



Group & 2 others (Suing for and on Behalf of themselves and Echariria Mwangaza Self Help Group) v Kagai (Sued in her Own Right and as a Legal Representative of the Estate of Peter Kagai Gathige -Deceased) & 5 others; Kariuki & another (Intended Interested Party) (Environment & Land Case 185 of 2014) [2023] KEELC 18818 (KLR) (11 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18818 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 185 OF 2014**

**A OMBWAYO, J
JULY 11, 2023**

BETWEEN

**STEPHEN NJOROGE KAHARA 1ST PLAINTIFF
GODFREY NDUNGU 2ND PLAINTIFF
MIRRIAM WAIRIMU KURIA 3RD PLAINTIFF
SUING FOR AND ON BEHALF OF THEMSELVES AND ECHARIRIA
MWANGAZA SELF HELP GROUP**

AND

**RAHAB WANGARI KAGAI (SUED IN HER OWN RIGHT AND AS A
LEGAL REPRESENTATIVE OF THE ESTATE OF PETER KAGAI GATHIGE -
DECEASED) 1ST DEFENDANT
EUNICE WANJIRU KAGAI 2ND DEFENDANT
SIMON WAINAINA GATWIKU 3RD DEFENDANT
MARY NJOKI MACHARIA 4TH DEFENDANT
PETER WANGAI KIIRU 5TH DEFENDANT
NAIVASHA DISTRICT LAND REGISTRAR 6TH DEFENDANT**

AND

**JEREMIAH KARIUKI INTENDED INTERESTED PARTY
DANIEL GITHUI (REPRESENTATIVES OF ECHARIRIA MWANGAZA SELF
HELP GROUP) INTENDED INTERESTED PARTY**



RULING

1. This ruling is in respect of the intended interested parties application dated February 13, 2023 which is expressed to be brought under Order 51 Rule 1 of the Civil Procedure Rules, sections 1A, 1B, 3, 3A of the Civil Procedure Act and articles 50 (1), 159(1) and (2) of the Constitution of Kenya which seeks the following prayers;
 1. That the applicants/intended interested affected parties be enjoined as parties in the suit.
 2. That the costs of this application be provided for in the cause.
2. The grounds on the face of the application are that the intended interested parties are some of the current office holders of Echariria Mwangaza Self Help Group. That the previous officials wrongfully transferred members properties, registered in their names and sold the said properties to other parties. That some of the previous officials refused to hand over the group documents to the current leadership. That the self help group members have been in the dark with regard to the issues raised in the present suit. That it is fair, just and expedient that the application be allowed as prayed.
3. The application is supported by the affidavit of Daniel Muriuki Githui sworn on February 13, 2023. He deposed that he is the current secretary of Echariria Mwangaza Self Help Group. That on November 11, 2018, the said self-help group had a general meeting where Jeremiah Kariuki Njiraini was elected as the chairperson. That it was only the 3rd plaintiff who maintained her position as the treasurer. That Stephen Njoroge Kahara was not the chairperson and had been masquerading as one to deceive unsuspecting parties. He reiterated that some officials illegally transferred the members properties to their names and sold them. That some of the previous officials included the late Peter Kagai Gathige (deceased) and Stephen Njoroge Kahara who refused to hand over the group documents to the current leadership. That they seek to be joined as parties so as to protect the interests of the members as well as their own.
4. The intended interested parties filed a further affidavit sworn on April 6, 2023 and filed on April 12, 2023 that was sworn by Daniel Muriuki Githui.
5. The said further affidavit was sworn in response to the replying affidavit of Stephen Njoroge Kahara that was dated March 14, 2023.
6. The said replying affidavit dated March 14, 2023 is not on the court record.
7. Daniel Muriuki Githui deposed that the 1st plaintiff alleged that he was not a member of the group which was not true. That Jeremiah Kariuki inherited his shares from his late father and took over from him which made him a member. That he was a member of the said group from the year 2003 and that his parents have never been members. That they served as officials of the group when the 1st plaintiff was the chairperson of the group. That they had done various transactions with the 1st plaintiff and his advocates in their capacity as officials and that it was unfortunate that the 1st plaintiff was trying to deceive the court. That the 1st plaintiff alleged that they were not officials and allegedly attached fraudulent documents from the chief together with minutes and a letter from the social development offices which was not true. That they were indeed elected and that the members were ready to testify in that regard. That they seek to be enjoined as parties so as to protect the interests of the group as well as their own.



