



**Maaui Resort Limited v Narok County Government; Namiry
(Proposed Interested Party) (Environment and Land Case Civil Suit
181 of 2017) [2024] KEELC 6745 (KLR) (15 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6745 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND CASE CIVIL SUIT 181 OF 2017
CG MBOGO, J
OCTOBER 15, 2024**

BETWEEN

MAAU RESORT LIMITED PLAINTIFF

AND

NAROK COUNTY GOVERNMENT DEFENDANT

AND

JOHN MARK OLE NAMIRY PROPOSED INTERESTED PARTY

RULING

1. Before this court for determination is the notice of motion dated 13th May, 2024 filed by the proposed interested party/ applicant. The application is expressed to be brought under Article 159 and Article 40 of the Constitution, Sections 1A,1B,3,3A and 63 (c) and (e) of the Civil Procedure Act and Order 8 Rule 3 and 10 (2), Order 40 (1) and Rules 3 and 4 (1) and Order 51 Rules 1, 3, and 13 (2) of the Civil Procedure Rules seeking the following orders: -
 1. Spent.
 2. That pending the hearing and determination of the plaintiff’s suit this honourable court be pleased to issue an order of injunction restraining the plaintiff/ respondent, his servants, licensees, agents or any other persons acting on his behalf from howsoever continuing with any development or interfering in any manner with plot number 300, Block 7 formerly plot No. 1 Block 7 at Narok.
 3. That this honourable court be pleased to vary, discharge and/or set aside the orders issued on 8th April, 2021 and all consequential orders thereto.



4. That this honourable court be pleased to enjoin the proposed interested party/applicant as a party to these proceedings.
5. That costs be in the cause.
2. The application is premised on the grounds inter alia that the proposed interested party/ applicant is the legitimate allottee and owner of plot number 300 Block 7 formerly plot no. 1 Block 7 at Narok having been duly allocated the same by the then defunct Narok County Council.
3. The application is supported by the affidavit of the proposed interested party/ applicant sworn on even date. The proposed interested party/ applicant deposed that he has been enjoying quiet and peaceful possession of his plot until the plaintiff/ respondent encroached on the said land on the strength of impugned court orders with the intent to dispossess him of his property. He deposed that he has dutifully paid the land rent and rates to the defendant/respondent.
4. The proposed interested party/ applicant further deposed that he has raised several complaints with the defendant/ respondent of third parties who want to dispossess him of his rightful plot, by making a complaint to the Deputy County Commissioner's office, the Narok County Peace and Development Officer vide letters dated 23rd December, 2022 and 14th February, 2023. He deposed that the Sub County Administrator Narok North vide the letter dated 10th March, 2018 confirmed that the suit plot belongs to him.
5. The proposed interested party/ applicant further deposed that the plaintiff/ respondent has interpreted the injunction orders to mean conclusive evidence that it is the rightful owner of the plot to justify its illegal claim over his parcel of land, and that the orders obtained have by extension deprived him of his right to property as protected by law. He went on to depose that in obtaining the orders, the plaintiff/respondent concealed from the court all the relevant facts necessary to guide the court in issuing the impugned orders. Further, that the intention of the plaintiff/ respondent is to sanitise and legitimize its fraudulent activities. The proposed interested party/ applicant deposed that it is fair and just that the orders be vacated and that his presence before this court is necessary to enable the court effectually and entirely adjudicate on the matter.
6. The proposed interested party/ applicant deposed that the suit plot being allocated to him, is no longer available for re-allocation to the plaintiff/ respondent or anyone else.
7. The application was opposed by the undated replying affidavit of the plaintiff/ respondent sworn by Patiye Naikumi. The plaintiff/ respondent deposed that it is the registered owner of plot no. 300/7 Narok Township from the year 2010 with a valid plot allotment letter. The plaintiff/ respondent further deposed it has indefeasible rights to the suit plot, and the proposed interested party/ applicant has failed to draw with clarity the nexus between plot no. 1 and plot no. 300 block 7 as it is alleged. He deposed that the records held by the defendant/ respondent confirm that the suit plot belongs to the plaintiff/ respondent, and that there has been no change in number and or ownership or any legal challenge to its title save for the existent case. Further, he deposed that the annexures in the application are fraudulent and suspicious with some of the defendant/ respondent's officers ceding ownership to a third party.
8. The plaintiff/ respondent further deposed that the existing Narok town development plan clearly brings the distinction and existence of plot numbers 1 and that of plot number 300 which fact the defendant/ respondent is fully aware of. Further, that it is intriguing why a party would want to enforce his rights to property over thirty years from allotment.



