



Okeya v Carmel Alma Lammon Orphans Home of Grace Children’s Home (Suing through its Board of Directors) & 5 others (Environment and Land Appeal E017 of 2020) [2023] KEELC 19818 (KLR) (18 September 2023) (Ruling)

Neutral citation: [2023] KEELC 19818 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND APPEAL E017 OF 2020
DO OHUNGO, J
SEPTEMBER 18, 2023**

BETWEEN

PETER OCHIENG OKEYA APPELLANT

AND

**CARMEL ALMA LAMMON ORPHANS HOME OF GRACE CHILDREN’S
HOME (SUING THROUGH ITS BOARD OF DIRECTORS) .. 1ST RESPONDENT
STANLY OMUTEREMA 2ND RESPONDENT
PATRICE OWUOR ADIKA 3RD RESPONDENT
PAMELA KAVEZA 4TH RESPONDENT
TERESA W. TOLOMETI 5TH RESPONDENT
NJUGUNA JORAMAS NDANI 6TH RESPONDENT**

(Being an appeal from the ruling and order of the Chief Magistrate’s Court at Kakamega (Hon. B. Ochieng, Chief Magistrate) delivered on 23rd July 2020 in Kakamega MCELC No. 400 of 2018)

RULING

1. By Notice of Motion dated 5th October 2022, Salvatore Russo and Lewis Kadivira (the applicants) seek the following orders:
 1. That the honourable court be pleased to grant the proposed interested parties, Salvatore Russo and Lewis Kadivira, leave to intervene as a party to the proceedings herein.
 2. That the honourable court be pleased to thereafter enjoin Salvatore Russo and Lewis Kadivira as interested parties, to participate fully in the proceedings herein.



3. That the honourable court be pleased to thereafter record Emanuel Wanyonyi Advocate of Emanuel Wanyonyi Co. Advocates on record for the said interested parties.
 4. That the applicant's costs be in the cause.
2. The application is supported by affidavits sworn by the applicants. They deposed at length on matters that go to the dispute that is still pending determination before the Subordinate Court. I will confine myself to matters that are germane to the application at hand.
 3. Lewis Kadivira deposed that he is "the Secretary General on permanent basis" of Orphans Home of Grace which is a party in this appeal and in favour of whom the ruling and order appealed against was made. On his part, Salvatore Russo deposed that he is a brother-in-law to Carmel Alma Lammon who he termed the founder and director of Orphans Home of Grace and that he took a loan on 22nd May 2002 to pay part of the purchase price of land parcel number Kakamega Block 111/49 (the suit property). In essence, both applicants oppose the appeal herein and consider it an attempt at delaying determination of the suit before the Subordinate Court.
 4. The appellant opposed the application through grounds of opposition in which he took the position that the application has been drawn by a counsel who is a stranger to the proceedings, that rules under which the application is brought do not support the orders sought, that the applicants seek to use the appeal as an avenue to ventilate matters pending before the Subordinate Court and that the applicants have not satisfied the principles that warrant their joinder.
 5. The application was canvassed through written submissions. The applicants argued that they are stakeholders in Orphans Home of Grace Children's Home and that they therefore qualify for joinder as interested parties to advocate for the rights of the real beneficiaries of Orphans Home of Grace Children's Home who they claim have been abandoned by the appellant and the respondents. They relied on the cases of *Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others* [2014] eKLR and *Attorney General v David Ndi & 73 others* (Petition 12 (EO16) of 2020) [2021] KESC 17 (KLR) (9 November 2021) (Ruling) and urged the court to allow the application.
 6. In his submissions, the appellant reiterated his grounds of opposition and argued that the suit was instituted in the year 2016 and that the applicants' attempt to join the appeal at this stage is an attempt to delay the matter and to waste judicial time. Further arguing that the applicants have not demonstrated how their inclusion in the appeal is important for the determination of the appeal, he cited the cases of *Skov Estate Limited & 5 others v Agricultural Development Corporation & another* [2015] eKLR and *Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others* [2014] eKLR and urged the court to dismiss the application.
 7. The respondents in the appeal neither filed a response to the application nor submissions.
 8. I have considered the application, the affidavits, grounds of opposition and the parties' submissions. The sole issue for determination is whether the applicants should be joined to this appeal as interested parties.



9. The principles that guide the court while considering an application such as the present one are straightforward and were discussed by the Supreme Court in *Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others* (supra) thus:

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?

10. This appeal was filed on 11th August 2020, against the ruling and order of the Chief Magistrate's Court at Kakamega (Hon. B. Ochieng, Chief Magistrate) delivered on 23rd July 2020 in Kakamega MCELC No. 400 of 2018. The said ruling in essence allowed Orphans Home of Grace Children's Home (suing through Stanly Omuterema, Patrice Owuor Adika, Pamela Kaveza and Teresa W. Tolometi, all of whom were described its board of directors) to join the suit as the second defendant and Njuguna Joramas Ndani to join the suit as the third defendant. The ruling further ordered that the title in respect of land parcel number Kakamega Block 111/49 (the suit property) as well as the logbook in respect motor vehicle registration number KAR 486M be both deposited in the Subordinate Court pending hearing and determination of the suit before the said court. Thus, as of the date of the decision appealed from, the applicants were not parties to the suit before the Subordinate Court. The suit before the Subordinate Court has been pending in court since the year 2006 when it was filed in the High Court. It was later transferred to the Subordinate Court.
11. The applicants claim that they are stakeholders in Orphans Home of Grace Children's Home and that they advocate for the rights of the real beneficiaries of Orphans Home of Grace Children's Home. The appellant has contended that the applicants have made an application similar to present one, before the Subordinate Court. I will therefore be frugal with my words, so as not to unduly fetter the Subordinate Court in its determination of the application before it. Suffice it to state that for purposes of this appeal, I am not persuaded that the applicants have any identifiable stake in the appeal or that they will



suffer any prejudice if denied joinder. The appeal is on an interlocutory issue. They should attempt to persuade the Subordinate Court as to whether they should be joined to the suit.

12. In view of the foregoing, I find no merit in Notice of Motion dated 5th October 2022. I dismiss the application with costs to the appellant.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 18TH DAY OF SEPTEMBER 2023.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

No appearance for the appellant

No appearance for the respondents

Mr Mwangi holding brief for Mr Wanyonyi for the applicants

Court Assistant: E. Juma

