



**Railways Housing Co-operative Society Limited v Gatome t/a Gatome Associates; Maingi & 2 others (Proposed Interested Parties) (Environment & Land Case 52 of 2020) [2024] KEELC 4440 (KLR) (3 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4440 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 52 OF 2020  
CA OCHIENG, J  
JUNE 3, 2024**

**BETWEEN**

**RAILWAYS HOUSING CO-OPERATIVE SOCIETY LIMITED ..... PLAINTIFF**

**AND**

**JAMEES MWARARI GATOME T/A GATOME ASSOCIATES ..... DEFENDANT**

**AND**

**CATHERINE N'THENYA MAINGI ..... PROPOSED INTERESTED PARTY**

**LUCY MUTHONI NGARI ..... PROPOSED INTERESTED PARTY**

**BIGITA JOYCE KERUBO ..... PROPOSED INTERESTED PARTY**

**RULING**

1. What is before Court for determination is the proposed Interested Parties Notice of Motion Application dated the 3<sup>rd</sup> August, 2023 brought pursuant to Order 10 Rule 11 of the [Civil Procedure Rules](#) as well as Section 3A of the [Civil Procedure Act](#), seeking the following Orders:-
  - a. Spent
  - b. That the proposed Interested Parties be enjoined in this case.
  - c. Spent
  - d. That costs of this Application be provided for.
2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of CATHERINE N'THENYA MAINGI where she deposes that she has authority of the two other Applicants', to swear this Affidavit. She claims to be the registered owner of Land Title numbers LR



- 7340/3203 and 3204 respectively. She avers that the 2<sup>nd</sup> proposed Interested Party is the registered owner of LR No. 7340/ 3235 while the 3<sup>rd</sup> proposed Interested Party is the proprietor of LR No. 7340/3205 respectively. She explains that there is an application dated the 23<sup>rd</sup> September, 2023 which seeks cancellation of their titles. She contends that they were shocked to learn that the Plaintiff and Defendant were litigating over their land without their knowledge nor participation. She urges the court to join them in these proceedings to allow them participate in the aforesaid application. Further, that they have a good defence to the Plaintiff's claim, on their titles. She insists that unless the orders sought are granted, they will suffer irreparable loss and damage.
3. The Plaintiff opposed the instant by filing a Replying Affidavit sworn by its Treasurer Aggrey Ogotu where he deposes that there is no written express authority to demonstrate that the 1<sup>st</sup> Interested Party is authorized by the 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties' respectively. He avers that LR No. 7340/3203 and 3204 belong to the Plaintiff and in the event there was a transfer of the said properties, the same was done fraudulently by the Applicants', without involvement of the Plaintiff. He explains that the 1<sup>st</sup> and 3<sup>rd</sup> Applicants ceased to be employees of the Plaintiff, because of engaging in fraudulent activities which forced the Plaintiff to publish in the Daily Nation of 25<sup>th</sup> July, 2019. He contends that the 2<sup>nd</sup> Applicant is a spouse to the Plaintiff's former treasurer namely Patrick Ngari Njeru, the one who allegedly signed the transfer form annexed to the instant Application. Further, that the said Patrick Ngari Njeru was suspended from his duties as a Treasurer due to among other things obstructing the processing of titles in respect to LR No. 7340/95. He avers that, when the alleged transfers were done, the said titles were in possession of the Defendant and the same were subject to the proceedings herein, of which Judgment was delivered in favour of the Plaintiff and the Defendant ordered to supply the titles to the Plaintiff.
  4. He argues that, the annexures "CNM 1 – 4" are forgeries and highlights the anomalies thereon. He states that the transfer annexed by the Applicants' is not sealed with the common seal of the Plaintiff. Further, the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants' have not attached any Transfer Instruments as well as produce documentation to demonstrate that their purported transactions were done. He reiterates that the aforementioned properties were incapable of being transferred to the Applicants' as the titles were in possession of the Defendant.
  5. He reaffirms that, the said titles being LR Nos. 7340/3331, 7340/3235, 7340/3203, 7340/3204 and 7340/3205 were subject to the hearing in this suit and vide a Judgment delivered on 9<sup>th</sup> May, 2022, the Defendant was ordered to furnish the original titles to the Plaintiff, which it failed to do so, culminating in an Application for contempt. Further, that the Applicants' Counsel has been part of these proceedings and vide a letter dated the 28<sup>th</sup> October, 2019, the said Counsel wrote to the Plaintiff indicating that he was acting for the 164 residents of Mavoko Municipality Block 7340/95 whose subdivision resulted into LR Nos. 7340/3331, 7340/3235, 7340/3203, 7340/3204 and 7340/3205 respectively.
  6. He argues that the Counsel for the Applicants' drew the said letter demanding for the completion of the conveyance of the plots and processing of the titles in the names of the 164 clients and the averments that the Applicants' were not aware of the instant proceedings is false. He made reference to the orders granted by the court and contended that the Defendant failed to supply titles being LR Nos. 7340/3331, 7340/3235, 7340/3203, 7340/3204 and 7340/3205 which are allegedly owned by the Applicants. The Defendant did not oppose the instant Application which was canvassed by way of written submissions.



