



**David (1st Administrator of the Estate of the late Nzioki Wambua - Deceased) v  
Nzioki (2nd Administrator of the Estate the late Nzioki Wambua – Deceased);  
Homeward Agencies Limited (Proposed Interested Party) (Environment &  
Land Case 60 of 2020) [2023] KEELC 409 (KLR) (2 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 409 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 60 OF 2020**

**CA OCHIENG, J  
FEBRUARY 2, 2023**

**BETWEEN**

**PAUL ITOTIA DAVID ..... PLAINTIFF  
1ST ADMINISTRATOR OF THE ESTATE OF THE LATE NZIOKI WAMBUA -  
DECEASED**

**AND**

**MUTHIO NZIOKI ..... DEFENDANT  
2ND ADMINISTRATOR OF THE ESTATE THE LATE NZIOKI WAMBUA –  
DECEASED**

**AND**

**HOMEWARD AGENCIES LIMITED ..... PROPOSED INTERESTED PARTY**

**RULING**

1. What is before court for determination is the proposed interested party’s notice of motion application dated the March 8, 2022 where it seeks the following orders;
  1. Spent
  2. That Homeward Agencies Limited, the applicant herein be joined in this suit as interested party.
  3. That pending the hearing and determination of this application as well as the main suit hereof, the plaintiff/respondent either by himself, or his agents, surrogates and servants be restrained from trespassing into, or entering upon or in any other manner howsoever interfering with



the applicant's right use and occupation of all that parcel known as title No Mavoko Town Block 2/3.

4. That the cost of this application be provided for.
2. The application is premised on the grounds on the face of it and the supporting including supplementary affidavits of Andrew Mbaluto Musila, its Director. He deposes that on November 6, 2009, the applicant purchased land parcel number Mavoko Town Block 2/3, hereinafter referred to as the 'suit land'. He explains that the applicant is a land buying company which purchases huge tracts of land from willing vendors and sells the same to third parties. Further, upon execution of the agreement for sale, the applicant proceeded to subdivide the land for sale to third parties and a significant part of the suit land is fully occupied and developed by the said third parties. He confirms that the Muthio Nzioki is yet to effect a formal transfer of the suit land to the applicant. He contends that the plaintiff herein together with his agents and servants have been harassing the applicant's officers including third parties to whom the applicant sold land. He insists that since the applicant will significantly be affected by the outcome of the suit hereof, it would be in the interest of justice to have it joined as an interested party. Further, that the plaintiff or any person acting at his behest should be restrained from interfering with the applicant's including applicant's customers right to use as well as occupy the suit land, pending the determination of this suit. He reiterates that the applicant's presence in the suit land will enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. He states that the applicant is not a party in Machakos ELC 100 of 2021 as the plaintiffs therein sued the deponent in his private capacity yet the suit land was lawfully acquired by the applicant. He reaffirms that the instant application is not *res judicata*.
3. From the court records, I note none of the respondents filed their replying affidavits to oppose the instant application.
4. The application was canvassed by way of written submissions.

### **Analysis and Determination**

5. Upon consideration of the notice of motion application dated the March 8, 2022 including the respective affidavits and the rivalling submissions, the issues for determination are whether the applicant should be joined in this suit as an interested party and if the plaintiff as well as his agents should be restrained from interfering with the suit land.
6. The applicant in its submissions reiterated its averments as per the respective affidavits and contended that it had made out a case for joinder.
7. The defendant in his submissions insists the applicant is not a necessary party to this suit and should not be joined in these proceedings. Further, that no order of interim injunction should be granted pending the determination of this suit. To buttress his averments, he relied on the following decisions: *Giella v Cassman Brown* (1973) EA 358 and *Nguruman Limited v Jan Bonde Nielsen & 2 others* CA No. 77 of 2012 (2014) eKLR.
8. As to whether the applicant should be joined as an interested party in this suit. Order 1 rule 10 (2) of the *Civil Procedure Rules* stipulates 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."

9. *Black's Law Dictionary*, 9th Edition, defines an 'interested party' as "a party who has a recognizable stake (and therefore standing) in a matter". Further, in the case of *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others* (2015) eKLR the court defines 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.'

10. I note the applicant has annexed a sale agreement confirming it purchased the suit land from the defendant which fact the defendant has not disputed. Further, that it has sold most of the resultant subdivisions from the suit land to third parties who have since developed the same. It has also emerged that a director to the applicant who is the deponent herein has actually been sued in his personal capacity in ELC 100 of 2021 which is related to the instant suit as the fulcrum of the dispute is the same. The defendant has opposed the joinder insisting that the applicant is not a necessary party to the dispute herein. However, in relying on the legal provisions I have quoted as well as associating myself with the decisions cited above which have set out the principles for joinder of an interested party including the definition of an interested party, I opine that the applicant indeed meets the criteria for joinder as it is a purchaser of the suit land that has even sold resultant subdivisions therefrom, to third parties. It is my considered view that the applicant's involvement in these proceedings is necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the dispute herein. Further, it will be affected by any decision from this suit.
11. As to whether an interlocutory injunction should issue restraining the plaintiff including his agents from interfering with the suit land pending the outcome of the suit. I note Justice Angote while dealing with the plaintiff's notice of motion application dated the July 23, 2020 where he sought an injunction, *vide* his ruling dated the February 3, 2022 held as follows:
- a. An order be and is hereby issued maintaining the prevailing status quo in respect of the parcels of land known as Mavoko Town Block 2/ 3 and Mavoko Town Block 2/104 pending the hearing and determination of the suit.
  - b. Pursuant to the status quo order herein, the respondent is prohibited from selling, transferring, charging or in any other manner alienating or disposing of the said parcels of land.
  - c. Costs shall be in the cause.'
12. Based on these circumstances, at this juncture I am unable to grant any contrary orders of injunction but reiterate that the orders granted on February 3, 2022 and direct that the obtaining status quo be maintained where no party should interfere with the suit land nor dispose of it pending the outcome of this suit.
13. In the foregoing, I find the notice of motion application dated March 8, 2022 partially successful.
- I direct that costs will be in the cause.

**DATED SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 2<sup>ND</sup> DAY OF FEBRUARY, 2023**

**CHRISTINE OCHIENG**



**JUDGE**

