



**Kore Forest Limited v Attorney General & 3 others; Patel (Interested Party) (Environment & Land Case 245 of 2021) [2023] KEELC 20412 (KLR) (3 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20412 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KWALE  
ENVIRONMENT & LAND CASE 245 OF 2021  
AE DENA, J  
OCTOBER 3, 2023**

**BETWEEN**

**KORE FOREST LIMITED ..... PLAINTIFF**

**AND**

**THE ATTORNEY GENERAL ..... 1<sup>ST</sup> DEFENDANT**

**THE LAND REGISTRAR-KWALE ..... 2<sup>ND</sup> DEFENDANT**

**EN MARWANGA ..... 3<sup>RD</sup> DEFENDANT**

**MWANAJUMA ALI BUWA ..... 4<sup>TH</sup> DEFENDANT**

**AND**

**URMILABEN G PATEL ..... INTERESTED PARTY**

**RULING**

1. The certificate of urgency by C. A. Opolu Advocate filed before this court on 24/3/2023 underpins the subject of this ruling. It is stated that the applicant herein seeks to be made a party to this suit on behalf of the Estate of Raojibhai Patel the registered owner of the suit property. It is averred that the consent judgement dated 6<sup>th</sup> June 2022 is a fraud and an abuse of the court process as the parties therein deliberately failed to disclose all material facts concerning the suit property.
2. Accompanying the certificate is the Notice of Motion premised upon the provisions of articles 49 & 50 of *the Constitution*, order 10 rule [2], 53 rules [1][2] [3] and [4] and order 22 rule 22 of the *Civil Procedure Rules*. The following orders are sought;
  1. Spent
  2. The applicant be granted leave and allowed to join the suit herein as interested party,



3. Consequently, upon the grant of leave sought above, the court be pleased to grant the orders below,
  4. The consent judgement and consequential decree entered by the court on 6<sup>th</sup> June 2022 be varied or set aside as respects plot no LR Kwale/Msambweni 'A'/1706,
  5. The execution of the consent judgement and decree entered on 6<sup>th</sup> June 2022 herein be stayed pending the hearing and determination of this application interpartes.
3. The application is set upon grounds on its face and the supporting affidavit of the applicant Urmilaben Raajibhai Patel.
  4. It is the applicant's case that she is the administrator and beneficiary of LR Kwale/Msambweni 'A'/1706 as per the attached certificate of confirmation of grant of the estate of Rajiobhai Patel. That she has learnt of the present suit involving the land which she inherited from her late husband. At the time of his death, they were not aware of the proceedings. She seeks to be enjoined as a party to the suit being the sole beneficiary to the estate of the deceased.
  5. The applicant states that she has no interest in the other properties mentioned in this suit. It is deponed the suit property was purchased by her late husband on 13/10/1995 in a bank auction and he was duly registered as the owner. That using fake court proceedings the Land Registrar Kwale on 12/2/2020 made an illegal entry on the register declaring that parcels including the suit parcel to the instant application as belonging to Mohamed Shehe, Tumbu Mrauku, Ali Kassim Mkungu and Iddi Mohamed Mwatandara by way of adverse possession and a title deed issued on 1/3/2020.
  6. It is stated that the 4<sup>th</sup> and 5<sup>th</sup> Defendants used forged proceedings and court orders to obtain registration of the land. That the orders asking the 4<sup>th</sup> and 5<sup>th</sup> Defendants to retain the suit property is therefore incapable of getting the defendants the land. The applicant avers that the consent judgement entered on 6/6/2022 is a fraud as the parties deliberately failed to disclose all material facts concerning the suit property. That the 4<sup>th</sup> Defendant Mwanajuma Ali Buwa died before the consent and could therefore not prosecute the suit. That both the 4<sup>th</sup> and 5<sup>th</sup> Defendants have no known interest known to the suit parcel Kwale/Msambweni 'A'/1706. The court is urged to allow the application as prayed.

