



**Mavueni Properties Kilifi Limited v Mutungi (Being sued in her capacity as the administrator of the Estate of the Late Henry Kithia Mwitari); Mwangiri (Intended Interested Party) (Environment & Land Case E083 of 2022) [2022] KEELC 14658 (KLR) (3 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14658 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E083 OF 2022  
LN MBUGUA, J  
NOVEMBER 3, 2022**

**BETWEEN**

**MAVUENI PROPERTIES KILIFI LIMITED ..... PLAINTIFF**

**AND**

**AGNES NKATHA MUTUNGI ..... DEFENDANT**

**BEING SUED IN HER CAPACITY AS THE ADMINISTRATOR OF THE  
ESTATE OF THE LATE HENRY KITHIA MWITARI**

**AND**

**MOSES NJAU MWAGIRU ..... INTENDED INTERESTED PARTY**

**RULING**

1. Before me is an application dated May 23, 2022 filed by the intended interested party and is brought pursuant to the provisions of article 22(1), 40, 48, 50(1), 159(2) (d) of the *Constitution*, sections; 1, 1A,3,3A of the *Civil Procedure Act* and order 51(rule 1) of the *Civil Procedure Rules*.
2. The applicant, Moses Njau Mwangiri seeks orders that he be enjoined to this suit as an interested party and that there be a stay of further proceedings in this matter.
3. The application is based on grounds on its face and on the supporting affidavit of the applicant sworn on May 23, 2022. He depones that he is the lawful and bonafide owner of LR No 27/34 which is also disputably referred to as LR No 20780 by reason of land ownership records held by the ministry of lands, judicial orders and judgement issued in Nairobi HCCC No 1580 of 1968 George Njau Mwangiri v Donald Victor Kidman, Registrar of Titles and Attorney General.
4. He avers that the suit land has had a longstanding dispute which began in 1968 and that there are still cases pending relating to ownership of the suit property, thus the doctrine of lis pendens, functus



officio and res-judicata applies. The other cases mentioned by the applicant are: Nairobi ELC No 1758 of 1995 Henry Mwitari v Commissioner of Lands and Rose Muthoni Mathenge and Nairobi ELC Petition No 8 of 2017, Moses Mwagiru Njau v Henry Mwitari, Chief Land Registrar and others.

5. He further avers that in Nairobi ELC Petition No 8 of 2017 there's an inhibition order prohibiting registration of any further dealings with the suit land and a further order issued on July 24, 2017 inhibiting Henry Mwitari from dealing with the suit land in any manner and that the said orders were registered on July 18, 2017 by the lands registrar against the title to the suit land. He adds that his protests led to the land registrar revoking the plaintiff's then attempts at registration of the said land.
6. He deposes that the feigned impugned alleged sale of the suit land purportedly between Mavueni Properties and the late Henry Mwitari is a nullity in law since it has always been private land as decreed in Nairobi HCCC No 158 of 1968 where the court declared George Njau Mwagiru as having lawfully purchased the suit land (as trustee of his son- Moses Mwagiru) from Donald Victor Kidman for Ksh 100,000 on June 28, 1968.
7. The application is opposed by the plaintiff via a replying affidavit sworn on July 4, 2022 by Dennis Kagira Mwangi, who is the director of the plaintiff. He contends that plaintiff's claim to the suit property stems from a valid contract, the subject of this suit that was breached by the defendant and that the plaintiff is presently not engaged in any matter involving the interested party and is not privy to the history of the property as collated by the applicant. He deposes that there is no existing privity of contract that would enable the intended Interested Party to be enjoined in these proceedings as breach of contract proceedings involve a right in rem and not persona for which the interested party is seeking to enforce herein.
8. Mr Mwangi also deposes that Nairobi ELC Petition No 8 of 2017 was within the plaintiff's knowledge. He adds that the applicant's claim to ownership is premised on a consent order dated November 24, 1969 which was stayed and neither the applicant nor his father has a valid transfer/ title document showing ownership of the suit land. He avers that the only valid judgement is the one delivered in Nairobi ELC No 1958 of 1995 that vested the subject property in the defendant's deceased husband.
9. I have duly considered all the arguments raised herein including the submissions of the plaintiff. It is noted that the applicant did not file any submissions. The issue falling for determination is whether the applicant should be joined in this suit as an interested party.
10. The *Black's Law Dictionary 9th Edition, page 1232* defines an interested party as;  
' A party who has a recognizable stake (and therefore standing) in the matter'
11. Order 1 rule 10(2) Civil Procedure Rules provides as follows:  
' 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 to effectually and completely to adjudicate upon and settle all questions involved in the suit, be added'.



12. Further, rule 2 of the ‘Mutunga Rules’, the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, Legal Notice No 117 of 2013 defines an interested party as;

‘ A person or an entity that has an identifiable stake or legal interest or duty in the proceedings and may not be directly involved in the litigation’

13. The case of *Joseph Njau Kingori vs Robert Maina Chege & 3 others [2002] eKLR* provided the guiding principles to be adhered to when an intending interested party is to be joined in a suit:

‘ It is clear that the guiding principles when an intending party is to be joined are as follows:(1) He must be a necessary party; (2) He must be a proper party; (3) In the case of the defendant there must be a relief flowing from that defendant to the plaintiff; (4) The ultimate order or decree cannot be enforced without his presence in the matter; (5) His presence is necessary to enable the court to effectively and completely to adjudicate upon and settle all questions involved in the suit’.

14. The applicant seeks to be joined as an interested party herein on grounds that he is the lawful and bonafide owner of the suit property by reason of land ownership records held by the ministry of lands, judicial orders and judgement issued in Nairobi HCCC No 1580 of 1968 George Njau Mwangi v Donald Victor Kidman, Registrar of Titles and Attorney General. The plaintiff on the other hand is tracing the validity of his claim to the judgment in ELC 1958 of 1995.

15. The attention of this court has been drawn to the averments set out by the plaintiff at paragraph 8 of his affidavit where he claims that the only suit he is aware of is ELC Petition 8 of 2017, but in his submissions, he has alluded to the existence of the case ELC No 1758 of 1995, averring that this was the only valid judgment which vested the suit property unto the defendant’s deceased husband. It is quite clear that there has been litigation galore concerning the suit property and the only way to unravel the dispute is to give the claimants audience before this court.

16. The issues being advanced by the plaintiff that the applicant has no tangible claim over the suit land are factual averments requiring proof in evidence. The applicant cannot certainly advance his claims to the suit land if he is shut out from these proceedings.

17. In the circumstances, I find that the application is merited and the same is allowed in terms of prayer no. (2) on joinder. The costs there of shall abide the outcome of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF NOVEMBER, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Munyua for Applicant

Court assistant: Eddel