9. The plaintiff/ respondent further deposed that the proposed interested party/ applicant has not demonstrated a prima facie case of sufficient interest in the suit property to warrant being enjoined in these proceedings. Further, that he has not shown any credible evidence of ownership and thus, stands no chance to suffer any harm as alleged.
10. The application was further opposed by the replying affidavit of the defendant/ respondent sworn on 9th July, 2024 by Godfrey Kwena. The defendant/ respondent deposed that the allotment letter produced by the proposed interested party/ applicant has no records of minutes by either the Town Council of Narok's Planning Committee/Plots Allocation Committee or the Full Council. He deposed that the only documents in existence in the custody of the defendants/ respondent's indicate that the suit plot is public land, and reserved for a public purpose which is the National Museums of Kenya. He also deposed that for this reason, the application is ill advised, misconceived and unmaintainable in law.
11. The application was canvassed by way of written submissions. On 14th October, 2024 the proposed interested party/ applicant filed his written submissions dated 30th September, 2024 where he raised two issues for determination as follows: -
 1. Whether the proposed interested party should be enjoined in this suit
 2. Whether the application dated 13th May, 2024 meets the threshold for grant of an injunction.
12. On the first issue, the proposed interested party/ applicant submitted that this suit has neither been heard nor finalized making it appropriate for the application of this nature. He went on to submit that if he is not joined in this suit, he will be deprived of an opportunity to be heard on his claim to ownership of the suit property. He relied on the cases of *Leonard Kimeu Mwanthi v Rukaria M'twerandu M'iringu; Nathaniel Kitbinji Ikiugu & 4 Others (Intended Interested Parties)* [2021] eKLR, *Francis Karioko Muruatetu & Another v Republic & 5 Others* [2016] eKLR, *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others* [2015] eKLR and *Judicial Service Commission v Speaker of the National Assembly & Another* [2013] eKLR.
13. On the second issue, the proposed interested party/ applicant submitted that under Article 159 (2) of the *Constitution*, there are situations where the court in a bid to do substantive justice will give an exception to the procedure of issuing injunctions. He also he submitted that an application for injunction is an equitable remedy granted with discretion, and which requires the parties to act with utmost good faith. The proposed interested party/ applicant submitted that it is shocking to note that the plaintiff/ respondent failed to disclose to this court that he is in occupation of the suit property when it filed the instant suit.
14. While relying on the cases of *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR, and *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, the proposed interested party/ applicant submitted that he is the original allottee of plot no. 300, block 7 formerly plot no. 1 block 7 where he has been carrying on his business for over a decade. He submitted that he is in occupation of the suit property and he will suffer irreparable harm if the court does not set aside the injunction orders.
15. The plaintiff/ respondent filed its written submissions dated 12th August, 2024 where it raised three issues for determination as listed below: -
 1. Whether the proposed interested party should be enjoined in the suit.
 2. Whether the plaintiff is the legal and rightful owner of plot no. 300/7 Narok Township.
 3. Whether the application dated 13th May, 2024 meets the threshold for grant of an injunction.



