



**Muchiri v Gathura Investment Limited & another; Thiong'o & 2 others (Interested Parties)  
(Environment & Land Case E146 of 2022) [2024] KEELC 6828 (KLR) (14 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6828 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E146 OF 2022**

**BM EBOSO, J  
OCTOBER 14, 2024**

**BETWEEN**

**PETER THIONG'O MUCHIRI ..... PLAINTIFF**

**AND**

**GATHURA INVESTMENT LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**STEPHEN GITHARA THIONG'O ..... INTERESTED PARTY**

**JAMES MWANGI THIONG'O ..... INTERESTED PARTY**

**JOHN MUCHIRI THIONG'O ..... INTERESTED PARTY**

**RULING**

1. Peter Thiongo Muchiri [the plaintiff] initiated this suit on 28/11/2022 through a plaint dated 25/11/2022. He sought the following reliefs against M/s Gathura Investment Limited [the 1st defendant] and the Attorney General [the 2nd defendant]: (i) a permanent injunction restraining the defendants against interfering with his occupation of 6.405 acres out of land parcel numbers Githunguri/ Kimathi/776; Githunguri/ Kimathi/ 1459 and Githunguri/ Kimathi/1460"; (ii) a declaration that the said portion belongs to him (the plaintiff); (iii) a declaration that he is entitled to ownership and exclusive use, occupation and vacant possession of the portion; (iv) an order compelling the defendants to forthwith carry out survey for the parcels and issue a title to him relating to the 6.405 acres at their cost; (v) an order decreeing the Director of Surveys to formalize the subdivision of Githunguri/ Kimathi/776, Githunguri/ Kimathi/1459 and Githunguri/ Kimathi/1460 to reflect his [the plaintiff's] parcel of land as shown in the mutation forms in the event that the defendants do not produce the Registry Index Map [the RIM] and the Mutation Forms; (vi) general and exemplary damages; (vii) costs of the suit; and (viii) interest.



2. The case of the plaintiff is that he was at all material times the registered proprietor of land parcel numbers Githunguri/ Kimathi/776 measuring 12.3 acres; Githunguri/ Kimathi/ 1459 measuring 2.013 acres; and Githunguri/ Kimathi/1460 measuring 2.013 acres. He contends that he consolidated the three parcels of land and sold to the 1st defendant 10 acres out of the three consolidated parcels. It is his case that the Land Registrar and/or the District Surveyor captured the following wrong acreage in the green cards: (i) Githunguri /Kimathi/776 – 2.42 hectares [5.97 acres]; (ii) Githunguri Kimathi/1459 – 0.815 hectares [2.013 acres] and (iii) Githunguri/ Kimathi/1460 – 0.815 hectares [2.013 acres]. He adds that the 1st defendant illegally entered the land, fenced it, and has declined to allow him access to his 6.405 acres. He terms the defendants’ actions as a “fraudulent scheme”.
3. The 1st defendant filed a statement of defence dated 8/2/2023 in which it denied the contention that the three parcels of land were consolidated. It added that it purchased the three parcels of land vide a sale agreement dated 31/1/2013, adding that the impugned records relating to the acreage of Githunguri/ Kimathi/776 were made in 1978, long before it entered into the purchase agreement with the plaintiff. The 1st defendant adds that the 10 acres which it bought from the plaintiff is what it holds to date. It denies fraud.
4. There is no evidence of any defence by the 2nd defendant. Hearing of the case commenced on 7/11/2023. The plaintiff testified as PW1. He was cross-examined and re-examined. The court listed the case for further hearing on 26/6/2024.
5. Subsequently, Stephen Gathara Thiongo [1st applicant], James Mwangi Thiongo [2nd applicant] and John Muchiri Thiongo [3rd defendant] brought an application dated 20/6/2024 seeking an order joining them as interested parties in the suit. The said application is the subject of this ruling.
6. The application is premised on the grounds set out in the motion and in the supporting affidavit sworn by Stephen Gathara Thiongo on 14/6/2024. The application was canvassed through oral submissions tendered in the virtual court on 18/9/2024.
7. The case of the applicants is that in 1972, Luka Muchiri, their late grandfather, bequeathed the plaintiff and their now deceased mother [the late Teresiah Mary Thiong’o] land parcel number Githunguri/ Kimathi/665 which was subdivided into Githunguri/ Kimathi/1459 and Githunguri/ Kimathi/1460 [the two subdivisions]. The applicants contend that they were raised on the two subdivisions which constitute their ancestral home. The applicants further contend that they learnt of this suit while they were in the process of executing a court order against the plaintiff, issued in Kiambu Succession Cause No. 19 of 2022: In the Matter of the Estate of Teresiah Mary Thiong’o. They add that the aforementioned succession cause was secretly filed by the plaintiff with the intention of disinheriting them of their mother’s property.
8. It is the applicant’s case that upon perusal of the proceedings in this suit, they discovered that the plaintiff sold the two subdivisions, which is their ancestral home, without their knowledge or consent. The applicants contend that they intend to present a claim for customary trust against the plaintiff, adding that the suit land was not available for sale to the 1st defendant by the plaintiff. The applicants state that they risk being rendered homeless if the plea for joinder is not granted. The applicants add that no prejudice will be suffered by the parties given that the hearing is still ongoing and parties will have an opportunity to tender rebutting evidence.
9. Gathura Investment Limited [the 1st defendant] opposed the application through a replying affidavit sworn by Stanley Gathura Njenga on 12/9/2024 and grounds of opposition dated 12/9/2024. The 1st defendant’s case is that no meaningful purpose will be served by the applicants joining the suit given that the dispute in the suit pertains to determination of the size of land parcel number Githunguri/



