstrates that he has an interest and equates the said interest to a prima facie case.
35. it is not in dispute that Applicant is not the registered owner of the suit parcels neither is he in occupation of the suit parcel, he submitted being a neighbour with sentimental value, to the suit.
36. Can sentimental value entitle the Applicant to the orders sought?
37. The Applicant being neither a registered owner and/or in occupation but a neighbour, has not established any right that is being infringed so as to entitle him protection of the court by way of an order of injunction. He has not proven a prima facie case;
38. Having found that no prima facie case has been established, the court is not obligated to examine the other two conditions in *Giella vs Cassman Brown* as was held in the decision in the case of *Kenya Commercial Finance Company Ltd vs Afraha Education Society 2001 EA. 86* where the court held “...if a prima facie case is not established then irreparable injury and balance of convenient need no consideration...”
39. The Applicant having failed to establish a prima facie, it follows that the application lacks merit and the same is dismissed with costs to the 2nd and 3rd Defendants/Respondents.

DATED AT KILGORIS THIS 1ST DAY OF APRIL, 2025.

HON. M.N MWANYALE

JUDGE

In the presence of

CA – Emmanuel

Ms. Vahid h/b for Lusyola for Applicant

Ms. Munene h/b for Koech for 1st Respondent

Mr. Ngeno h/b for Dr. Nyaundi for 2nd Defendant/Respondent

Mr. Mumo for 3rd Defendant/Respondent

Mr. O.M Otieno for the Plaintiff