16. On the first issue, the plaintiff/ respondent while relying on the case of *Francis Karioko Muruatetu & Another v Republic & 5 Others* [2016] eKLR submitted that the proposed interested party/ applicant lacks proximate personal interest. Further, that the proposed interested party/ applicant claims ownership of plot no. 1 whereas the plaintiff/ respondent is the registered proprietor of Plot No. 300/7 Narok Township which are distinct and separately located. He went on to submit that there is no nexus between the proposed interested party's claim and the plaintiff's/ respondent's property. The plaintiff/ respondent further submitted that the proposed interested party/ applicant has not demonstrated the prejudice he is likely to suffer in the event that the orders sought are not granted, and that he has never been on occupation or even remotely dealt with the property in quo.
17. The plaintiff/respondent submitted that if the wild claim of ownership by the proposed interested party/ applicant is to be entertained, the glaring delay in asserting any rights over the property further undermines the credibility and urgency of his claim, and that it is only an attempt to derail the expedited disposal of the matter by introducing unfounded and misleading narratives.
18. On the second issue, the plaintiff/ respondent submitted that it has demonstrated clear ownership of plot no. 300/7 Narok Township as it is supported by the valid documents, and once an allotment letter has been issued, the same is not available for allocation to someone else.
19. On the third issue, the plaintiff/ respondent submitted that the proposed interested party/ applicant has not met the threshold for grant of the orders of injunction having failed to provide credible evidence to prove ownership, and draw with clarity the nexus between plot no. 1 and plot no. 300 block 7.
20. The defendant/ respondent filed its written submissions dated 19th July, 2024 where it raised one issue for determination which is whether the proposed interested party/ applicant may be joined as an interested party in these proceedings. On this issue, the defendant/ respondent submitted that the proposed interested party/ applicant has come to court almost 7 years later since the matter was filed way back in 2017 which brings to question the authenticity and legitimacy of the documents adduced as evidence in support of his allegations. The defendant/respondent further submitted that if the proposed interested party was the legitimate owner, he would have instituted the suit from the onset so as to have the plaintiff/respondent evicted from the suit property.
21. The defendant/respondent further submitted that the proposed interested party/applicant will not be prejudiced in any way should the application not be allowed since it has been shown that the land has been designated for public use and it cannot be held to belong to him or any other person.
22. I have considered the application, the replies thereof and the written submissions filed by the proposed interested party/applicant, the plaintiff/respondent as well as the defendant/respondent. I am of the considered the issue for determination is whether the application has merit.
23. To begin with, it is important to point out that prayer number 3 of the application cannot issue. The reason being that there exists no injunction orders in force in favour of the plaintiff/respondent. There is on record a ruling delivered on 30th June, 2022 dismissing the notice of motion dated 19th April, 2020 filed by the plaintiff/ respondent. I also find it necessary to first and foremost determine the issue of joinder of the proposed interested party/applicant in these proceedings before delving into the issue of injunction as sought in prayer 2.
24. Order 1 Rule 10(2) of the *Civil Procedure Rules* provides that: -

“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.”

25. The relevant tests for determination whether or not to join a party in proceedings were restated by Nambuye, J (as she then was) in the case of *Kingori v Chege & 3 Others* [2002] 2 KLR 243 where the learned Judge stated that the guiding principles when an intending party is to be joined are as follows:

1. He must be a necessary party.
2. He must be a proper party.
3. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.
4. The ultimate order or decree cannot be enforced without his presence in the matter.
5. His presence is necessary to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit.

26. In, *Civicon Limited v Kivu Watt Limited and 2 Others* [2015] eKLR the court observed as follows:

“Again the power given under the rules is discretionary which discretion must be exercised judicially. The objective of these rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”

27. Let me also add that, joinder of parties is permitted by law and it can be done at any stage of the proceedings. But, joinder of a party may be refused where such joinder: will lead into practical problems of handling the existing cause of action together with one of the parties being joined; is unnecessary; or will just occasion unnecessary delay or costs on the parties in the suit. In other words, joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible to or totally different from existing cause of action or the relief. The determining factor in joinder of parties is that a common question of fact or law would arise between the existing and the intended parties.

28. In this case, the proposed interested party is seeking to be joined as a party to these proceedings. As I have understood the proposed interested party/ applicant, he has left it to the court to decide which description fits him, either as a plaintiff or as a defendant.

29. The proposed interested party/ applicant contended that he has sufficient interest in the matter by virtue of being the rightful allottee of plot number 300, Block 7 formerly plot no. 1 Block 7 at Narok. In support of his claim, the proposed interested party/ applicant annexed a copy of a letter of allocation of plot, the same being illegible as well as copies of receipts of payments of rates payable to the defendant/ respondent, and the letters dated 1st November, 2017, 22nd December, 2022, 14th February, 2023, 10th



May, 2018 and 24th September, 2018. Having carefully perused the annexures, I am satisfied that the proposed interested party/ applicant has an identifiable interest or claim in the matter before this court, and it would thus be proper to join him to ensure that all the issues arising out of the subject matter are determined once and for all.

30. Having found that the proposed interested party/ applicant is a necessary party to these proceedings, I now turn to the prayer for injunction. As earlier stated, this court has previously pronounced itself on the application for the orders of temporary injunction. As it is similar with the other parties, the proposed interested party/ applicant is also laying claim over the suit property. In other words, all the parties in this suit are laying claim on the suit property. At this stage, I find the same to be unfair to the plaintiff and defendant/ respondents for the reason that the matter had been set down for hearing of the main suit. As such I decline to grant prayer 2 of the application.
31. Arising from the above, the notice of motion dated 13th May, 2024 partially succeeds in terms of prayer 4, the proposed interested party/ applicant is hereby joined as a defendant in this suit. Costs to be in the cause. Further mention on 30th October, 2024 for further directions. Orders accordingly.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 15TH DAY OF OCTOBER, 2024.

HON. MBOGO C.G.

JUDGE

15/10/2024.

In the presence of: -

Mr. Meyoki Pere – C. A