Kimathi/776 and not land parcel number Githunguri/Kimathi/665. The 1st defendant contends that the applicant's dispute with the plaintiff over inheritance is a succession dispute that ought to be reserved for the Family Division of the High Court. The 1st defendant further contends that the applicants' claim for customary trust can only be canvassed in a different suit, noting that it is a distinctively separate cause of action from the one before this court. The 1st defendant adds that the application is an act of collusion between the plaintiff and the applicants, who are father and sons, in a bid to delay the determination of the suit, adding that, the applicants were at all material times aware their father [the plaintiff] sold the land to the 1st defendant. The 1st defendant argues that the suit is due for defence hearing, adding that starting the hearing afresh will occasion great injustice to the parties in terms of time, costs and effort. The 1st defendant urges the court to find that there is no legal basis for the applicants to be joined in these proceedings.

10. The court has considered the application; the response to the application; and the rival submissions that were tendered on the application. The single question to be determined in this ruling is whether the application satisfies the criteria for joinder to a civil suit as an interested party.
11. The legal framework on joinder in relation to an ordinary civil suit is contained in Order 1 rule 10(2) of the Civil Procedure Rules which provides as follows:

“(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 *Francis Karioki Muruatetu & another v Republic & 5 others* [2017] eKLR the Supreme Court outlined the following general principles on joinder to a case 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”

13. Have the applicants met the criteria for joinder as interest parties? It has been contended by the respondent and admitted by the applicants that the applicants are sons of the plaintiff. Secondly, it does emerge that whereas the applicants claim to have a customary interest in two subdivisions surveyed out of land parcel number Githunguri/ Kimathi/665, which was registered in the name of the plaintiff as an absolute proprietor in 1972, they have not bothered to initiate any independent action against



the plaintiff to ventilate their claim. They have not done so inspite of the fact that the plaintiff was registered as the absolute proprietor of parcel number Githunguri/Kimathi/665 in 1972 and charged it to secure credit facilities on three different occasions in 1973, 1975 and 1979. Neither the applicants nor their deceased mother challenged the above actions which were clearly not consistent with the manner in which a trust property should be dealt with. The view the court takes is that, nothing has prevented the applicants from filing their own suit to ventilate their interest in any of the suit lands. Having elected to do nothing in terms of independently ventilating their alleged interest, I do not think the applicants are bonafide interested parties. If they have a bonafide claim, they are at liberty to initiate independent proceedings. They will be at liberty to apply for consolidation once they initiate their independent proceedings.

14. For the above reasons, I do not think the application dated 20/6/2024 satisfies the criteria for joinder as an interested party. The application for joinder is rejected for lack of merit. The applicants will bear costs of the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 14TH DAY OF OCTOBER 2024**

**B M EBOSO**

**JUDGE**

In the presence of:

Mr Wandaka for the Plaintiff

Mr Kimani for the Defendants

Court Assistant: Melita

