



REPUBLIC OF KENYA



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**Munyinyi v Priscilla Njoki Igogo & 9 others (Environment & Land
Case 74 of 2020) [2023] KEELC 17248 (KLR) (4 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17248 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 74 OF 2020**

JG KEMEI, J

MAY 4, 2023

BETWEEN

GEORGE IGOGO MUNYINYI PLAINTIFF

AND

PRISCILLA NJOKI IGOGO 1ST DEFENDANT

PETER MWAURA IGOGO 2ND DEFENDANT

MORRIS KUNGU IGOGO 3RD DEFENDANT

NELLIE WAITHIRA IGOGO 4TH DEFENDANT

CATHERINE WAMUHU MWAURA 5TH DEFENDANT

RAHAB WANJIRU KIMANI 6TH DEFENDANT

CHRISTINE MARY NYAMBURA 7TH DEFENDANT

ALICE NJERI GAITI 8TH DEFENDANT

THE LAND REGISTRAR KIAMBU 9TH DEFENDANT

THE HON ATTORNEY GENERAL 10TH DEFENDANT

RULING

1. The 1st – 8th defendants/applicants filed the instant notice of motion dated 27/6/2022 seeking in the main orders to join the interested party herein as a party in this suit.
2. The application is brought under section 1A, 1B, ad 3A of the [Civil Procedure Act](#) and order 51 rule of the [Civil Procedure Rules](#).



3. The Application is based on the grounds thereat that the Interested Party, Land Control Board Kiambaa Kiambu county, is the legal custodian of the proceedings that approve issuance of both consent and subdivision of land parcel Kiambaa/Ruaka/1324 which has been subdivided into Land parcel Kiambaa/Ruaka/4932 to Kiambaa/Ruaka/4948. That the intended Interested Party be enjoined to produce documents namely receipt for booking Land Control Board consent and consent to subdivide and the ultimate transfers.
4. The Application is further supported by undated Affidavit sworn by Peter Mwaura Igogo, the 2nd Defendant/Applicant on behalf of 1st, 3rd, 4th, 5th, 6th, 7th & 8th his co-Defendants. He averred that it is necessary to enjoin the Interested Party as a custodian of the aforementioned documents and produce them in Court to help the Court determine the case on merit. That no prejudice will be occasioned to the parties if the Interested Party is enjoined in the suit.
5. The Motion is opposed by the Plaintiff only.
6. The Plaintiff filed his Grounds of Opposition dated 14/7/2022 on grounds That;
 - a. The Application is a gross abuse of the process of the Court, frivolous and vexatious, ex facie incompetent, fatally defective and inadmissible.
 - b. The Application is hopelessly incompetent and has nil chances of success for the following reasons;
 - i. The Land Control Board is not a corporate body capable of being sued or being a party in a suit or legal proceedings.
 - ii. The Land Control Board is a body corporate under the docket of the Ministry of Lands and Physical Planning and exercises delegated powers as provided by the [Land Control Act](#) cap 302.
 - iii. All disputes where any docket, department or office of the Ministry of Lands and Physical Planning such as Land Registrar or Land Control Board is sued, the same is and/or are represented in the said proceedings by the Attorney General (who is already a party to this suit) pursuant to article 156(4) of [the Constitution](#) of Kenya.
 - iv. The documents being sought to be produced by the Applicant such as the Consent from the Land Control Board are all within the purview and/or possession of the Land Registrar who is already a party to this suit and is represented by the Attorney General.
 - c. Given the forgoing, the application for joinder dated June 27, 2022 is utterly misguided, untenable and a waste of judicial time and resources.
7. On 6/10/2022 directions were taken and parties agreed to canvass the Application by way of written submissions.
8. The firm of B.G Mwangi & Co. Advocates filed submissions dated 25/10/2022 on behalf of the Applicants. It was submitted that the Plaintiff alleges that the 1st Defendant being one of the administrators of the Estate of David Igogo Munyinyi commenced the irregular sub-division of Kiambaa/Ruaka 1324 (hereinafter the suit land) and the attendant transfers. That the intended Interested Party's joinder will produce documents and/or proceedings in relation to the suit land. That in their trial bundle, the Applicants have included statements of one of the surviving Land Control Board members and its imperative that the Interested Party be enjoined for the Land Control Board chair to produce the said documents. Reliance was placed on the case of [Tabelgaa Chepngeno Tele & 2](#)



Others v John Kiprotich Ngetich & 5 others [2022] eKLR where the Court allowed a similar Application for joinder of Land Control Board among others.

