



REPUBLIC OF KENYA



Mwaka v Muindi; Munyambu (Interested Party) (Environment & Land Miscellaneous Case E001 of 2023) [2025] KEELC 5158 (KLR) (10 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5158 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND MISCELLANEOUS CASE E001 OF 2023**

EO OBAGA, J

JULY 10, 2025

BETWEEN

JULIUS KIMEU MWAKA APPLICANT

AND

MULOO MUINDI RESPONDENT

AND

NZIOKA MUNYMBU INTERESTED PARTY

RULING

1. This is a ruling in respect of a Notice of Motion dated 13th October, 2023 in which the Intended Interested Party/Applicant seeks the following orders:
 1. That Nzioka Munyambu be enjoined as an interested party in this suit.
 2. That pending the hearing and determination of this application this honourable court be pleased to grant an order of temporary injunction restraining the Plaintiff, their agents, servants and employees from further dealings with the land parcel Makueni/Kitengei Scheme "A"/237.
 3. That the costs of the suit be provided.
2. The Applicant contends that in the year 2012 he entered into a sale agreement with one John Mutuku for the purchase of John Mutuku's land. He paid the purchase by installments which he cleared in 2014. When the seller obtained title, he handed over the book which contained the agreement and record of payments together with the original title for purposes of processing transfer.
3. When the Applicant got title from John Mutuku, he sold a portion of the land to the Defendant who has built a permanent house on it. In March, 2022, the Plaintiff went to the area chief and Assistant



- County Commissioner claiming that the suit property belonged to him. The officials asked him to bring documents of ownership but he did not have any.
4. The Plaintiff later reported him to the DCI that he had broken into the house of John Mutuku and stolen documents relating to the suit property. The Applicant was summoned to the Deputy County Commissioner's office at Kibwezi where he was asked to produce the documents. He innocently surrendered the book containing the agreement and title deed. The Deputy County Commissioner told him that he was going to look at the issue.
 5. The seller John Mutuku developed mental problems. The Applicant has now discovered that the Plaintiff took advantage of the mental condition of John Mutuku with the assistance of the Deputy County Commissioner to transfer the suit property to himself in 2014. The Applicant states that the Plaintiff deliberately failed to sue him so that he could take the suit property yet he is in possession with the Defendant to whom he sold a portion of the suit property. It is on this basis that he wants to be joined as an Interested Party to enable him defend his interest in the suit.
 6. The Applicant's application was opposed by the Plaintiff/Respondent through a replying affidavit sworn on 1st November, 2024. The Respondent contends that the Intended Interested Party does not have any proprietary interest in the suit property and that his intended joinder in the suit is a ploy by the Defendant to delay the conclusion of this suit. The Respondent states that the Applicant has not annexed any agreement to show that he sold part of the suit property to the Defendant.
 7. The Respondent further states that an Interested Party cannot get substantive orders unless he files a suit. He goes on to state that he has title to the suit property and that this court should order that the status quo be maintained until this suit is heard and determined by the court.
 8. The Respondent contends that the Intended Interested Party has not given evidence to warrant issuance of an injunction and that in any case, he cannot get any substantive order unless he becomes a party to this suit through a court order.
 9. The parties were directed to file written submissions. The Respondent filed his submissions dated 30th May, 2024. The Applicant filed his submissions dated 7th October, 2024.
 10. The Applicant submitted that he has proprietary interest in the suit property as he purchased the same from John Mutuku and the Respondent was a witness to the agreement. He further submitted that an application for joinder has to be made in a pending suit. Reliance was placed on the case of Florence Nafula Ayodi & 5 others –vs- John Tabalya Mukite & Another; Benson Givenge Kidiavai & 67 others (Interested Parties) (2022) KEELC 1936 (KLR).
 11. The Applicant also relied on the case of Francis Karioko Muruatetu –vs- Republic & 5 others Petition No. 15 as consolidated with No. 16 of 2023 (2016) eKLR where the Supreme Court set out the principles for joinder as follows:
 - i. The personal interest or state 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.
 - ii. 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.
 - iii. 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.

