



**Mohamed & 2 others v Wananchi Estates Limited & 5 others; Mohamed (Proposed Interested Party) (Environment & Land Case 40 of 2017) [2023] KEELC 17320 (KLR) (9 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17320 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 40 OF 2017**

**NA MATHEKA, J**

**MAY 9, 2023**

**BETWEEN**

**FATUMA MOHAMED ..... 1<sup>ST</sup> PLAINTIFF  
ASHA MOHAMED ..... 2<sup>ND</sup> PLAINTIFF  
WANANCHI RANCHING LIMITED ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**WANANCHI ESTATES LIMITED ..... 1<sup>ST</sup> DEFENDANT  
HARRIES HORN ALIAS HARRY HORN ..... 2<sup>ND</sup> DEFENDANT  
SETTLEMENT FUND TRUSTEES ..... 3<sup>RD</sup> DEFENDANT  
COMMISSLONER OF LANDS ..... 4<sup>TH</sup> DEFENDANT  
HON. ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT  
NATIONAL LAND COMMISSION ..... 6<sup>TH</sup> DEFENDANT**

**AND**

**ZAMZAM MOHAMED ..... PROPOSED INTERESTED PARTY**

**RULING**

- 1 The application is dated February 13, 2023 and is brought under Order 1 Rule 10 of the [Civil Procedure Rules](#) Section IA, I B 3A of the [Civil Procedure Act](#) seeking the following orders;
1. That the Proposed Interested Party herein, Zamzam Leila Mohammed be joined in this suit as an interested party forthwith before the matter proceeds to full trial
  2. That cost of this Application be in the cause.



- 2 It is based on the annexed affidavit of Zamzam Leila Mohamed and grounds that the Proposed Interested Party is a proper and necessary party to this suit. That the suit property is a family property for the Estate of Haji Mohamed which is subject of proceedings in Succession Cause No 380 of 2009 at the High Court at Mombasa. That the decision of this court will have an impact on the Interested Party since she has interest on the suit property. That the Succession Proceedings are almost in the tail end and it will be proper that the Interested Party be allowed to join these proceedings. That the presence of the Interested Party is very necessary in these proceedings as it will aid in just determination of this suit as she is a key player in the estate of the deceased. That there will be no prejudice to be occasioned upon any party if this application is allowed. That it is in the wider interest of justice and fairness this application be allowed.
- 3 This court has considered the application and the submissions therein. The provisions of Order 1 Rule 10(2) and (4) under which the application is brought provides as follows;
- “(2) (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.
- (4) Where a defendant is added or substituted, the plaint shall, unless the court otherwise direct, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants”.
- 4 The court of Appeal in *Civicon Limited vs Kivuwatt Limited & 2 Others* (2015) eKLR stated that;
- “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”.
- 5 A more succinct test to be applied in answering the question of joinder was pronounced by the Court of Appeal in *Central Kenya Limited vs West Bank Ltd & Others*, CA No. 222 of 1998 as follows;
- “the paramount consideration is whether the party concerned is necessary for the effectual and complete adjudication of all the question involved in the suit.”
- 6 The Court of Appeal in *Meme vs Republic* (2004) KLR 637 outlined the following circumstances which would warrant grant of leave to enjoin a party;
- “(i) Where the presence of the party will result in the complete settlement of all the questions involved in the proceedings;
- (ii) Where the joinder will provide protection for the rights of a party who would otherwise be adversely affected in law: and
- (iii) Where the joinder will prevent a likely course of proliferated litigation.”



7 In *Central Kenya Ltd vs Trust Bank Ltd & Others* CA No 222 of 1998 the Court of Appeal held that;

“the paramount consideration is whether the party concerned is necessary for the effectual and complete adjudication of all the questions involved in the suit.”

8 Looking at the circumstances of this case the Proposed Interested Party submitted that the suit property is a family property for the Estate of Haji Mohamed which is subject of proceedings in Succession Cause No 380 of 2009 at the High Court at Mombasa. That the decision of this court will have an impact on the Interested Party since she has interest on the suit property. I find that the Applicant having an interest in the suit property is necessary for the effectual and complete adjudication of all the question involved in the suit. From the foregoing I find this application has merit and I grant the following orders;

1. That the Proposed Interested Party herein, Zamzam Leila Mohammed be joined in this suit as an interested party forthwith before the matter proceeds to full trial.
2. Costs to be in the cause.

9 It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 9<sup>TH</sup> DAY OF MAY 2023.**

**N A MATHEKA**

**JUDGE**

