



James v Mami’s Motor World Limited & 4 others; KCB Bank Limited (Interested Party) (Environment and Land Case Civil Suit E030 of 2022) [2024] KEELC 6798 (KLR) (16 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6798 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE CIVIL SUIT E030 OF 2022
MAO ODENY, J
OCTOBER 16, 2024**

BETWEEN

JANE NJERI JAMES PLAINTIFF

AND

MAM’S MOTOR WORLD LIMITED 1ST DEFENDANT

MINISTRY OF DEVOLUTION 2ND DEFENDANT

MINISTRY OF LANDS & PHYSICAL PLANNING 3RD DEFENDANT

COUNTY GOVERNMENT OF NAKURU 4TH DEFENDANT

DISTRICT LAND REGISTRAR, NAKURU 5TH DEFENDANT

AND

KCB BANK LIMITED INTERESTED PARTY

RULING

1. This ruling is in respect of a Notice of Motion dated 27th November, 2023 by the Intended Interested Party/Applicant seeking the following orders:
 - a. That the applicant herein be joined as interested party and thereafter be allowed to file such pleadings that may be necessary for the effective, efficient and final determination of this matter.
 - b. That cost of this application be in the cause.
2. The application was supported by the annexed affidavit of Velma Atieno, the Legal Officer of the Applicant where she deponed that the Plaintiff herein applied for a facility in 2014 from the applicant



and the suit property herein being land title number Nakuru Municipality Block 20/111 was offered as a security. She further deponed that on 5th September, 2014, a legal charge of Kshs 21,300,000 was registered in favour of the Applicant over the said parcel of land and that the charge is still valid and binding upon parties therein.

3. The deponent further stated that in exercise of the Applicant's statutory power of sale, the suit property was sold via public auction in October, 2020 but the completion of the transaction is still pending due to multiplicity of suits by the Plaintiff. It was the Applicant's case that to protect its interests in the suit property, the applicant has previously participated in all suits involving the suit property being Nakuru E.L.C 163 of 2014, Nakuru E.L.C Number E010 of 2020, Nakuru High Court Civil Suit Number E003 of 2021 and Nakuru CMELC E.L.C Number E017 of 2021. She urged the court to allow the application for joinder in this suit as an interested party to enable them protect its interests.
4. The Plaintiff filed a Replying Affidavit dated 19th June, 2024 where she deponed that sometime in October 2020, the intended Interested party purportedly exercised its statutory power of sale without a current valuation of her property. She stated that she challenged the sale of her property in two suits and she joined the intended interested party as a Defendant in both suits since it was a necessary party to the resolution of the issues in those suits.
5. It was the Plaintiff's case that she has since withdrawn Nakuru ELC No E10 of 2020 and the auction sale of her property is currently the subject of a challenge in in Nakuru HCCC No E003 of 2021 in which she has sued the Intended Interested Party as the 1st Defendant.
6. The Plaintiff further deponed that the Intended Interested Party having already exercised its statutory power of sale, have no interest whatsoever in the suit property and that the Intended Interested party ought to pursue any claims that they may have in Nakuru HCCC NO E003 of 2021 where they are a proper party and not in this suit. She further stated that the Intended Interested party has no role to play and even if the applicant is joined, they cannot file any pleadings since they will neither be a plaintiff nor a defendant herein.
7. The Intended Interested party filed a further supporting affidavit dated 19th September, 2024 sworn by Velma Atieno who deponed that it is actually the Plaintiff who does not have a legitimate claim over the suit property and that the Intended interested party has a higher stake in the suit property than the Plaintiff.

Applicant's Submissions

8. Counsel for the Applicant filed submissions dated 19th September, 2024 and identified the issue for determination as to whether the applicant should be joined as an interested party.
9. Counsel relied on Order 1 Rule 10 (2) of the Civil Procedure Rules and the cases of Communications Commission of Kenya and 4 others vs Royal Media Services Limited & 7 others Petition No 15 of 2014 eKLR and Parmet Ole Kiseet vs Sylvia Moi & 3 others; Ndegwa Kabogo (Interested party) [2021] eKLR.
10. Mr. Mburu submitted that the applicant is a necessary party to the instant suit and it seeks to secure its interests as a chargee and facilitate the effect of discharge of the land parcel Nakuru Municipality Block 20/111, facilitate completion and to ensure that a clean title passes to the purchaser of the suit property once the suit is determined.
11. Counsel further submitted that the intended interested party has previously participated in all suits involving the suit property being Nakuru E.L.C 163 of 2014, Nakuru E.L.C Number E010 of 2020,



Nakuru High Court Civil Suit Number E003 of 2021 and Nakuru CMELC E.L.C Number E017 of 2021 hence has an identifiable interest in this suit.