## Analysis and Determination

7. Upon consideration of the Notice of Motion Application dated the 3<sup>rd</sup> August, 2024, including the respective affidavits, annexures and rivaling submissions, the only issue for determination is whether the Intended Interested Parties should be enjoined in these proceedings.
8. I note this matter had been concluded vide a Judgment dated the 9<sup>th</sup> May, 2022 where the Court directed the Defendant to deliver in the name of the Plaintiff, 120 titles namely Land Reference Numbers 3343, 31803181, 3182, 3183, 3184, 3186, 3187, 3188, 3190, 3248, 3249, 3250, 3251, 3252,, 3253, 3255, 3256, 3257, 3258, 3259, 3260, 3261, 3262, 3288, 3287, 3286, 3273, 3272, 3270, 3269, 3268, 3265, 3264, 3263, 3247, 3246, 3244, 3279, 3280, 3281, 3282, 3283, 3284, 3285, 3320, 3323, 3319, 3316, 3312, 3311, 3308, 3307, 3306, 3309, 3310, 3313, 3314, 3317, 3318, 3321, 3322, 3325,3328, 3341, 3340, 3338, 3337, 3335, 3334, 3333, 3332, 3339, 3342, 83299, 3300, 3303, 3304, 3305, 3302, 3301, 3292, 3296, 3297, 3243, 3242, 3241, 3240, 3239, 3237, 3236, 3224, 3227, 3229, 3230, 3231, 3235, 3221, 3219, 3218, 3217, 3214, 3213, 3212, 3203, 3204, 3205, 3205, 3206, 3210, 3211, 3197, 3196, 3195, 3192, 3191, 3330, 3200, 3199, 3198.
9. The Plaintiff claims the Defendant is yet to release four titles for LR Nos. 3235, 3203, 3204 and 3205 respectively, but the Defendant in its Replying Affidavit dated the 22<sup>nd</sup> May, 2023 in response to the Plaintiff's Application for contempt, confirms forwarding the said titles on the 29<sup>th</sup> May, 2018 personally to one Mr. Patrick K. Njeru, the then Treasurer of the Plaintiff. During the pendency of the Application to cite the Defendant for contempt, the intended Interested Parties filed the instant Application seeking joinder, claiming they own the said LR Nos. 7340/3235, 7340/3202, 7340/3203 and 3204 respectively.
10. On description of an Interested Party, *Black's Law Dictionary*, 9<sup>th</sup> Edition, states that it is: "A party who has a recognizable stake (and therefore standing) in a matter."
11. On joinder to proceedings, Order 1 Rule 10 (2) of the *Civil Procedure Rules* stipulates that:-
  - "(2) 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."
12. In the case of *Trusted Society of Human Rights Alliance V Mumo Matemu & 5 Others* (2015) eKLR the Court defined an Interested Party 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."



13. While in the case of *Francis Karioko Muruatetu & another v Republic & 5 others* [2016] eKLR (Petition No. 15 of 2015), the Supreme Court provided parameters to be considered for joinder of an Interested Party and provided inter alia:-

“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: 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:- 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.”

14. Further, in the case of *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others* [2017] eKLR, Mativo. J (as he then was) stated that:-

“A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights. In determining whether or not an applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party the true test lies not so much in an analysis of what are the constituents of the applicant's rights, but rather in what would be the result on the subject-matter of the action if those rights could be established. It is apparent that a party claiming to be enjoined in proceedings must have an interest in the pending litigation, but the interest must be legal, identifiable or demonstrate a duty.”

15. On perusal of the annexures herein, I note Catherine Nthenya Maingi got her title for 7340/3204 on 1<sup>st</sup> October, 2019. While Lucy Muthoni Ngari was registered as proprietor of LR No. 7340/ 3235 on 1<sup>st</sup> October, 2019. Further, Bigita Joyce Kerubo was registered as owner of LR No. 7340/3205 on 1<sup>st</sup> October, 2019 respectively. The Plaintiff filed its suit on 7<sup>th</sup> July, 2020 after the aforementioned titles had been issued. The Applicants' hence seek joinder, which has been vehemently opposed by the Plaintiff.
16. In the case of *Alton Homes Limited & another v Davis Nathan Chelogoi & 5 others* [2020] eKLR, the Court of Appeal while dealing with an Appeal on joinder post Judgment, upheld the trial court's decision where the Judge had allowed joinder of an Interested Party after Judgment had been entered between two parties, without involving him, yet he was in occupation of the suit land.
17. Based on the facts as presented while relying on the legal provisions I have quoted and associating myself with the cited decisions, it is my considered view that the Applicants' as registered proprietors of the suit plots have a stake in these proceedings and even though Judgment had been delivered, but since this suit is at an execution stage, their involvement in these proceedings is necessary to enable the court effectually and completely adjudicate upon as well as settle all questions involved in the dispute. Further, they will be affected by any decision from the execution process. I opine that the Plaintiff has failed to demonstrate what prejudice it stands to suffer if the proposed Interested Parties were joined in



these proceedings and I find that I will be curtailing their rights to be heard, if I denied them audience, yet their titles are affected.

18. It is against the foregoing that I find the Notice of Motion Application dated the 3<sup>rd</sup> August, 2023 merited and will allow it. Costs will be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 3<sup>RD</sup> DAY OF JUNE, 2024**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Kamunde for Plaintiff

Muthama for Applicant

Githui for Defendant

Court Assistant – Simon/Ashley

