



Mwangi & 3 others v Karanja & another (Environment & Land Case 386 of 2011) [2024] KEELC 1194 (KLR) (6 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1194 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 386 OF 2011**

JA MOGENI, J

MARCH 6, 2024

BETWEEN

PETER KAMAU MWANGI 1ST PLAINTIFF
JOSPHAT NYAKWARA 2ND PLAINTIFF
MAUREEN ONDIEKI 3RD PLAINTIFF
MICHEAL OKEYO CURTIS AND 104 OTHERS 4TH PLAINTIFF

AND

ESTHER MUMBI KARANJA 1ST DEFENDANT
MARGARET WAIRIMU WANGUYU T/A RUAI PROPERTY DEVELOPERS 2ND DEFENDANT

RULING

1. Coming up before me for determination is an Application dated 12/06/2023 brought under Article 159 (2) (d) of *the Constitution*, Section 3A of the *Civil Procedure Act*, Rule 12 of the Civil Procedure Rules and all enabling provisions of the law. In it, the Applicant seeks the following orders;
 1. Spent
 2. Spent.
 3. That Samfan Aundo, Daniel Mwangi, Philip Anyul, Rose Tinega, Maurine Kwamboka, Julius Munyithya, Robert Pendo, Michael Curtis, Augustus Munyalo, Ben Morara, Jared Kerosi, Ruth Ogada, Stepen Miatu, Brenda Wekesa, Evans Ogega and Peter Mungai Mbiria be allowed to participate in their individual capacities in hearing of applications dated 1/03/2023 and 30/08/2022 and any future proceedings in this matter.



4. That the proceedings of this court dated 11/05/2023 be set aside and the applicants herein be allowed to file replying affidavits to the application dated 1/03/2023.
5. That this court's ruling and orders dated 20/02/2023 be set aside and application dated 30/08/2022 be heard afresh with the applicants herein participating.
6. That costs of this application be in the cause.
2. The Application is premised on the grounds are on the face of the application listed in paragraph (a)-(l) and it is further grounded on the Supporting Affidavit of Samfan Aundo sworn on 12/06/2023. I do not need to reproduce them here.
3. The 2nd Defendant/Respondent, Margaret Wairimu Wangunyu, filed her Replying Affidavit sworn on 20/06/2023 in support of the present Application.
4. The Application is opposed by the 1st Plaintiff/Respondent, Peter Kamau Mwangi. He filed a Replying Affidavit sworn on 22/06/2023 together with grounds of objection dated 19/06/2023 opposing the application on the following grounds:
 1. That the consent purportedly filed and relied on by the Applicant is inadmissible by this Honorable court.
 2. That the Applicant, Samfan Aundo is not a party to the matter herein and therefore lacks locus to file an application in the matter herein.
 3. That the application is incompetent and fatally defective since the Order being sought to be reviewed is not attached to the application as required by law and the rules of procedure.
 4. That the application is made after an inordinate delay and the Applicant has disentitled himself to any remedy by this Honorable court.
 5. That the application is otherwise frivolous, vexatious and an abuse of the process of this Honorable court.
5. The Application was canvassed by way of written submissions upon Court's directions given on 6/02/2024. Parties duly submitted and a Ruling date was reserved. The Applicant filed written submissions dated 12/11/2023 on 15/11/2023, the 1st Plaintiff/Respondent filed written submissions dated 21/11/2023 on 22/11/2023 and the 2nd Defendant/Respondent filed her written submissions dated 24/11/2023 on 1/12/2023.

Issues for determination

6. Having carefully read and considered the application, the rival affidavits and the submissions thereto, I find that the following issues stand out for determination: -
 - i. Whether the application for joinder is merited.
 - ii. Whether the court should set aside the proceedings of this court dated 11/05/2023 and allow the Applicants to file replying affidavits to the Application dated 1/03/2023.
 - iii. Whether the Applicants have met the grounds for an order of setting aside the Ruling dated 20/02/2023.



