



**Kitur & another v Lelei & 2 others; Mutai & 3 others (Proposed Interested Parties) (Environment & Land Case E003 B of 2023) [2023] KEELC 21273 (KLR) (2 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21273 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT & LAND CASE E003 B OF 2023  
MN MWANYALE, J  
NOVEMBER 2, 2023**

**BETWEEN**

**STANLEY KIPKIRUI KITUR ..... 1<sup>ST</sup> PLAINTIFF**

**HOSEA KIPTANUI KIRUI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**WILSON KIPKOSGEI LELEI ..... 1<sup>ST</sup> DEFENDANT**

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

**THE SURVEYOR, NANDI ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**SAMWEL MUTAI ..... PROPOSED INTERESTED PARTY**

**PHILEMON RUTO ..... PROPOSED INTERESTED PARTY**

**NOAH KIPROTICH ..... PROPOSED INTERESTED PARTY**

**TIMOTHY KIPKORIR METTO ..... PROPOSED INTERESTED PARTY**

**RULING**

1. The four proposed Interested parties Samwel Mutai, Philemon Ruto, Noah Kiprotich and Timothy Kipkorir Metto vide their chamber summons dated 6<sup>th</sup> June 2023 sought joinder in this suit as Interested Parties.
2. The application was premised on grounds interalia
  - i) that the Applicants have an Interest in Nandi/Ndalat Settlement/ 412 as they are occupants of portions in the suit parcel together with the Plaintiff.



- ii) that the orders which the Court will give is likely affect them as that are in actual occupation and possession of the portions of the suit parcel.
  - iii) that the presence of the proposed interested parties in the suit will enable the Court effectually and completely adjudicate upon and settle all questions involved in the suit.
3. The application was supported by the supporting affidavit of Samuel Mutai, who reiterated the grounds in support of the application as well exhibited a copy of authority to co-plaintiff, Agreements for Sale in respect of L.R. No. Nandi/Ndalat Settlement/412 copies of receipts to Department of Lands in respect of adjudication process.
4. No replying affidavit in respect of the application was filed.
5. Though the application was unopposed the same will be subjected to a merit review to see whether the orders sought should be granted.
6. The Learned Counsels for the parties were directed to proceed with oral submissions, with the Respondents Advocate permitted to submit only on points of law as his client had not filed a replying affidavit.
7. Mr. Serem Learned Counsel for the Applicant submitted that the Interested Parties had a right of joinder as they had purchased properties and the title was issued in the name of Wilson Kipkosgei Lelei the Defendant. He cited order 1 rule 10 (2) of the Civil Procedure Rules and the decision in the case of Lucy Nungari Ngigi vs National Bank & 4 others Civil Case No. 517/2015, on the test for joinder.
8. The Learned Counsel equally placed reliance on the decision in the case of Francis Muruatetu and another vs Republic and 5 others, on the elements for joinder which he stated that the main issue is to assist the Court, and to show the personal interest, and to avoid multiplicity of suits.
9. In opposing the application on points of law, Mr. Choge Learned Counsel pointed to the Court on the principles set out in the Francis Muruatetu case to wit an interested party cannot get precipatory orders against the Principal Parties.
10. He further submitted on the likelihood of a conflict of interest should the Defendants Advocate also represent the Interested Parties as was the likely scenario in the matter.
12. In a brief rejoinder on matters of law Mr. Serem Learned Counsel for the Defendant and the proposed Interested Parties/Applicants submitted that the Plaintiff had purchased the whole portion from the Defendants and that at the opportune time, he would cease acting for the Defendant to avoid the likely conflict of interest.
13. Having considered the application, affidavit in support and rival submissions by Counsels the Court frames the following as the issues for determination; -
  - i) whether the Applicants has met the conditions for joinder as an Interested Party
  - ii) whether the application is merited
  - iii) what reliefs ought to issue?



14. In *Francis Kariuki Muruatetu and Another vs Republic and 5 others* (2016) eKLR the Supreme Court at paragraph 37 set out three requirements an Applicant must show to succeed in an application for joinder as an Interested Party. The Applicant must show that;
- “i) 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.
  - ii) 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.
  - iii) 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 merely not a replication of what the other parties will be making before the Court.”
15. In the application before Court the Applicant/Proposed Interested Parties have exhibited agreements for sale where Mr. Stanley Kipkirui Kitur of P.O. Box 2151 Eldoret was the vendor and Philemon Ruto, Samuel Kipkorir Mutai and Shadrack Kipngeny Kogo were purchasers.
16. Other agreements exhibited reveal sale between Paul Bii Kipngetch as vendor Hosea Kirui, Benjamin Metto, Timothy Metto as the purchasers.
17. There was exhibited before Court evidence of payments to the Government of Kenya through the SFT by Philemon Ruto and Samuel K. Mutai on behalf of Kipchirchir Birech in respect of Ndalat / Settlement Scheme (043)/412.
18. From the annexure, the Interested Parties purchased properties in Ndalat/settlement/412 by paying to Mr. Stanley Kipkirui and Paul Bii Kipngetch.
19. In the plaint before Court at paragraph 6, the Plaintiff avers having purchased 6.3 Ha of Ndalat Settlement 412 from the 1<sup>st</sup> Defendants father and that the 1<sup>st</sup> Defendant is now the registered owner of the whole parcel of land Ndalat/Settlement/412 pursuant to a grant and a certificate of confirmation of the Grant.
20. The applicants have demonstrated an interested demonstrated an interest and have met the threshold for joinder.
21. In answer to issue number 1, the Court answers the same in the affirmative.
22. On issue number 2, Applicants having demonstrated interested by virtue of purchaser of portions in Nandi/Ndalat/Settlement/412 their application is merited.
23. The result is that the application for joinder is allowed, but the firm of Cheruiyot Melly shall not represent both the Defendant and the Interested parties as that shall constitute a conflict of interest.

**RULING, DATED AND DELIVERED AT KAPSABET THIS 2<sup>ND</sup> DAY OF NOVEMBER 2023.**

**HON. M. N. MWANYALE**

**JUDGE**

In the presence of;

Mr. Choge for Plaintiff/Respondent



Mr. Kiprono for Defendant and Interested Parties/Applicants

