



**Kirgotty v Castro; Nairobi City County Assembly Service Board (Intended Interested Party)
(Environment & Land Case E010 of 2021) [2022] KEELC 3209 (KLR) (2 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 3209 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E010 OF 2021
CA OCHIENG, J
JUNE 2, 2022**

BETWEEN

SIMEON OLE KIRGOTTY PLAINTIFF

AND

ROMEO CASTRO DEFENDANT

AND

**NAIROBI CITY COUNTY ASSEMBLY SERVICE BOARD INTENDED
INTERESTED PARTY**

RULING

1. What is before court for determination is the Intended Interested Party's Notice of Motion Application dated the May 5, 2021 brought pursuant to Order 1 Rule 8 and 10(2) of the [Civil Procedure Rules](#) and section 1, 1A, 1B & 3A of the [Civil Procedure Act](#). The Applicant seeks the following orders:
 1. That Nairobi City County Assembly Service Board be allowed to join in these proceedings as Interested Party.
 2. The costs of this Application be provided for.
2. The Application is premised on the grounds on the face of it and the supporting affidavit of Edward O. Gichana. It is the applicant's contention that the defendant who is an employee of Nairobi County Assembly benefited from a mortgage facility that resulted in a Charge being registered in favour of Nairobi City County Assembly for the purchase of all that parcel of land known as Mavoko Town Block2/5304 and hence has an interest in the subject matter. It explains that errors occurred during the subdivision of the mother title and issuance of the new title deeds. It avers that the boundaries of all the properties that had been sold from the 'mother parcel' were erroneous to the extent that the



actual boundaries on the parcel did not match the Surveyor's map. Further, a Surveyor's visit did reveal that the Plaintiff's property known as Mavoko Town Block 2/5303 had been sandwiched between the defendant's property and Mavoko Town Block 2/5302 but at the site, the same is non-existent. It reiterates that it is in the interest of justice that the applicant be enjoined in these proceedings so as not to be arbitrarily deprived of its property.

3. The plaintiff opposed the application and filed a replying affidavit where he confirms being the registered owner of the parcel of land known as Mavoko Town Block 2/5303. He avers that the defendant has admitted encroachment into his parcel of land in his pleadings. He contends that no Charge Facility which the applicant claims to have extended to the defendant has been annexed to the supporting affidavit. He states that the issue in contention herein does not affect the authenticity of title nor does it affect Title Number Mavoko Town Block 2/5304 in any capacity but the intentional act by the Defendant to encroach on Title Number Mavoko Town Block 2/5303. He avers that the Intended Interested Party has no business participating in these proceedings. He reiterates that the intended interested party's financial interests are not threatened and allowing the instant application will prejudice him as well as his case.
4. The application was canvassed by way of written submissions

Analysis and Determination

5. Upon consideration of the Notice of Motion application dated the May 5, 2021 including the respective affidavits, annexures and rivaling submissions, the only issue for determination is whether the intended interested party should be allowed to be joined in these proceedings.
6. The intended interested party in its submissions reiterated its averments as per the supporting affidavit and insisted it has an identifiable stake in this matter before court. Further, it has a right over the suit property as a Chargor since the Charge is registered in their favour over the suit property. To buttress its averments, it relied on the following decisions: *Trusted Society of Human Rights Alliance v Mumo Matemu* (2014) eKLR; *Francis Kariuki Muruatetu & another v Republic & 5 others* (2016) eKLR; *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v attorney General & 4 others* (2017) eKLR; *Communications Commission & 4 others v Royal Media Services Limited & 7 others* (2014) eKLR and *Meme v Republic* (2004) 1 EA 124.
7. The plaintiff in his submissions insists the intended interested party has no interest in this matter and his position will be prejudiced. He contends that the land parcel wherein the intended interested party claims to have interest in, is Mavoko Town Block 2/ 5302, while these proceedings have nothing to do with the said land. Further, the intended interested party has not demonstrated the identifiable stake it has in this matter. He further submits that the Intended Interested Party seeks to introduce new issues which are non-existent. To support his arguments, he has relied on the following decisions: *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others* (2017) eKLR; *Trusted Society of Human Rights Alliance v Mumo Matemu* (2014) eKLR and *Methodist Church in Kenya v Mohammed Fugicha & 3 others* (2019) eKLR.
8. *Black's Law Dictionary*, 9th Edition, defines an 'interested party' as "A party who has a recognizable stake (and therefore standing) in a matter".
9. In respect to joinder of a party to proceedings already in court, Order 1 Rule 10(2) of the *Civil Procedure Rules* stipulates *inter alia*:

(2) 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 and settle all questions involved in the suit, be added.”

10. In the case of *Trusted Society of Human Rights Alliance Mumo Matemu & 5* (2015) eKLR the Court defined an Interested Party as follows:

(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.”

11. Rule 2 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, 2013, also known as the Mutunga Rules defines an Interested Party as follows:

A person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation.”

12. While in the case of *Francis Karioko Muruatetu & another v Republic & 5 others* [2016] eKLR (Petition No. 15 of 2015), the Supreme Court vide its ruling dated the January 28, 2016 provided parameters to be considered for joinder of an interested party and provided inter alia:

From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party:

One must move the court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the court; hence, sufficient grounds must be laid before the court, on the basis of the following elements:-

- 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 not merely a replication of what the other parties will be making before the court.”

13. On perusal of the pleadings herein, I note the plaintiff filed its plaint on January 28, 2021 where he sought for eviction orders as well as a permanent injunction restraining the Defendant or his agents or any other person claiming under him from interfering with land known as Mavoko Town Block 2/5303. From a cursory look at the Defence including Counter-claim, the defendant denied the Plaintiff's claim and it emerged that Mavoko Town Block 2/5303 and Mavoko Town Block 2/5304 which belongs to the defendant were resultant subdivisions of Mavoko Town Block 343 and 344 that was initially owned by Stephen Muriu. The defendant in his Defence contended that there was an error during the subdivision which was brought to light that even though in the sketch map, the plaintiff's



suit property is sandwiched between the defendant's land as well as Mavoko Town Block 2/5302, however the same was non-existent on site. Further, that the representative of the vendor one Charles Muriu Mwangi offered the plaintiff a vacant parcel of land to replace the lost one. The defendant has also sought for various prayers including an order for the Machakos District Land Registrar to carry out a resurvey with a view to reassigning the boundaries as per the current existing boundaries. I note the defendant has not denied that his parcel of land is Charged to Nairobi City County Assembly Service Board, the intended interested party. The plaintiff has also not denied that his parcel of land and the defendant's parcel of land were resultant subdivisions of one title. From this analysis, it is evident that the main reason for theintended interested parties' quest to be joined to this suit is to protect its rights as a Chargor of the defendant's parcel of land.

14. Based on the facts as presented and relying on the legal provisions I have quoted while associating myself with the cited decisions, it is my considered view that the Intended interested party as a chargor of the defendant's land has a stake in these proceedings and its involvement herein is hence necessary to enable the court effectually and completely adjudicate upon, as well as settle all questions involved in the suit. Further, that it will be affected by any decision from the suit herein. The plaintiff has not demonstrated what prejudice he stands to suffer if the intended interested party was joined in these proceedings.
15. It is against the foregoing that I find the Notice of Motion application dated the May 5, 2021 merited and will allow it. Costs will be in the cause.
16. I further grant the interested party leave of 21 days to file and serve its Defence after which the plaintiff including the defendant have leave of fourteen (14) days to file as well as serve their reply to defence if need be.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 2ND DAY OF JUNE, 2022.

CHRISTINE OCHIENG

JUDGE