7. The application was canvassed by way of written submissions. The intended interested parties filed their submissions dated April 6, 2023 on April 12, 2023.
8. They submitted on whether the applicants were the officials of Echariria Mwangaza Self Help Group and whether they are entitled to the prayers sought. On the first issue, they submitted that they are not only members of Echariria Mwangaza Self Help Group but they were also officials and they have the authority to represent the group. They also submitted that the plaintiffs merely accused the applicants of tendering false documents but did not produce anything to support their statements. The applicants then reiterated the contents of their further affidavit that they were members and officials of the self help group.
9. On the second issue, the applicants relied on the case of *Civicon Limited v Kivuwatt Limited & 2 others* [2015]eKLR and submitted that they have proven their interests and the reason to be joined as parties to the suit. The applicants also submitted that they are seeking orders in the application in order to protect the interests of the members of the group and protect their interests.
10. The plaintiffs in their submissions dated April 25, 2023 and filed on April 26, 2023 set out a summary of their pleadings and submitted that the applicants have not indicated in their application whether they want to be joined as plaintiffs, defendants or interested parties. The plaintiffs further submitted that the applicants could not be joined as plaintiffs because there was already a plaint in court and that they could also not be joined as defendants because they cannot force to be sued. Also they could not be interested parties because they have not demonstrated any interest they have on the suit property. The plaintiffs submitted that the applicants have not demonstrated the kind of pleadings they intend to file and relied on the case of *Kenya Anti Corruption Commission v Francis Z.K Menjo & others* Nakuru ELC No. 317 of 2015 in support of their arguments.

Analysis and determination

11. After considering the application, further affidavit and submissions, the only issue that arises for determination is whether the applicants should be joined as parties to the suit.
Order 1 Rule 10(2) of the *Civil Procedure Rules* 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. The applicants in the present application are seeking to be joined in this suit as parties to the suit on the grounds that they are the current office holders of Echariria Mwangaza Self Help Group and have information that would shed more light on the issues brought the court.
13. It is important to point out that the plaintiffs in the present matter are suing for and on behalf of Echariria Mwangaza Self Help Group.
14. As submitted by the plaintiffs, the applicants have not indicated in what capacity they seek to be joined in the present suit. They have not indicated whether they would like to be joined as plaintiffs, defendants or as interested parties. However in their application, they have indicated that they are intended interested affected parties and it would therefore be logical to deduce that they are seeking to be joined as interested parties.



15. The Supreme Court in the case of *Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 others* [2014] eKLR held as follows on joinder of parties as interested parties;
- (22) In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this court's Ruling in the *Mumo Matemo case* where the court (at paragraphs 14 and 18) held:
- [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..."
- (23) 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:
- (i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
- (ii) joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) joinder to prevent a likely course of proliferated litigation."
- (24) We ask ourselves the following questions: (a) what is the intended interested party's stake and relevance in the proceedings? and (b) will the intended interested party suffer any prejudice if denied joinder?"
16. As pointed out before, the applicants are seeking to be joined as parties on the ground that they are now leaders of the Echariria Mwanganza Self Help Group. They have annexed an undated letter from the Chief Mbaruk Location and minutes dated November 11, 2018 from Echariria Mwangaza Self Help Group. For the applicants to be joined as interested parties to the suit, they have to demonstrate a stake in the proceedings and whether they will suffer any prejudice if they are denied joinder.
17. As aforementioned, the plaintiffs are suing on behalf of Echariria Mwangaza Self Help Group and the applicants are also claiming to be officials of the said self-help group which is disputed by the plaintiffs. It is my view that the court in considering whether the applicants can be joined in the suit has to consider whether the applicants are members of the said self-help group which is not within its jurisdiction.
18. It is my finding that other than alleging that they are officials of Echariria Mwangaza Self Help Group, the applicants have not indicated their relevance in the proceedings and how they would be prejudiced if they are denied joinder. Consequently, the applicant's application dated February 13, 2023 lacks merit and is dismissed with costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 11TH JULY 2023 AT NAKURU.

A.O OMBWAYO

JUDGE