### **Hearing of the Application**

7. The application was placed before me for hearing under certificate of urgency. I made reference to proceedings in Kwale ELC Misc No 3 of 2021 involving suit parcel Kwale/Msambweni 'A'/1706 where I delivered a ruling in the following terms; -
  1. The consent judgement orders issued on 22<sup>nd</sup> May 2017 be and are hereby set aside
  2. The status quo with regard to the register of Kwale/Msambweni 'A'/1706 and status quo in regard to possession thereof be maintained,
  3. The 1<sup>st</sup> and 2<sup>nd</sup> respondents are hereby prohibited from registering any disposition against Kwale/Msambweni 'A'/1706 until final determination of this matter,
  4. Costs shall be in the cause.
8. In view of the above orders I declined to render the application urgent and ordered for service to be effected upon the respondents. Both files were placed before this court on 18/4/2023. From the proceedings it is clear that the applicant's counsel is keen on having the consent order set aside despite the plaintiff counsel insisting on preserving the rest of the contents of the consent and only setting



aside what concerns the suit parcel Kwale/Msambweni “A”/1706. The plaintiff was allowed to put in a response to the application. I then directed the application be dispensed by way of written submissions.

### **Response to Application**

9. In opposing the application, the plaintiff/respondent filed a replying affidavit sworn by Charles Karani Nyamu, its director. The deponent states that he does not oppose the joinder of the Applicant as a party in the suit but is a stranger to all other allegations in totality. He states that to his knowledge at all times before and during the recording of the consent judgement entered on 6/6/2022 the plaintiff and its advocate acted in good faith and did not fail to disclose facts which were within their knowledge. That the consent for retention of plot Kwale/Msambweni/ “A”/1706 by the 4<sup>th</sup> and 5<sup>th</sup> defendants was with the honest belief that the said 4<sup>th</sup> and 5<sup>th</sup> defendants were still the registered owners of the said property and had a title deed. That in the event the same was not true then that information lay with the 4<sup>th</sup> and 5<sup>th</sup> defendants who failed to disclose the same. It is prayed that in the event that the court decides to vary/set aside the consent the same should be limited to that part dealing with plot Kwale/Msambweni/ “A”/1706 and the rest be preserved.

### **Determination**

10. The court record bears no submissions from either parties who participated in the application. I am of the considered opinion that the main issues for determination arising herein are as follows: -

1. Whether the prayer for joinder as an Interested Party is merited.
2. Whether the Applicant has met the threshold for reviewing or setting aside the consent judgement and consequential decree entered by the court on June 6, 2022.

11. On the first issue for determination, order 1 rule 10(2) of the [Civil Procedure Rules](#) 2010 states as provides: -

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 or settle all questions involved in the suit, be added.

12. In the case of [Francis Karioko Muruatetu & another v Republic & 5 others](#) Petition No. 15 as consolidated with No 16 of 2013 [2016] eKLR, the Supreme Court set out guidance on the requirements for successful application for joinder as an Interested Party as follows;

1. 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.
2. 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.
3. Lastly, 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.



13. From the above it behoves a party seeking to be enjoined as an interested party in a suit to demonstrate that they will be affected by the expected decision of the Court. This was emphasised by the holding in *Judicial Service Commission -vs- Speaker of the National Assembly & Another* [2013] eKLR where the court stated that:

“...an interested party ..... is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to urge the court to make a determination favourable to his stake in the proceedings.”

14. I have perused the documents presented before court by the Applicant in relation to having an identifiable stake in the suit property subject of this application and which is Kwale/Msambweni/“A”/1706. Attached to the application is a copy of the title to the suit parcel registered in the names of the Applicants deceased husband Raojibhai G Patel. The title deed was issued on 13<sup>th</sup> October 1995. I have further perused the decree pursuant to the consent judgement entered into by the parties herein and which at item No. 1 indicates that the plot No. Kwale/Msambweni/ “A”/1706 shall be retained by the 4<sup>th</sup> and 5<sup>th</sup> defendants. The applicant has alleged to the property having been fraudulently transferred to the 4<sup>th</sup> and 5<sup>th</sup> defendants through fake court proceedings on an adverse possession claim. To me it is imperative that ownership of the suit parcel ought to be determined by according both sides of the divide an opportunity to be heard. Indeed, the intended interested party is a crucial party in aiding the court make a just finding on the same.

