



Kavila ((Suing as the Administrator of the Estate of Nduume Kavila Nthuku)) v Maundu; Wambua (Interested Party) (Environment & Land Case 375 of 2017) [2023] KEELC 17745 (KLR) (7 June 2023) (Ruling)

Neutral citation: [2023] KEELC 17745 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE 375 OF 2017**

TW MURIGI, J

JUNE 7, 2023

BETWEEN

**BERNADETTE KOKI KAVILA PLAINTIFF
(SUING AS THE ADMINISTRATOR OF THE ESTATE OF NDUUME KAVILA NTHUKU)**

AND

PETER MAUNDU DEFENDANT

AND

BERNARD MUNYWOKI WAMBUA INTERESTED PARTY

RULING

1. Before me for determination is the Notice of Motion dated 21st March, 2022 brought under section 3A of the *Civil Procedure Act*, Order 1 Rule 10 (2), Order 40 Rule 2 and Order 51 Rule 1 of the *Civil Procedure Rules* and all other enabling provisions of the law in which the Applicant seeks the following orders: -
 1. That the honourable court be pleased to grant leave to the Interested Party to be enjoined as a party to the suit.
 2. That the honourable court be pleased to stay the witness summons issued to the Intended Interested Party dated March 3, 2022 pending the full hearing and determination of this Motion.
 3. That the costs of this application be provided for.



2. The application is premised on the grounds appearing on its face together with the supporting affidavit sworn by Bernard Munywoki Wambua of even date.

The Applicant's Case

3. The applicant (intended interested party) averred that he is a private surveyor in Makueni County and is duly conversant with the facts of this case. He averred that sometime in the year 2007, he was retained by the Plaintiff herein to produce some plots with respect to land parcel No. Makueni/Unoa/600. That pursuant to the said instructions, he produced six plots whose sub Title Nos. are 1890 – 1894.
4. The Applicant further averred that land Parcel No. Makueni/Unoa/600 borders land Parcel No. Makueni/Unoa/601 which is the subject matter of the dispute herein. He argued that in the instant suit, his evidence is not of any probative value since he did not survey or undertake subdivision of land Parcel No. Makueni/Unoa/601. He urged the Court to revoke the witness summons issued against him as the same are a waste of judicial time.

The Defendants' Case

5. Opposing the application, the Defendant filed grounds of opposition dated 07/06/2022 on the following grounds:-
 - i. The Notice of Motion dated 21st March, 2022 is incompetent, frivolous, vexatious and an abuse of the Court's process.
 - ii. The prayer sought by the Applicant amounts to reviving the Plaintiff's suit which has been closed.
 - iii. The Applicant's application is fatally defective and bad in law as the Applicant has failed to annex a draft suit and/or grounds against and/or for the parties herein stating how they would be affected personally or professionally by any judgment issued by this Honourable Court relating to the subject matter before the Court.
 - iv. The Applicant having confirmed to have surveyed the suit property, has failed to identify what constitutes a violation of the law were he to appear and give evidence on the statement he had filed in court.
 - v. The Applicant is guilty of laches.
6. The parties were directed to canvass the application by way of written submissions.

The Applicant's Submissions

7. The Applicant filed two sets of submissions dated 30/05/2022 and 22/11/2022.
8. On the Applicant's behalf, Counsel submitted that the Civil Procedure Rules empower this Court to order the joinder of any person who ought to be joined to proceedings in order to enable the court to effectively adjudicate and settle the controversy. It was contended that the applicant has a recognizable stake in these proceedings and thus he should be enjoined as an Interested Party.
9. Counsel argued that the Applicant had opted to be enjoined in the proceedings so that he can canvass his position through Counsel.
10. It was submitted that the Applicant's right to representation by Counsel is a fundamental right enshrined in the Constitution.



11. It was further submitted that, if the Defendant's position was that the Plaintiff's case had been closed, there would be no need for witness summons to issue against the Applicant unless the Defendant was keen on stealing a march on the Plaintiff. Counsel contended that such tactics should not be countenanced by the Court. Counsel reiterated that the witness summons issued herein threaten to curtail the Applicant's fundamental liberties and freedoms without justification.

The Defendant's Submissions

12. The Defendant/Respondent submissions were filed on 06/03/2023. On his behalf, Counsel submitted that the witness summons dated 03/03/2022 were issued after the only witness remaining for the Defence refused to appear for hearing, having signed a statement in support of the Defendant's case.
13. Counsel contended that the Applicant does not fit the legal definition of an Interested Party because he had failed to demonstrate his interest in the ownership of Land Parcel Nos. Makueni/Unoa/601, 600 or the subsequent subdivided Plot Nos. 1890 – 1894. It was also argued that the Applicant has not demonstrated how he would be affected by the judgment if it was issued in either of the Plaintiff or the Defendant's favour.
14. Counsel relied on the annexed authorities cited in the list of authorities at the tail end of his written submissions.

Analysis and Determination

15. Having considered the application, affidavits and the rival submissions, the only issue that arises for determination is whether the application to enjoin the Applicant as an Interested Party is merited.
16. The law governing the joinder of parties is grounded on Order 1 Rule 10(2) of the *Civil Procedure Rules* which provides as follows;

“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 to effectually and completely to adjudicate upon or settle all questions involved in the suit, be added.”
17. The *Black's Law Dictionary* (8th Edition) page 3548 defines an Interested Party as follows:-

“a party who has a recognizable stake and therefore a standing in the matter.”
18. In the case of *Trusted Society of Human Rights Alliance vs Mumo Matemo & 5 others* (2015) eKLR the court held that;

“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 interest will not be well articulated unless he himself or she herself appears in the proceedings and champions his or her cause.”
19. The Supreme Court of Kenya in the case of *Francis Karoki Muruatetu & another vs Republic & 5 others* (2010)eKLR set out the key elements for consideration in an application for joinder of an Interested Party as follows:-



- 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. Lastly, a party must, in its participation, 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.
20. These are persuasive decisions that state the legal position with regard to joinder of Interested Parties.
 21. Going by the above decisions, an Interested Party must therefore demonstrate that it is necessary for he/she to be enjoined in the suit so that the Court may settle all the questions involved. The Intended Interested Party must make a good case to be enjoined in the suit. The intended Interested Party must demonstrate that it has an identifiable stake in the proceedings.
 22. The Applicant deposed that he has an identifiable stake in the proceedings herein. As rightly submitted by the Respondent, the Intended Interested Party has not demonstrated that he has a stake in the proceedings herein. The Intended Interested Party has not demonstrated how he will be affected by the decision of the Court when it is made either way or if he will suffer prejudice in case of non-joinder.
 23. The upshot of the foregoing is that the application dated 21st March, 2022 is devoid of merit and the same is dismissed with costs the Defendant/Respondent.

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HON. T. MURIGI

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 7TH DAY OF JUNE, 2023.

IN THE PRESENCE OF: --

Court assistant – Mr. Kwemboi.

Paul Gichuhi for the intended interested party.

Ms. Kilonzo for the Defendant.

