



**Mulwa & 2 others v Fundi & 2 others; Muthoka & 2 others (Interested Parties) (Environment & Land Case 74 of 2009) [2023] KEELC 20018 (KLR) (20 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20018 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 74 OF 2009  
A NYUKURI, J  
SEPTEMBER 20, 2023**

**BETWEEN**

**JOSHUA NZIVE MULWA ..... 1<sup>ST</sup> PLAINTIFF  
JULIUS MUTINDA KANYOTU ..... 2<sup>ND</sup> PLAINTIFF  
CHARLES MATHEKA (SUING AS THE CURRENT CHAIRMAN,  
SECRETARY, AND TREASURER OF KASUITU PLOT OWNERS SELF HELP  
GROUP) ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**CHARLES FUNDI ..... 1<sup>ST</sup> DEFENDANT  
GLADYS NJERI MAINA ..... 2<sup>ND</sup> DEFENDANT  
FELISTA NDUKU MUNANDA ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**JUSTUS MUEMA MUTHOKA ..... INTERESTED PARTY  
HARRISON MUIINDE KIVAYA ..... INTERESTED PARTY  
PAUL MAINGI JUVE NGEI ..... INTERESTED PARTY**

**RULING**

1. Before court is a notice of motion dated September 8, 2022 filed by the proposed interested parties seeking the following orders:
  - a. Spent.



- b. That the honorable court be pleased to order that the proposed interested parties Justus Muema Muthoka, Harrison Muinde Kivaya and Paul Maingi Juve Ngei be joined as interested parties.
  - c. That upon grant of prayer 2 above, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> interested parties be granted leave to file pleadings in the matter.
  - d. That costs of this application be in the cause.
2. The application is premised on the supporting affidavit sworn by Justus Muema Muthoka. He deponed that the Applicants are officials of Kasuitu Plot Owners Self Help Group registered under the Ministry of Labour and Social Protection. Further that the applicants have “vested interest” in the suit property as they are group officials.
  3. He stated further that the joinder of the applicants to the suit will shed more light on the issues raised in the pleadings and that if they don’t participate they will be condemned unheard.
  4. The application was opposed. Counsel for the plaintiff filed grounds of opposition dated September 29, 2022. He stated that the suit is already concluded as the issues in the suit were settled by the consent executed by the plaintiff and the defendants, and filed on July 28, 2022 and that therefore there is nothing to be determined. He further stated that the application for joinder has come too late in the day after the issues have been concluded and that no explanation for delay has been given. He stated that the interest in the proceedings by the applicants has not been demonstrated and is not identifiable, and that they have not shown the prejudice that they will suffer.

#### **Analysis and determination**

5. I have considered the application and the response and in my view the only issue for consideration is whether the Applicants have met the threshold for joinder.
6. Order 1 rule 10 (2) of the [Civil Procedure Rules](#) provides for the power of court to join necessary parties to a suit 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.
7. It is therefore clear that where a person’s presence in a suit is necessary to enable the court to completely and effectually determine all the questions in dispute, the court has power to join such party as Interested Party. To be joined to a suit as an interested party, the applicant must demonstrate that they have an identifiable stake in the proceedings. [Black’s Law Dictionary](#) 11<sup>th</sup> Edition, defines Interested Party as follows:-

A party who has a recognizable stake (and therefore standing) in the matter.



8. In the case of *Communications Commission of Kenya and 4 Others v Royal Media Services Limited & 7 Others* (2014) eKLR, the court 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 appears in the proceedings, and champions his or her cause.

9. In the instant application the Applicants state that they are the elected officials of Kasuitu Plot Owners Self Help Group. They attached Minutes of January 22, 2022 and the Certificate of Registration of Kasuitu Plot Owners Self Help Group. They stated that they have vested interest in the suit property.
10. The question that this court ought to address is whether the Applicants have an identifiable stake in the suit. It is not disputed that the suit was filed in 2009 by officials of Kasuitu Plot Owners Self Help Group. That group is still the Plaintiff to date. The reason for joinder is that the Applicants are now the current officials of the group and that they have vested interest in the suit. I note that while the Applicants have not defined what amounts to vested interest, they have not shown what prejudice they will suffer if they are not joined to the suit; which in any event, their group remains the Plaintiff. I do not think that a mere election of new group officials would vest a real stake in the Applicants because if that were the case, then after every election, there would be joinder of new office bearers to the suit, which means that the suit may not be determined at all.
11. In my considered view, since Kasuitu Plot Owners Self Help Group is a party to this suit, then the Applicants who are members and officials of the group are already parties to the suit as they have failed to show that the interests of the group are not in conformity with their interest. In addition, the mere mention of having “vested interest” in the suit property which interest has not been defined or delineated from the Plaintiffs’ interest is not a demonstration of an identifiable stake envisaged under Order 1 Rule 10(2).
12. In the premises, I find and hold that the notice of motion dated September 8, 2022 lacks merit and the same is hereby dismissed with costs to the Plaintiffs.
13. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 20TH DAY OF SEPTEMBER, 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

**In the presence of:**

**Mr. Mutuku for 2<sup>nd</sup> and 3<sup>rd</sup> Defendants**

**Mr. Nzei for Plaintiffs**

**Mr. Kariuki holding brief for Ms. Mukami for Intended Interested Parties**

**The 1<sup>st</sup> Defendant in person absent**

**Ms. Josephine Misigo- Court Assistant**