12. Counsel relied on the case of Hopf vs Director of Survey *Œ 2 others; Sakaja Œ 2 others (Interested Parties) (Environment and Land Case 4 of 2021)* [2022] KEELC 6 (KLR) and urged the Honourable court to allow the application as prayed.

Plaintiff's Submissions

13. Counsel for the Plaintiff filed submissions dated 20th June 2024 and identified the issue for determination as whether the Applicant should be joined as an Interested Party herein.
14. Counsel also relied on Order 1 Rule 10 (2) of the Civil Procedure Rules and the cases of Joseph Leboo & 2 others vs Director Kenya Forest Services & another [2013] eKLR, Trusted Society of Human Rights Alliance vs Mumo Matemo & 5 others [2014] eKLR, Benjamin K. Kipkulei vs The County Government of Mombasa and Another [2015] eKLR and Evans Odhiambo Kidero vs Director of Public Prosecutions & 3 others [2014] eKLR.
15. Mr. Ratemo submitted that Order 51 rule 14 (3) provides that any applicant upon whom a replying affidavit or statement of grounds of opposition has been served may, with the leave of the court file a supplementary affidavit. Counsel submitted that the record shows that on 10th June, 2024, the court gave directions on the disposal of the application and that the applicant did not crave for leave to file a supplementary affidavit hence no leave was granted. Counsel relied on the case of Republic vs Chief of General Staff & another [2017] eKLR and urged the court to dismiss the application with costs.

Analysis And Determination

16. The issue that for determination is whether the applicant herein has met the threshold for joinder as interested party.
17. Although the *Civil Procedure Act* does not expressly provide for joinder of Interested Parties to a suit, courts have used Order 1 Rule 10(2) of the Civil Procedure Rules and precedents set giving the essentials that must be met before a party is joined as an Interested Party.
18. 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 and settle all questions involved in the suit, be added.”
19. In the case of Judicial Service Commission –v- Speaker of the National Assembly & another [2013] eKLR, the High Court defined an Interested Party as follows:

“...a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to urge the Court to make a determination favourable to his stake in the proceedings.”
20. It is not in dispute that the Applicant gave the Respondent a facility of Kshs. 21, 300,000 vide a legal charge on 5th September 2014. The Plaintiff in her affidavit and submissions in opposition to this application admits this. The Plaintiff further admits that the Applicant was joined or sued in Nakuru



E.L.C 163 of 2014, Nakuru E.L.C Number E010 of 2020, Nakuru High Court Civil Suit Number E003 of 2021 and Nakuru CMELC E.L.C Number E017 of 2021

21. The Suit land in respect of this case is the one that was charged as security to secure the facility advanced to the plaintiff. Both parties admit that the Applicant exercised its statutory power of sale but the sale has not yet been concluded, as processes as discharge of charge have not yet been perfected. The charge is still binding on the parties and therefore the applicant is within its right to safeguard its interest. This is purely an identifiable stake.
22. The Plaintiff argues that since the Applicant exercised its statutory power of sale then it has not business in the current case. What is the plaintiff afraid of and yet the applicant is participating in other suits involving the same suit land in other cases which are yet to be determined. The argument with due respect does not hold any water.
23. The court has the discretion to join or strike out parties in a suit. A party seeking to be joined must establish that it has a legal stake in the suit and that it is a necessary party to the suit. Once a party is joined, they are still under a duty to prove the stake that they claim, as it cannot be a walk in the park once joined.
24. The Supreme court of Kenya in Francis K. Muruatetu and another v. Republic & 5 others (2016) eKLR set out factors for consideration in an application for joinder as an Interested Party. The Learned Judges held as follows:

“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 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.”
25. In the case of Skov Estate Limited & 5 others v Agricultural Development Corporation & another [2015] eKLR the Learned Judge in dealing with the question of an Interested Party seeking to be joined 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.

...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. This court finds that the Applicant has demonstrated that it has a clear and identifiable interest and stake in this suit as it seeks to secure the interests of a charge of Kshs 21,300,000 that was registered in favour of the Plaintiff over parcel of land known as Nakuru Municipality block 20/111.

27. Consequently, the application dated 27th November, 2023 is hereby allowed with costs in the cause.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 16TH DAY OF OCTOBER 2024.

M. A. ODENY

JUDGE