12. On the issue of injunction orders sought by the Applicant, the Applicant submitted that he had established a prima facie case and should be granted an injunction. The Applicant relied on the case of Hopf –vs- Director of Survey & 2 others, Sakaja & 2 others (Interested Parties) Environment & Land Case 4 of 2021) (2022) KEELC 6(KRL) (4 May, 2022) Ruling where Justice Dr. Iur Nyagaka held as follows:

“I have made an observation above that the proper procedure when a person not a party to a suit seeks to be enjoined as an interested party, he/she should seek leave first and upon being granted the same, they join and apply for any reliefs they deem fit. That is the idea situation. But how about when there is urgency and the danger of wasting the subject matter before the court? In my view, under Article 159 (2)(2) of the *Constitution* as read with Section 3A and 63(e) of the *Civil Procedure Act*, there are situation where the court, in a bid to do substantive justice, will give an exception to the procedure. An application for injunction is an equitable remedy granted discretionally and which requires that the parties in a suit (players in the theatre of justice) act with utmost good faith. This should be demonstrated by the parties. But where one of the parties come to court with unclear hands, the court cannot sit back and fold hands in the scenario or arena of a procedure being followed. Rules of procedure are handmaids in the later of justice. They are not masters of the people so as to lord it over them. They were brought into play to assist the wheels of justice to turn in an oiled manner. Where they seem to cause the wheels of justice to slide of the unity of the cog and the teeth, they will have to give way. Equity will not suffer a wrong without a remedy”.

13. The Respondent submitted that the Applicant has not demonstrated that he has sufficient interest in the suit property as to call for his joinder in the suit. The Respondent further submits that the Applicant cannot seek for injunctive orders as he has not been made a party to the proceedings.
14. I have carefully considered the Applicant’s application, the opposition to the same by the Respondent, the submissions by the parties and the authorities cited. There are two issues which emerge for determination. The first is whether the Applicant should be joined in these proceedings. The second is whether an injunction should issue in the manner sought by the Applicant.
15. On the first issue, the Applicant has demonstrated that he has interest in the land through purchase. He has annexed a copy of sale agreement between him and John Mutuku and subsequent payments. The Defendant in this case has stated that she purchased part of the suit property from the Applicant. The Applicant has therefore satisfied the principles set out in the case of Francis Karioko Muruatetu (Supra).
16. It is also important that the Applicant be joined in these proceedings so that the court can determine the issues touching on the suit property. The Respondent was a witness to the sale agreement between John Mutuku and the Applicant. He was also witness in Subsequent payments made to the said John Mutuku though there was no indication as to the reason for the payments. The Respondent was only absent during four of the occasions when payment was made to John Mutuku.
17. On the second issue, there is no basis upon which the prayer for injunction can be given. The Applicant sought this prayer before he was joined in the proceedings. He has no suit which will be the basis of grant of an injunction. The decision in Hopf –vs- Director of Survey (Supra) cannot be applicable in the circumstances of this case. The Respondent has prayed that there be an order of maintenance



of status quo until the suit is heard and determined. The status with respect to Makueni/Kiteng'ei Scheme "A"/237 is that the title is in the name of Respondent.

18. The Respondent was a witness to the Applicant in the agreement of 14th April, 2012 where the Applicant purchased one acre from John Mutuku at KShs.15,000/=. There were other payments made subsequent to this purchase but there was no indication as to whether it was for purchase of additional land or not. The Respondent was a witness to nine subsequent payments made to John Mutuku.
19. Though the sale agreement between the Respondent and John Mutuku was for purchase of 19 acres to be hived of the suit property which is 11.72 hectares which is equivalent to about 28.9 acres, the Respondent had the entire 28.9 acres registered in his name. There is therefore need to preserve the suit property until the suit is determined. An order of maintenance of status quo cannot be efficacious. An order inhibiting any dealings is appropriate in the circumstances.
20. I therefore find that the Applicant should be joined in this suit as the second Defendant. An order of inhibition should be registered against the title Makueni/Kiteng'ei Scheme "A"/237 prohibiting any dealings in the property until hearing and determination of the suit. The costs of this application shall be in the cause. Pleadings to be served upon the added party who shall file defence within 14 days.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 10TH DAY OF JULY, 2025.

In the presence of:

Mr. Muendo for Mr. Muthiani for Plaintiff/Respondent.

Ms. Isika for Defendant/Applicant.

Court assistant – Steve Musyoki