Analysis and determination

Summary of the case

7. In summary, the Applicants assert that the ongoing proceedings involve the subdivision and transfer of Plots on former LR No. 7340/104, which has been subdivided into 105 plots. These plots' owners formed an association called Ufunguo Court Residents to process title deeds and address welfare issues. The Applicants, as officials of the association's management committee, have taken significant steps in processing title deeds but face challenges due to confusion caused by Peter Kamau Mwangi.
8. Upon auditing the title deed process, it was discovered that a recorded consent agreement did not include stamp duty and other associated fees. Despite some members paying the agreed amount, progress was hindered due to issues with the surveyor. After negotiation with the defendants, the agreed fees were reduced, leading to the release of the title deed. A surveyor was engaged, and a payment plan was established, ratified by the association's members.
9. The Applicants assert that Peter Kamau Mwangi misrepresented the situation and brought applications to avoid accountability for funds received. They were unaware of these proceedings until March 2023 and request participation as affected parties. Returning the papers to the 2nd defendant would adversely affect over 90 association members and suffer irreparable damages.
10. Furthermore, the Applicants argue that the previous consent agreement did not cover surveyor fees and stamp duty charges, which are now agreed upon separately. They emphasize that the defendant's role is limited to signing transfer forms upon the plot owner's presence.
11. The 1st Plaintiff/Respondent on the other hand asserts that LR 7340/104, the land in question, was subject to a consent judgment on 5/12/2012, later adopted as a court order on 25/06/2015. Despite this, the 2nd defendant failed to comply with the court's orders, leading to frustrations among the original plaintiffs. Some plaintiffs, like Maureen Ondiek, joined others seeking alternative ways to obtain their titles, but the 2015 judgment has never been vacated.
12. The 1st Plaintiff/Respondent argues that the present applicants, mostly introduced after the 2015 judgment, cannot seek to join the suit as there is already a judgment. Additionally, the 1st Plaintiff disputes the existence and validity of a second consent allegedly made on 31/08/2021, arguing that they were not party to it. They also challenge the validity of the applicants' appeal, suggesting it would be frivolous given their alleged illegalities. Therefore, the 1st Plaintiff urges the court to dismiss the applicants' motion with costs.
13. The 2nd Defendant supports the present application affirming that the presented application accurately represents the case's status and ground issues. She confirms the applicants' roles as officials of the Ufunguo Court Association and asserts that all negotiations have been conducted through duly elected association officials. Despite facing challenges accessing documents held by the 105 plaintiffs, she confirms the applicants' ownership of plots in the mother title.
14. Furthermore, the 2nd Defendant asserts that she has no control over issuing title deeds, as the process is in the hands of the applicants and other parties. She highlights that since surrendering documents to the plot owners' officials, no complaints have been received, and some plot owners have already received their titles. She suggests that the 1st Plaintiff is complicating the matter to settle scores and asserts that she is a victim of disagreements between the plaintiffs.
15. Additionally, the 2nd Defendant contends that the 1st Plaintiff withheld vital information from the court and supports the applicants' efforts to be heard in response to the application dated 30/08/2022.



She emphasizes the adverse impact on the applicants if documents are returned to her for compliance with court orders and asserts that the 1st Plaintiff's vexatious litigation goes against *the Constitution's* spirit and should be discouraged.

Whether the application for joinder is merited

16. The Applicants seek to be enjoined in this suit. The Applicants have however not specified the capacity in which they would like to be enjoined. The Court will assume they intend to be enjoined as Interested Parties.

17. As to whether the Applicants should be enjoined in these proceedings as interested parties, Order 1 Rule 10(2) of the Civil Procedure Rules 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 or settle all questions involved in the suit, be added.”

18. The first step will be to define who an Interested Party is in order to consider whether the Applicant herein falls in the same category/ definition. Rule 2 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013.

“interested party” means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation;”

19. Black's Law Dictionary defines an Interested Party as “a party who has a recognizable stake (and therefore standing) in the matter.”

20. In the case of Francis Kariuki Muruatetu & another v Republic & 5 others Petition No. 15 as consolidated with No 16 of 2013 [2016] eKLR, the Supreme Court set out guidance on the requirements for successful application for joinder as an Interested Party. In it the Court gave three principles to be followed. At paragraph 37 the Court stated that the Applicant(s) must show:

- i. “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.
- 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.”



21. The Supreme Court of Kenya in *Communications Commission of Kenya and 4 Others ...Vs... Royal Media Services Limited & 7 Others* Petition No. 15 OF [2014] eKLR relied on its earlier decision in the *Mumo Matemo* case where the Court in defining who an Interested Party is, and held as follows:

“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. 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 question 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:

- a. what is the intended party’s state and relevance in the proceedings and
- b. will the intended interested party suffer any prejudice if denied joinder.?”

22. Subsequently, it is against that backdrop that I now consider whether or not the Application meets the above conditions.

23. The law on joinder of interested parties to suits has been settled by the Supreme Court of Kenya in the case of *Francis K. Muruatetu and another* (supra). The court set out identifiable key elements for consideration in an application for joinder as an Interested Party.