9. The Plaintiff through the firm of Mwaniki Gachoka & Co. Advocates filed submissions dated 24/2/2023. Acknowledging the Court's discretionary power to order for joinder of a party to a suit, the Plaintiff relied on order 1 rule 10 (2) *Civil Procedure Rules*. However, he pointed out that such joinder may be declined in cases where their inclusion would result in logistical difficulties in managing the existing cause of action. That in this case the documents to be produced are already included in the Plaintiff's trial bundle and the Land Registrar and Attorney General, who are the appropriate entities to produce the documents, are already parties in the suit.

10. The main issue for determination is whether the Application is merited.

11. The legal provisions on joinder of parties is found in order 1 rule 10(2) *Civil Procedure Rules* that;

“(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. The first step will be to define who an Interested Party is in order to consider whether the Applicant herein falls in the same definition. Rule 2 of *the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, 2013.

“Interested Party” means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the Court but is not a party to the proceedings or may not be directly involved in the litigation.”

13. Black's Law Dictionary defines an Interested Party as “a party who has a recognizable stake (and therefore standing) in the matter.”

14. Equally the Supreme Court of Kenya in *Communications Commission of Kenya and 4 Others v Royal Media Services Limited & 7 Others* Petition No. 15 of [2014] eKLR the Court in defining who an Interested Party is, and held 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. Similarly, in the case of *Meme v. Republic*, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- a. Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;
- b. Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- c. Joinder to prevent a likely course of proliferated litigation.



We ask ourselves the following questions:

- d. what is the intended party's state and relevance in the proceedings and
 - e. will the intended Interested Party suffer any prejudice if denied joinder.?"
1. Joinder of a party is not a right but an exercise of discretion by the Court. This was the decision in in *EG v Attorney General; David Kuria Mbote & 10 Others (Interested Parties)* [2021] eKLR whereby the Applicant sought to be enjoined in the appeal pending at the Supreme Court. The Appellate Court appreciated that joinder of a party is discretionary exercise of the power of the Court in the following terms;
- “(1) The core of the Court’s power to join a party to any proceedings including at the appellate stage, as aptly discussed in *Hamisi Yawa & 36,000 others v Tsangwa Ngala Chome & 19 others* [2018] eKLR, is to bring on board a necessary party for purposes of determining the real issue(s) in dispute. Also, a joinder of a party is not an automatic right, but one which is granted upon exercise of the discretion of the Court concerned. Nonetheless, the Court exercises such discretion under defined parameters, that is, it must be satisfied that: -
- a) The intended party has a personal interest or stake in the matter in question; and that interest is clearly identifiable and proximate enough and not merely peripheral.
 - b) The intended party’s presence would enable the Court to resolve all the matters in the dispute.
 - c) The intended party would suffer prejudice in case of non-joinder.
 - d) The joinder of the intended party will not vex the parties or convolute the proceedings with unnecessary new matters and grounds not contemplated by the parties or envisaged in the pleadings.”
16. Similarly, in the case of *Francis Kariuki Muruatetu Ltd & Another v Republic & 5 others* in Petition No. 15/16 of 2016 eKLR the Court laid down the following parameters in determining an application for such joinder;
- a. 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.
 - b. 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.
 - c. 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.



