



Kiriwa & another (Suing as the administratrix of the Estate of the Late Paul Kiriwa) v Meli (Suing as the administratrix of the Estate of the Kemeli Mbogo Simeon) & 5 others; Yego (Proposed Interested Party) (Environment & Land Case 58 of 2017) [2022] KEELC 13350 (KLR) (4 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13350 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 58 OF 2017
FO NYAGAKA, J
OCTOBER 4, 2022**

BETWEEN

**GRACE WANGOI KIRIWA 1ST PLAINTIFF
JOSEPH GITAU KIRIWA 2ND PLAINTIFF
SUING AS THE ADMINISTRATRIX OF THE ESTATE OF THE LATE PAUL
KIRIWA**

AND

**JACKSON KIPLAGAT ARAP MELI (SUING AS THE ADMINISTRATRIX OF
THE ESTATE OF THE KEMELI MBOGO SIMEON) 1ST DEFENDANT
ROSELYN CHEMAIYO KENEI (SUING AS THE ADMINISTRATRIX OF THE
ESTATE OF THE LATE ELIJAH KIPTARUS KENEI) 2ND DEFENDANT
ANNA JEPKOECH TENAI (SUING AS THE ADMINISTRATRIX
OF THE ESTATE OF THE LATE MICHAEL MALAKWEN ARAP
TENAI) 3RD DEFENDANT
DINA JEPKORIR TENAI (SUING AS THE ADMINISTRATRIX OF
THE ESTATE OF THE LATE MICHAEL MALAKWEN ARAP
TENAI) 4TH DEFENDANT
COMMISSIONER FOR LAND 5TH DEFENDANT
ATTORNEY GENERAL 6TH DEFENDANT**

AND

DANIEL KIRIWA YEGO PROPOSED INTERESTED PARTY



RULING

The application

1. The proposed interested party's notice of motion application dated July 13, 2020 And filed on March 17, 2022 seeks the following reliefs:

Subpara 1.

Spent;

2. That Daniel Kirwa Yego be made party and/or be enjoined to the instant suit as an interested party in order to participate in the proceedings herein;
 3. That the proceedings herein and any other orders flowing therefrom be set aside and/or be discharged forthwith;
 4. That costs of this application be provided for.
2. The application is supported by the grounds its face and by affidavit of the proposed interested party. In precise, the proposed interested party stated that in 1982, he purchased the suit land namely LR 9191 (EX Graham) Sosiot Farm measuring approximately 90 acres, from Paul Kirwo Simatwo (now deceased) measuring approximately 90 acres. He annexed and was marked DKY 1, a copy of the grant. The sale agreement was annexed and marked DKY 2 (a) - (b). It was agreed that all liabilities be inherited by the proposed interested party as a condition for sale. To this end, he settled the deceased's loan arrears from Agricultural Development Corporation (ADC) in full. He annexed and was marked DKY 3 (a) - (c), copies of the receipts in support of payment.
 3. He added that the title deed, held by ADC, was to be released to the deceased who in turn would transfer the property in his favor. The excision of those 90 acres was to be done upon survey. He added that Kshs 17,000.00 as survey fees was paid to the Kitale lands department. He also paid Kshs 400.00 to the district physical planning department. He annexed and was marked DKY 4 (a) - (d), copies of the receipts and correspondence.
 4. He deponed that it was the intention that the said land parcel be divided into two plots, namely A and B. However, the same did not materialize. He annexed and was marked DKY 5, a copy of the sub-division plan.
 5. In light of the above, he sought leave to litigate be enjoined in the litigation o protect his rights over the said parcel of land. He implored that it was in the interest of justice that the application be granted as prayed.
 6. During the hearing of the application on June 29, 2022, learned counsel for the plaintiff indicated that he had responded to the application. However as at the time of writing this ruling, the same was not in the court file. The 1st - 4th defendants did not oppose the application while the 5th and 6th defendants did not participate altogether.

Submissions

7. Pursuant to the court's directions, parties were directed to dispose of the application by way of written submissions. However, as at the time of writing this ruling, I was only in receipt of the proposed interested party's submissions. According to his submissions dated July 8, 2022 and filed on July 12,



2022, the application was merited. He reproduced the contents of his application in justification of that argument. He added that his participation in the proceedings will implore a holistic approach towards settlement of the dispute herein. He furthered that his presence was necessitated by the fact that he would be affected by the final orders of this court.

8. Relying on the definition of an interested party from the 10th Edition of the Black's Law Dictionary, he submitted that he was a party with a recognizable stake and therefore had standing in the matter. He urged this court to allow the application as prayed.

Analysis and disposition

9. The application seeks to enjoin one Daniel Kirwa Yego as a proposed interested party. Derivatively, it also prays for the proceedings herein and any other orders flowing therefrom be set aside and/or be discharged forthwith.
10. The principles set out in grant or refusal to enjoin a party were well articulated by the Supreme Court of Kenya in *JOO v MBO; Federation of Women Lawyers (intended interested party); Law Society of Kenya & 3 others (Amici Curiae) [2021] eKLR*. The apex court held thus:

(14) This court has laid down the principles for enjoinder as an interested party in the case of *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others*, SC Petition (Application) No 12 of 2013; [2014] eKLR where it was stated:

' [17] Suffice it to say that while an interested party has a 'stake/interest' directly in the case, an amicus's interest is its 'fidelity' to the law: that an informed decision is reached by the court having taken into account all relevant laws, and entertained legal arguments and principles brought to light in the courtroom.

(18) 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.'

(15) Similarly, in the case of *Francis Kariuki Muruatetu & another v Republic & 5 others, SC Petition No 15 as consolidated with SC Petition No 16 of 2013 [2016] eKLR* (Muruatetu Case) at paragraph [37], the court set out applicable principles where a party seeks to be enjoined in proceedings as an interested party as follows:

' ... One must move the court by way of a formal application. Enjoinder 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.'

11. Has the applicant met the threshold set out in the binding authority cited above? The applicant states that he purchased the property from the deceased, one Paul Kirwo Simatwo. By virtue of that fact, he contended, he had a stake in the outcome of the matter. He presented various annexures in support of this assertion.
12. While that may be the case, I am not satisfied that the interest is proximate enough to stand apart. Secondly, the applicant has not demonstrated the prejudice he is will likely to suffer if not enjoined as an interested party. Be that as it may, the issues for determination herein will be properly determined with the subsistence of the parties presently on record. In other words, the applicant has not demonstrated what relevance he will bring in the resolution of the dispute herein.
13. For these reasons, and further finding that enjoinder will occasion superfluous delay in the prosecution of this matter, I find that the application lacks merit. It is hereby dismissed with no orders as to costs.
14. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL THIS 4TH DAY OF OCTOBER, 2022.

HON. DR.IUR FRED NYAGAKA

JUDGE, ELC KITALE