15. This Court is of the view that the proposed interested parties’ application has met the threshold set out in the Muruatetu case (Supra). On the second issue for determination, the courts have in several judicial authorities rendered itself on the circumstances/threshold to be met for a consent judgement to be set aside. In the case of Samson Munikah practicing as Munikah & Company Advocates Vs Wedube Estates Limited Nairobi Civil Appeal No. 126 of 2005 the court stated; -

“This appeal raises the vexed question: (of) what are the circumstances in which a consent judgment may be set aside” In *Broke Bond Liebig (t) Ltd v Mallya* (1975) E.A. 266 the then Court of appeal for East Africa set out the circumstances in which a judgment freely entered into by parties to a dispute in court would be set aside: -

“The circumstances in which a consent judgment may be interfered with were considered by this court in *Hirani v Kassan* (1952)19 EACA 131 where the following passage from Section on judgments and orders, 7th Edition vol. 1, P. 124 was approved:

“Prima Facie, any order made in the presence and with the consent of the counsel is binding on all parties to the proceedings or action, and on those claiming under them and cannot be varied or discharged unless obtained by fraud or collusion or by an agreement contrary to the policy of the court or if the consent was given without sufficient material facts, or in general for a reason which would enable the court to set aside an agreement”.

16. Applying the above principles to the present case, Counsel for the applicant and the plaintiff intimated to court that there exists a case Kwale ELC Misc No 3 of 2021 where suit property Kwale/Msambweni/“A”/1706 herein is the subject matter therein. The court has had the chance to peruse the Miscellaneous Suit and from it, it is gathered that the interested parties therein vide an application dated 18/6/2021 sought to have a consent judgement entered in the matter on 22/5/2017 set aside.



17. A brief history of the said suit will suffice at this point. The suit property subject of this application being Kwale/Msambweni/ "A"/1706 was apparently subdivided to form titles Kwale/Msambweni A 3583,3633 and 3594. One of the subdivided portions was then sold to the interested parties in the Miscellaneous Suit No 3 of 2021 namely Dzocherà Ali Warakah by Mwanajuma Ali Buwa and who is the 4<sup>th</sup> respondent in the instant suit. The remaining parcels being Kwale/Msambweni A 3583 and 3633 were sold by the very Mwanajuma Ali Buwa to Welington Osore Opimbi the second interested party in the miscellaneous suit. The interested parties in the miscellaneous suit state that to their dismay they learnt of cancellation of their titles and the registration of the suit parcel in the names of Raojibhai G Patel the deceased husband to the intended intended interested party in the instant application. This brief history in my view has already clearly demonstrated that the consent judgement entered on 6/6/2022 was made without the benefit of the information that the suit parcel herein is allegedly already subdivided resulting into new numbers with title deeds. This information is germane and had it been known I have no doubt the court would not have sanctioned the consent. Consequently, it is my finding that the consent order was given without sufficient material facts, which facts are now apparent and entitle this court to set aside the impugned consent.
18. From the ruling delivered in respect of Kwale ELC Misc No 3 of 2021, the court notes that it was ordered that status quo with regards to Kwale/Msambweni/ "A"/1706 be maintained and that the 2nd defendant/respondent therein be prohibited from registering any disposition against the suit property Kwale/Msambweni/ "A"/1706. The said orders will apply in the instant application as it has been clearly demonstrated that the two files herein correlate. This shall require consideration for consolidation which I will allow the parties to address me at the opportune time.
19. The upshot of the foregoing is that consent judgement and decree of 6/6/2022 shall be set aside as sought by the Applicant. The same will however be limited to the suit property Kwale/Msambweni/ "A"/1706 which is the bone of contention in the related files herein. Moreover, the applicant states that she is not interested in the other parcels mentioned in the decree but only Kwale/Msambweni/ "A"/1706. However, be that as it may and in the interest of justice, the court will make the following orders;
1. The Applicant herein Urmilaben G Patel is hereby enjoined as an interested party in the suit.
  2. The first order in the consent judgement/decree in the suit herein made on 6/6/2022 be and is hereby varied or set aside as respects plot No. LR Kwale/Msambweni "A"/1706
  3. The Land Registrar-Kwale, the 2<sup>nd</sup> Defendant/respondent be and is hereby prohibited from registering any disposition against Kwale/Msambweni "A"/1706 until final determination of this matter,

It is so ordered.

**DATED SIGNED AND DELIVERED THIS 3<sup>RD</sup> DAY OF OCTOBER, 2023.**

**A E DENA**

**JUDGE**

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Mr. Opolu for the interested party

Mrs. Waswa 1<sup>st</sup> and 2<sup>nd</sup> Defendant/Respondent

Mr. Cheruiyot for 4<sup>th</sup> & 5<sup>th</sup> Defendant/Respondents



Mr. Chamwada present