24. Further, in *Skov Estate Limited & 5 others v Agricultural Development Corporation & another* [2015] eKLR Justice Munyao Sila in dealing with the issue of an Interested Party seeking to be enjoined in a suit stated as follows;

“In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party.

In other words, there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to



be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.”

25. This Court is guided by the above findings that there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.
26. Furthermore, from the case law, the following element emerges as applicable where a party seeks to be enjoined in proceedings as an interested party: “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...”
27. It is instructive to note that before a party is enjoined in a matter, the court ought to satisfy itself that the proceedings are alive. That means that the suit must still be pending before the Court. Therefore, the applicant must move the Court during the pendency of the proceedings in that matter. Again, besides the proceedings being pending there should be not bar to them going on, so much so that if there are orders staying the proceedings then the party cannot move the Court since the proceedings are ‘frozen’ until the orders are lifted, vacated or set aside.
28. For the proposition that the proceedings must be pending, this Court relies on the cases of Florence Nafula Ayodi & 5 others v Jonathan Ayodi Ligure v John Tabalya Mukite & another; Benson Girenge Kidiavai & 67 others (applicants/intended interested parties) [2021] eKLR and Elizabeth Nabangala Wekesa v Erick Omwamba & 3 Others; Esther Momanyi Omwamba (applicant) [2021] eKLR. In the first case, this Court held that in case a party wishes to be enjoined in a matter, the case must be either be at “the nascent or other stages but must be alive.” In the second case, it was held that in case a party moves the Court to be enjoined as a party, “there is no doubt anymore that if a party wishes to be joined in a matter he or she must move the Court during the pendency of the proceedings in that matter... the main point is that it (suit) is still alive.”
29. Similarly, in Leonard Kimeu Mwanthi v Rukaria M’twerandu M’iringu; Nathaniel Kithinji Ikiugu & 4 others (Intended Interested Parties) [2021] eKLR, Lady Justice Mbugua J stated, “A party claiming to be enjoined in proceedings must have an interest in the pending litigation...”
30. In the present suit, the 2nd defendant’s counsel submitted that the applicants in this application are the current officials of the association and therefore they are the only persons who are in the correct position to tell the court on what point they have gotten pertaining the issuance of title deeds. This means that they should be involved in the case to ensure that the court is up to date with the correct position on the issuance of title deeds.
31. That may be so, however, from the facts of the instant case, the present suit was settled and/or withdrawn by a consent dated 5/12/2012. The said consent was subsequently adopted as a judgment



of this Court. The file was initially closed on 9/11/2019 and later on 20/02/2023. I have perused the Court file and there is no application before me to review and/or set aside the Consent Judgment that withdrew this present suit.

32. This suit has been determined. It is not proceeding as it has been finalized pursuant to the consent dated 5/12/2012. Therefore, this stage is not appropriate for the application of this nature. It is worth noting that an application for joinder of an interested party may be made even at the appellate stage of the proceedings. The only condition to be met first is that the proceedings are still alive. The same has not been demonstrated.

Disposal order

33. This matter was determined by a consent judgment. The present suit was determined and withdrawn by the consent dated 5/12/2012. It is trite that a consent judgement is a judgement arrived after the consent of the parties that is to say the parties agreed to determine their matter in the manner stated in the consent judgement. That judgement is as well a valid judgment of the Court once the Court adopted it. I have not seen any evidence to suggest that the same has been reviewed, set aside appealed and or varied.
34. For avoidance of doubt, the present suit stands as withdrawn. The suit was compromised by a consent order. The suit was determined and there is no active suit. I have perused the Court file and I note that there is no application for review, vary and/or set aside the Consent Judgment that determined this present suit.
35. Taking into account the aforementioned circumstances, there is no suit in which the Applicants can be enjoined as Interested Parties as the present suit was withdrawn pursuant to the Consent dated 5/12/2012. Consequently, the Court finds and holds that the Application dated 12/06/2023 is devoid of merit and therefore fails. The same is hereby dismissed. There shall be no order as to costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI ON THIS 6TH DAY OF MARCH, 2024.

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MOGENI J

JUDGE

In the virtual Presence of:-

Mr. Peter Kamau Mwangi for the 1st Plaintiff

None appearance for the 2nd, 3rd and 4th Defendants

Mr. Kasimu for the Defendants

Ms. Caroline Sagina: Court Assistant

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MOGENI J

JUDGE

