



**Ngugi v Annah Nyokabi Kenyatta & another; Sukari View Residents Association
& another (Intended Interested Party) (Environment and Land Case Civil
Suit 502 of 2010) [2022] KEELC 14619 (KLR) (3 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14619 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 502 OF 2010
OA ANGOTE, J
NOVEMBER 3, 2022**

BETWEEN

FRANCIS NJURU NGUGI APPLICANT

AND

ANNAH NYOKABI KENYATTA 1ST RESPONDENT

KRISTINA WAMBUI PRATT 2ND RESPONDENT

AND

**SUKARI VIEW RESIDENTS ASSOCIATION INTENDED INTERESTED
PARTY**

ENOCK NYANCHONGA INTENDED INTERESTED PARTY

RULING

1. In the Notice of Motion application dated August 11, 2020, the applicants have sought for the following orders:
 - a. That the Honorable Court be pleased to issue an order that the applicants herein be enjoined as interested parties to the instant suit forthwith.
 - b. That this Honourable Court be pleased to order a review and/or setting aside of the consent agreement entered into by the parties in the instant suit Francis Njuru Ngugi, Annah Nyokabi Kenyatta and Kristina Wambui Pratt).
 - c. That in the alternative the Honourable Court be pleased to issue an injunction ceasing any and all action to develop, convey, dispose and or remove the applicants and current occupants of L.R. No. Ruiru/kiuBlock 7/131.



- d. That the Honourable Court be pleased to order the applicants herein be served with all necessary documents filed in the instant suit.
 - e. That this Honourable Court be pleased to issue any other further orders it deems fit and just.
 - f. That the costs of this Application be provided for.
2. This application is based on the grounds on the face of it and by the Supporting Affidavit of the 2nd Interested Party who is the Chairperson of the 1st Interested Party's Association. The 2nd Interested Party deponed that members of the intended 1st Interested Party, Sukari View Association, are the proprietors of the 140 plots which compose L.R. No. Ruiru/kiu Block 7/131.
 3. It is the deposition of the 2nd Interested Party that they purchased these plots from Kahawa West Investments Company, whose servant or agent is the Applicant in this suit, Francis Njuru Ngugi, and their ownership is signified by share certificates issued to them by the Company.
 4. According to the Interested Parties, the Company bought the 20 acres of the suit land from the Respondents in April 1990, at Kshs. 1000,000/- (Kshs. 2,000,000 /-) and paid Kshs. 1,400,000/- for the same and that pending the final payment and consent of the land control board, physical possession of the property was transferred to the Company which partitioned the land and sold it to members of the 1st Intended Interested Party.
 5. The 2nd Interested Party deponed that the consent agreement between the Plaintiff and Defendants is illegal and unlawful for material non-disclosure; that the Plaintiff did not have capacity to sue on the company's behalf, having failed to present to the court any resolution by shareholders or directors allowing him to prosecute this suit on their behalf and that the Plaintiff had no authority to depone or appear on behalf of members of Sukari View Residents Association.
 6. It was deponed that the consent agreement will infringe on the individual property rights of members of Sukari View Association; that despite the Interested Parties having an interest in the suit property, they were never involved in this suit and that this infringed on their right to fair hearing and fair administrative action. They urged that if the consent agreement is upheld, this court would be sanctioning an illegality.

Analysis and Determination

7. The application herein is for enjoinder of the Interested Parties as well as stay and review or setting aside of a consent order entered into between the Plaintiff and the Defendants.
8. A brief history of this suit is that it was commenced *vide* an Originating Summons seeking that this court grants orders declaring the Plaintiff to be the lawful proprietor of L.R. No. Ruiru/ Kiu Block 7/ 131 And Ruiru/ Kiu Block7/136, an order of specific performance compelling the Defendants to sign all the necessary documents to effect formal transfer in the Plaintiff's favor and orders restraining the Registrar of Lands in Thika from transferring the suit land to another party.
9. The court's record indicates that on February 12, 2013, it was directed that the matter be fixed for formal proof following the Defendant's failure to file a Replying Affidavit. The matter was however dismissed on March 18, 2015 under Order 17 Rule 2(1) of the [Civil Procedure Code](#) for want of prosecution.
10. Despite the dismissal of the suit, this court (Obaga J) adopted the Consent Order filed by the Parties on May 11, 2020 in which they agreed that the suit be settled with no order as to costs, and that the



Defendants refund the Plaintiff Kshs. 1,600,000/- being in full and final settlement of the Plaintiffs' case against the Defendant.

11. The Intended Interested Parties have opposed this consent judgement on the grounds that the members of the 1st Interested Parties are proprietors of the suit land, having purchased the same from the Plaintiff.
12. They have argued that the consent was adopted by the court due to material non-disclosure by the Plaintiff as he has no capacity to sue on the company's behalf; that he failed to present to this Court any resolution by shareholders or directors of the company allowing him to prosecute this suit on its behalf and that the Plaintiff had no authority to depone or appear on behalf of the members of Sukari View Residents Association.
13. While an interested party is not defined under the *Civil Procedure Act* or its *Rules*, they are defined under the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*, Legal Notice No. 117 of 2013 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.”
14. An Interested Party is also defined by the *Black's Law Dictionary*, 9th Edition at page 1232 as:

“A party who has a recognizable stake (and therefore standing) in the matter”
15. The Supreme Court of Kenya in the case of *Francis K. Muruatetu and another vs Republic & 5 others* (2016) eKLR stated that the joinder of a party in a suit is at the discretion of the court and is subject to certain elements. The Supreme Court held as follows:

“Enjoinment is not as a 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 participation, 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.”
16. The evidence before this court shows that the Intended Interested Parties purchased some portions of the suit property from a company known as Kahawa West Investment Company. According to the deposition of the 2nd Interested Party, the Plaintiff herein was the agent of the company that sold the suit property to them.
17. Considering that the documents annexed on the 2nd Interested Party's Affidavit indicate that all the monies were paid to the said Kahawa West Investment Company, and the said company having not been a party to this suit, it is the finding of this court that the Applicants cannot be joined in this suit.



18. In any event, before the consent between the Plaintiff and the Defendant was purportedly entered into, and adopted by this court (Obaga J.), this suit had long been dismissed for want of prosecution. There is no indication to show that the suit was ever revived. That being the case, there is no suit that is in existence in which the Intended Interested Parties can be joined.

19. For those reasons, I dismiss the Application dated August 11, 2020 with no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 3RD DAY OF NOVEMBER, 2022.

O. A. ANGOTE

JUDGE

In the presence of;

No appearance for Plaintiff/Applicant

Ms Nduta for Muhoro Kimani for 1st and 2nd Respondent

No appearance for intended Interested Parties

Court Assistant - June