17. In the case of Court of Appeal in *JMK v MWW & Another* [2015] eKLR the Court of appeal held that:-

“Order 1 Rule (10) (2) of the Civil Procedure Rules empowers the Court, at any stage of the proceedings, upon application by either party or suo motu, to order the name of a person who ought to have been joined or whose presence before the Court is necessary to enable the Court effectually and completely adjudicate upon and settle all questions involved in the suit, to be added as a party.”

18. The learned authors of *Sarkar's Code of Civil Procedure* (11th Ed. Reprint, 2011, Vol. 1 P. 887), have given guidance on how the section should be interpreted by Courts:

“The section should be interpreted liberally and widely and should not be restricted merely to the parties involved in the suit, but all persons necessary for a complete adjudication should be made parties.”

19. Before I delve into the substance of the application, it suffices to give a brief background of the case before the Court.

20. The Plaintiffs case is that he and the 1st Defendant are Co-administrators of the estate of the late David Igogo Munyinyi under Succession Cause No 186 of 2013.

21. Before his death on the 16/6/2013 the said David Igogo Munyinyi was at all material times the registered owner of parcel No Kiambaa/Ruaka /1324.

22. During the process of succession the said 1st Defendant subdivided the suit land without the consent of the co-administrator and the Court and transferred the resultant titles issued to the 2nd – 8th Defendants that is parcel Nos Kiambaa/Ruaka/4932-4948.

23. It was averred that the land control board consents were issued after the 16/6/2013 that is to say after the demise of the original owner and during the subsistence of the succession proceedings. In his view the consents were obtained through fraudulent activities of the 1st Defendant and her associates

24. The 1st -8th Defendants denied the Plaintiffs claims and contended that the original suit land was subdivided between the years 2011 - 2012. It was their contention that parcel 1324 was subdivided under the instructions of David Igogo Munyinyi and the resultant portions registered during the lifetime of the deceased in the presence and knowledge of the Plaintiff and therefore the suit lands did not form part of the estate of the deceased.

25. The 9th and 10 Defendants denied the Plaintiffs claim and in particular denied that the original suit land was subdivided after the death of David Igogo Munyinyi; they are not privy to the succession proceedings in the estate of the deceased; if subdivision was done then the same must have been carried out based on the documents presented before the Land Registrar who exercised due diligence and the said documents were believed to be genuine hence the registration; allegations of fraud were denied; and that in the unlikely event of culpability being decreed by the Court on their part, they shall seek indemnity from the 2nd - 8th Defendants.

26. The gist of the Plaintiffs case therefore is a claim of fraud against the Defendants in the manner in which the original suit land was subdivided and the resultant subdivisions registered in the names of the 1st – 8th Defendants.

27. Going by the decisions of the Courts earlier set out in the preceding paragraphs the Court finds that ;



- a. No demonstrable personal stake has been shown on the part of the proposed Interested Party in the case. It has not been shown that the Interested Party is staking an interest in the land or the estate of the late David Igogo Munyinyi to warrant joinder so as to afford it the opportunity to defend its interests.
 - b. As discussed above the cause of action is fraud against the 1st Defendant and her associates. There is no reference to the proposed Interested Party that has been made and the only mention is that the land control board consents allegedly were issued after the death of the deceased.
 - c. In the main and for the reasons above the Proposed Interested Party is not a necessary party. Its absence will not hamper in any way the full determination of the issues at hand.
 - d. There is no evidence laid before the Court to show that the Proposed Interested Party will be prejudiced if its joinder is denied.
28. Indeed no prejudice will be suffered by the Applicants because at best the proposed Interested Party may be called as a witness but not an Interested Party.
29. In the end the application is unmerited. It is dismissed with costs payable by the Applicants.
30. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 4TH DAY OF MAY, 2023
VIA MICROSOFT TEAMS.**

J G KEMEI

JUDGE

Delivered online in the presence of

Muchiri HB Gachoka for Plaintiff

Mrs. Fundi for 1st – 8th Defendants

AG is absent for 9th – 10th Defendants

Court Assistants – Kevin/Lilian

