



REPUBLIC OF KENYA



**Mwambire & 10 others v Sadiq & another; Chimbombo (Interested Party) (Environment & Land Case 3 of 2023) [2023] KEELC 21482 (KLR) (8 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21482 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 3 OF 2023  
EK MAKORI, J  
NOVEMBER 8, 2023**

**BETWEEN**

**SAFARI KAZUNGU MWAMBIRE ..... 1<sup>ST</sup> PLAINTIFF  
DAVID UNDA RUWA ..... 2<sup>ND</sup> PLAINTIFF  
GEDION THOMAS MUZUNGU ..... 3<sup>RD</sup> PLAINTIFF  
MAURIZE KAZUNGU MUSAJI ..... 4<sup>TH</sup> PLAINTIFF  
EUNICE DAMA SHARIFU ..... 5<sup>TH</sup> PLAINTIFF  
GONA MENZA LUGO ..... 6<sup>TH</sup> PLAINTIFF  
MANYESO KENGA MCHAWA ..... 7<sup>TH</sup> PLAINTIFF  
DAVID MZUNGU MWAKIPONDA ..... 8<sup>TH</sup> PLAINTIFF  
STEPHEN KAZUNGU MWAMBIRE ..... 9<sup>TH</sup> PLAINTIFF  
DAMA CHARO MZUNGU ..... 10<sup>TH</sup> PLAINTIFF  
KATSAK MWADENA ..... 11<sup>TH</sup> PLAINTIFF**

**AND**

**ABDUL WAHID MOHAMED SADIQ ..... 1<sup>ST</sup> RESPONDENT  
MOHAMED FAROOQ AZIZ KARAMDIN COCKER ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**TEMO HASSAN CHIMBOMBO ..... INTERESTED PARTY**



## RULING

1. The Notice of Motion dated 23<sup>rd</sup> August 2023 seeks to have one Hassan Chimbombo Temo joined as an interested party in this proceedings.
2. The said Hassan Temo Chimbombo claims that he has been a “caretaker” of the suit premises owned by Mohammed Aziz Karamdin Cocker also known as “Najim Cocker” since 1993. The Respondents migrated to Nairobi and Canada respectively but he had entered an oral agreement to take care of the 88-acre land – the subject matter in this suit. In 1993 the applicant as a caretaker, allowed the respondents to pay Kshs 600 per acre to enjoy usufruct rights over the suit property. They later defaulted.
3. On visiting the land in the year 2023 he came to discover the respondents had filed this suit.
4. He seeks to be joined to protect the rights of the said Mohamed Farooq Aziz Karamdin Cocker aka Najim Mohammed Cocker. The court needs to know there are owners to the suit property and that he is a caretaker, taking care of the interests of the said landowners.
5. The respondent opposes the joinder stating that the claim is against the titleholders who have been sued and who have failed to enter appearance and place a defence on record. The respondents claim adverse possession, which will be an important aspect herein. Parties quoted several authorities concerning the joinder of parties, which forms the only issue for the determination of this court.
6. I have carefully considered the materials and submissions placed before me with the authorities quoted. The issue of the joinder of a party in proceedings has been litigated in our courts for a while and the factors to consider have crystallized. For example, in the case of *Trusted Society of Human Rights, Alliance v Mumo Matemu & 5 Others* [2015] eKLR for a joinder to succeed- the applicant has to have a stake in the subject matter before the court, he has to show that he will be affected by the decision of the court and that his interest will not be articulated well in his absence from the proceeding. This is what the court had to say:

“Consequently, 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.”
7. What the applicant deposes extensively in his supporting affidavit is that he was given a caretaker position by the landowners who have long migrated to Nairobi and Canada respectively. This is found in paragraphs 4 to 36. Beyond stating that he is a “caretaker,” he will not be claiming ownership of the land in question but state it has owners - the respondents in the Originating Summons.
8. The owners have been sued and requested to respond. Summons to enter an appearance and defend were duly issued, presaging that there was a pending suit against them. They have failed to respond. An advertisement in the local daily of wide circulation has been put out there that there is an adverse possession claim filed against them seeking to impeach their title. They have not responded. The suit is headed to formal proof. Even if the interested party is joined, he has no Power of Attorney or express authority to permit him to propagate the interests of the sued landowners, (at least it was not shown to this court). At best, he will be a busybody in this matter. His claim as a caretaker will not be on trial here. What he needs to do, as a good caretaker is to inform his masters that there is a pending suit filed



at the ELC Malindi and they should swiftly file a response. Otherwise, the sails have been hoisted there are no noticeable knots and kinks - the boat is ready for the high seas – the trial itself.

9. The upshot is that the joinder of the interested party in this matter is undeserved. The interested party will bring nothing to the table of justice. Notice of Motion dated 23<sup>rd</sup> May 2023 is hereby dismissed with cost.

**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS 8<sup>TH</sup> DAY OF NOVEMBER 2023.**

**E. K. MAKORI**

**JUDGE**

