



Bihi v Omar; Hache (Intended Interested Party) (Environment and Land Appeal E075 of 2023) [2023] KEELC 21305 (KLR) (6 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21305 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E075 OF 2023
EK WABWOTO, J
NOVEMBER 6, 2023**

BETWEEN

MOHAMED BIHI APPELLANT

AND

OMAR MOHAMED OMAR RESPONDENT

AND

HASSAN HUSSEIN HACHE INTENDED INTERESTED PARTY

RULING

1. This ruling is in respect to the application dated October 18, 2023, in which the Intended Interested Party sought for the following orders;
 - a.Spent.
 - b. That this Honorable Court be pleased to enjoin Hassan Hussein Hache as the Interested Party in this suit and be allowed to participate as such.
 - c. That this Honorable Court be pleased to grant leave to the Interested Party to respond on the matter within 7 days or with timeline be given by Court.
 - d. That the costs of this application be in the cause.
2. The application was supported by the affidavit sworn by Hassan Hussein Hache dated October 18, 2023 under the following grounds:
 - i. That in the Interested Party has a tenancy interest on the suit premises and has a claim over the same in which he prays to be given opportunity to participate to this proceedings before the Court deliver its judgment on 2/11/2023.



- ii. The Appellant refused to vacate the premises that the Intended Interested Party rented from 21st February 2023 from the Respondent.
 - iii. The Respondent's property management company by the name: Shunny Shine Agency had already received a sum of Ksh 300,000 for the 1st quarter of the year as advised by the Respondent.
 - iv. The Intended interested party just noticed about the matter when trying to confirm the position of the suit premises when he requested to know from the Respondent when to take possession of the premises.
 - v. That the Intended Interested Party has already paid a sum of Kenya Shillings Three Hundred Thousand Only (Kshs 300,000) being 1st Quarter of the year as a part of rent.
 - vi. That it is fair and just that the order sought herein be granted so that the Court can make final determination once and for all.
3. On 2th November 2023, the matter had been set for judgment however due to this application the judgment stood arrested awaiting determination of the said application. Learned Counsel Rukwaro for the Intended Interested party relied entirely on the application and affidavit in support.
 4. Learned Counsel Dayib for the Respondent opposed the application on the premise that the issues raised can be addressed by the trial Court. The Appellant was represented by Learned Counsel Otinga who equally opposed the application in their grounds of opposition dated 2nd November 2023. It was submitted that the Intended Interested Party has not specifically demonstrated his interest in the subject matter and that this application was a conspiracy between the Intended Interested Party and the Respondent to unprocedurally terminate the Appellant's tenancy. For this reason, it was prayed for the same to be dismissed with costs.
 5. I have considered the application, submissions and supporting documents filed by the parties and the only issue for determination in respect to the said application is whether the intended interested party should be joined to this appeal.
 6. On the issue of joinder, The Black's Law Dictionary defines "interested party" as:-

"A party who has a recognizable stake (and therefore standing) in a matter."
 7. Order 1 rule 10, (2) of the *Civil Procedure Rules*, outlines that:

"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 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."
 8. The principles for joinder were well outlined in *Meme v Republic* (2004)1 124, eKLR which are:
 - a. Joinder of a person because his presence will result in the complete settlement of all questions involved in the proceedings;
 - b. Joinder to provide a protection of a party who would otherwise be adversely affected in law;



- c. Joinder to prevent a likely course of proliferated litigation.
9. The aforementioned decision was echoed by the Supreme Court in the case of *Communications Commission of Kenya & 4 Others vs Royal Media Services Ltd. & 7 Others* (2014) eKLR where it was stated:
- “An Interested Party is one who has a stake in the proceedings, though he or she was not a party to the cause ab initio. He or she is the 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 interests will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. A party could be enjoined in a matter for the reason 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 of the rights of a party who would otherwise be adversely affected in law;
 - iii. Joinder to prevent a likely course of proliferated litigation.”
10. Of importance, in the above mentioned case, the Supreme Court discussed the fact that the interested party had not previously participated in the initial suit nor the appellate stage.
- “The matter giving rise to this appeal was first determined in High Court Constitutional Petition No. 557 of 2013, in which Judgement was delivered on 23rd December, 2013. The 1st, 2nd and 3rd respondents being aggrieved by the decision of the High Court, filed an appeal before the Court of Appeal (Civil Appeal No. 4 of 2014). On 28th March, 2014, the Court of Appeal allowed the said appeal with costs, and which decision is now the subject of the present appeal. The applicant now seeks to be enjoined in this matter, even though it was neither a party at the High Court nor at the Court of Appeal. The applicant has not demonstrated how the ends of justice would better be served by enjoining it in the appeal. Despite the applicant’s argument that its rights under article 34 of *the Constitution* will be violated if not allowed to join in the appeal, we note that the proper forum of first instance, in seeking the enforcement of the Bill of Rights, is the High Court, and not this Court...”
11. I have also considered the holding by Muriithi J in *Benjamin K Kipkulei v County Government of Mombasa & Another* [2015] eKLR where:-
- “...The applicant must show a stake or interest that must prevail in the suit, as that is not possible before the full hearing of the matter; the applicant should demonstrate a legal interest that calls for hearing before a decision on the dispute before the court is adjudicated.”
12. In this instance, the appeal was at the tail-end stage only pending final judgment. It is undisputed that the Intended Interested Party was not a party in the proceedings before the Tribunal that necessitated the filing of this appeal. Perusal of the record of appeal confirms that the Appellant is in possession of the suit premises and had been paying rent until the filing of the appeal June 2023. Bearing this in mind, the Court is hard pressed to believe the averments of the intended interested party who claims to be a tenant who paid Kshs 300,000 as the rent for the 1st Quarter of this year.



13. A further perusal of the cheque dated 21st February 2023 in the name of Omina Building Contractors Ltd and payable to Shummy Shine Agency does not in itself prove the nexus between the interested party and the Respondent-Landlord. In my opinion, in the event that the Respondent has received the said sum, it is recoverable by other means. Moreover, the Intended Interested Party has not presented any further evidence as proof of tenancy. In view of the foregoing, I am not satisfied that it is necessary to join the Intended Interested party.
14. Consequently, this court finds no merit in application dated 18th October 2023 and the same is hereby dismissed with costs payable to the Appellant and the Respondent assessed at Ksh 15,000/- each.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6TH NOVEMBER 2023.

E.K. WABWOTO

JUDGE

In the presence of:

Mr. Otinga for the Appellant.

N/A for the Respondent.

N/A for the Intended Interested Party.

Court Assistant – Caroline Nafuna.

