



**Kebiro v Nyakundi; Ndubi (Interested Party) (Environment & Land Case 545 of 2013) [2024] KEELC 3696 (KLR) (8 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3696 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 545 OF 2013**

**EO OBAGA, J**

**MAY 8, 2024**

**BETWEEN**

**ZIPPORAH NYANGARA KEBIRO ..... PLAINTIFF**

**AND**

**HELEN KEMUNTO NYAKUNDI ..... DEFENDANT**

**AND**

**GLADYS OMANDI NDUBI ..... INTERESTED PARTY**

**RULING**

1. This suit was filed by John Onsumu Kebiro against the defendant, Hellen Kemunto Nyakundi. The hearing proceeded ex-parte and a judgement was entered against the defendant who was ordered to vacate the suit premises within 30 days from 6.12.2016.
2. The plaintiff who is now deceased was husband to the defendant but they divorced in the United States of America on 18.4.2007.
3. On 19.10.2023, the defendant filed an application seeking to set aside the ex-parte judgement so that she could be heard in her defence. Before this application could be heard, the advocates for the parties entered into a consent setting aside the ex-parte judgement and declaring the defendant as the sole owner of the suit properties.
4. On 23.10.2023 Zipporah Nyangara Kebiro was brought in place of John Onsumu Kebiro (Deceased) as plaintiff. A decree was extracted and those occupying the suit premises were evicted therefrom.
5. The interested party who states that she is the widow of the deceased filed an application seeking to set aside the consent which was entered on 23.10.2023. Before this application could be heard, the plaintiff raised a preliminary objection on the following grounds: -



- i. That plaintiff has no cause of action against the 1<sup>st</sup> plaintiff.
  - ii. That subsequently the applicant is a stranger to the proceedings.
  - iii. That the suit application is fatally defective and an abuse of the court process.
  - iv. That this application is frivolous, vexatious and abuse of the court process.
  - v. That the application is a duplicitous and offends the set rules.
  - vi. That the applicant has no locus standi to bring the application to court.
6. The parties agreed to dispose of the preliminary objection by way of written submissions. The plaintiff filed her submissions on 16.2.2024. The interested party filed her submissions on 13.3.2024.
  7. The plaintiff submitted that the interested party does not have locus standi to bring the application and that she is not entitled to be joined in these proceedings as an interested party. The Plaintiff argues that the Interested party has not applied to be joined in these proceedings and that in any case there are no pending proceedings in which the interested party can be joined.
  8. The Plaintiff relied on the case of *Florence Nafula Ayodi & 5 others v Jonathan Ayodi Ligure v John Tabalya Mukite & another; Benson Girenege Kidiavai & 67 others* (Applicants/intended Interested parties) [2021] eKLR, where the court held that in case a party wishes to be joined in a matter, the case must be either be at “nascent or other stages but must be alive.”
  9. The plaintiff also relied on the case of *Elizabeth Nabangala Wekesa v Erick Omwamba & 3 others, Esther Momanyi Omwamba* (Applicant) [2021] eKLR where it was held that in case a party moves the court to be joined as an interested party, 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.”
  10. The interested party submitted that she has locus standi in that she obtained grant of letters ad litem in Eldoret Chief Magistrate’s Court in Succession Cause No. 196 of 2017. The interested party further submitted that a party can even be joined as an interested party after judgment. She relied on the case of *David Kiptugen v Commissioner of Lands, Nairobi & 4 others* [2016] where the Court of Appeal stated as follows:-

“We agree with Ms. Kirui that whatever the outcome of the appeal, if the applicant is not joined in this appeal, he will be deprived of an opportunity to be heard on his claim to the ownership of the suit land. That will of course be unconstitutional and against the rules of natural justice.”

11. I have considered the submissions by the parties herein. The only issue for determination is whether the grounds raised by the plaintiff are pure points of law. Grounds (i) to (v) do not raise any pure point of law which can lead to disposal of the application by the interested party. On the issue of locus standi, the interested party has obtained a limited grant ad litem vide Eldoret Chief Magistrate Succession Cause No. 196 of 2017. I therefore find no merit in the preliminary objection which is dismissed with costs to the Interested party.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 8TH DAY OF MAY, 2024.**

**E. O. OBAGA**

**JUDGE**



In the virtual presence of;

Mr. Keter for Interested party/Applicant.

Mr. Nyachiro for Plaintiff.

Mr. Ndege for defendant.

Court Assistant –Laban

**E. O. OBAGA**

**JUDGE**

