Hussein v Islamic Foundation Kenya & 2 others (Land Case E157 of 2024) [2024] KEELC 6757 (KLR) (9 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6757 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

LAND CASE E157 OF 2024

JA MOGENI, J

OCTOBER 9, 2024

BETWEEN

ABDISALAN ADAN HUSSEIN ..... PLAINTIFF

AND

ISLAMIC FOUNDATION KENYA ..... 1ST DEFENDANT

SALEPUSH INVESTMENTS LIMITED ..... 2ND DEFENDANT

SHYAM GENERAL MERCHANTS LIMITED ..... 3RD DEFENDANT

RULING

1. The application for which I write this ruling is the one dated 08/05/2024 where the applicants seek joinder. The prayers made in the application are:

   a. Spent

   b. That this Honorable Court be pleased to enjoin Sadaff Shokatali Habib, Sabahatt Shokatali Habib, Paragon Property Consultants Limited, and the Estate of Shokatali Gulamhussein Habib alias Shokali Gulamhussein Habib as the 1st, 2nd and 3rd Interested Parties respectively in this suit and the interested parties be allowed to respond to the plaintiff's application dated 18th April and to generally participate in the suit

   c. Costs of this Application be provided for.

2. Which application is premised upon the grounds of the application which are enumerated from 1-19 and supported by the Affidavit sworn on 8/05/2024 by Kepha Ogutu the Property Managing Agent and a Supplementary Affidavit by the same Kepha Ogutu on 6/6/2024 in response to the replying affidavit of the plaintiff herein sworn on 27/05/2024.

3. The application is opposed by the plaintiff/respondent where he has stated that the application for joinder is a backdoor on Application disguised as a joinder application. That the issue before the court is about encroachment which has led to destruction of the plaintiff's wall, power line, driveway and undermining of the structural integrity of the house.

4. The plaintiff contends that the issue of property was resolved by the Court of Appeal in its ruling of 26/05/2024 by staying the ruling of Justice Mbugua in ELC Case No. 300 and this according to the plaintiff confirmed prima facie that he is the owner of the suit property. Thus the Proposed Interested Parties application is misconceived an abuse of the court process since the issue of ownership is not in contention as evidenced by the annexed sublease marked as AAH-1. The plaintiff referred to the Supreme Court case of *Francis Karioki Muruatetu & Another vs Republic & 5 Others* where the court enumerated three (3) principles for joinder.

5. The parties were directed to file their submissions to the application.

Analysis and Determination

6. I am of the considered opinion that the sole issue for determination arising therefrom is just one and this is: -

   i. Whether the Applicant should be enjoined as an Interested Party in the proceedings herein.

Whether the Applicants should be Enjoined as Proposed Interested Parties in the Proceedings herein.

7. 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."

8. The Applicants herein have sought to be enjoined as an Interested Parties to the suit for the reason that ownership of IR 86014 ownership was transferred from the original developer Bryca Enterprises Limited to Shokatali Gulamhussein Habib the late father of the 1st and 2nd Proposed Interested Parties on 11/02/2010. That by way of gift on 29/05/2013, the late Shokatali Gulamhussein Habib transferred his property IR 86014 and the developments thereon (a massionette and servants quarter) to the proposed 1st and 2nd Proposed Interested Parties. As evidenced by the annexture marked Ko-1 attached to the affidavit sworn by Kepha Ogutu.

9. However, it is this same property that the plaintiff herein lays claim to and which is the subject of the plaint. The proposed interested parties were not enjoined in the ELC Case No. E300 of 2022 in which the Honorable Judge issued orders for eviction against the plaintiff herein who was the defendant in the said suit.

10. At this stage, it would be difficult to delve into issues of ownership of the suit property these are matters to be determined during the hearing of the main suit where parties will adduce their evidence on their different claims. For now what this court is called upon to do is to adjudicate on the issue of joinder of the proposed interested parties.

11. The first step will be to define who an Interested Party is in order to consider whether the Applicants herein fall 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;

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

13. Further, The Supreme Court of Kenya in *Communications Commission of Kenya and 4 Others v 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:
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> i. Joinder of a person because his presence will result in the complete settlement of all the question involved in the Proceedings;
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> 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.?"

14. Subsequently, having defined who an Interested Party is, it is important to then determine whether the Applicants satisfy the criteria for joinder as Interested Parties in the Proceedings.

15. The Apex Court, the Supreme Court has settled for us the law on joinder of interested parties to suits. In the case of *Francis K. Muruatetu and another v Republic & 5 others* [2016] eKLR, the court set out identifiable key elements for consideration in an application for joinder as an Interested Party. The elements are as follows: -

> " a. 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.
>
> b. 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.

c. Lastly, a party must, in its application, set out the case and/or submission 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."

16. 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."

17. The Applicants aver that the plaintiff fraudulently and illegally acquired the ownership of the property known as IR 86014 and has annexed the fraudulently acquired title for IR 86014 and is claiming that the same is the title document for LR 1870/III/417.

18. In fully adopting the reasoning in the above mentioned cases; I do find that the Applicants have demonstrated on a balance of probabilities that they have a clear and identifiable interest and stake in the present suit and have made relevant submissions to the issue in dispute and further explained how they are likely to suffer prejudice should their application be denied; being the alleged tenants in common in equal shares of the suit property. Their interest in my opinion goes further than being merely affected by the judgment or order

19. Thus I do find that their presence before the court is necessary and it will enable the court to effectually and completely answer questions on ownership of the suit property among others issues involved in the suit.

Disposal Orders

20. In the upshot of the foregoing analysis, I accordingly find that the Application dated 08/05/2024 is merited and is therefore allowed as prayed. The Applicants are directed to regularize their position and file all the necessary documents within 14 days from the date of this Ruling.

21. Costs shall be in the cause.

22. Mention on 22/10/2024 for directions on disposal of the application and suit.

    It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 9TH DAY OF OCTOBER 2024.

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MOGENI J

JUDGE

In the virtual presence of:-

Mr. Mutara for Applicant

Mr. Hussein for 1st Defendant

Mrs. Fundi 2nd and 3rd Defendant

Mr. Macharia for Interested parties (1st - 3rd Proposed Interested)

Caroline Sagina - Court Assistant