



**Mbici v Muiruri; Amalia Paradise Ltd (Proposed Interested Party) (Commercial Case E107 of 2023) [2025] KEHC 10021 (KLR) (Commercial and Tax) (11 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10021 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E107 OF 2023**

**RC RUTTO, J**

**JULY 11, 2025**

**BETWEEN**

**DUNCAN MARANGA MBICI ..... PLAINTIFF**

**AND**

**ESTHER MUTHONI MUIRURI ..... DEFENDANT**

**AND**

**AMALIA PARADISE LTD ..... PROPOSED INTERESTED PARTY**

**RULING**

1. Before this Court for determination is a Notice of Motion dated 23rd September 2024. The Applicant seeks the following orders: that the Proposed Interested Party be joined in this suit as an Interested Party; that a Mareva injunction be issued against the Proposed Interested Party, freezing funds held on behalf of the Respondent pending the hearing and determination of the suit; and that the Applicant be granted leave to trace funds deposited and/or held in Stanbic Bank of Kenya Account No. 0100XXXXXX765 on behalf of the Respondent, pending the hearing and determination of the suit.
2. The application is supported by the grounds on the face of the application and on the affidavit sworn by the Applicant, who states that he was induced by the Respondent into what she presented as a lucrative business opportunity. The Respondent allegedly claimed to have secured a tender to supply chilled meat to the Embassy of Kuwait, with delivery scheduled for the first week of June. Relying on her representations, the Applicant financed the Respondent to facilitate the purported supply. He avers that the Respondent provided him with purchase orders, allegedly issued on behalf of various embassies, for the supply of meat and other items through her company, Bella Casa Agencies Limited. Based on these representations, the Applicant transferred from his I&M Bank Account No.



01300XXXXXX910 a total of Kshs.38,088,000 to the Respondent's Stanbic Bank Account No. 0100XXXXXX765 and to her Mpesa number.

3. The Applicant further states that, following a separate transaction that did not materialize, the Respondent refunded him Kshs.4,930,000. Thereafter, the parties entered into a loan agreement dated 4th February 2022, which outlined the terms of the outstanding obligations. The Applicant later discovered that the purchase orders were forged and fraudulent. He reported the matter to Central Police Station, leading to the arrest of the Respondent and the institution of criminal proceedings against her in Milimani Criminal Case No. E657 of 2022, *Republic v Esther Muthoni*. He also filed the present civil suit seeking to recover the outstanding sum of Kshs. 29,158,000.
4. The Applicant further avers that, during the pendency of this suit, he discovered that the Respondent had entered into a sale agreement with the Proposed Interested Party for the purchase of a maisonette situated on Land Reference No. 32724/16. Under the agreement, the Respondent paid a deposit of Kshs.4,800,000. However, she later terminated the agreement, entitling her to a refund of Kshs.3,200,000. The Applicant now seeks to restrain the Proposed Interested Party from releasing the said amount to the Respondent, in order to preserve the funds for potential satisfaction of the eventual decree in the event that judgment is entered in his favour.
5. The Respondent opposed the application through a Replying Affidavit sworn on 7th October 2024. In summary, she contended that the Applicant was not a party to the sale agreement and therefore has no legal claim to any funds arising from it. She further argued that the alleged sale transaction is unsupported by any documentary evidence that would justify the joinder of the Proposed Interested Party. According to the Respondent, the reasons advanced for the joinder are misplaced and should be rejected. She averred that the application is premature, as the Applicant cannot pre-empt the outcome of the suit before the parties have been afforded an opportunity to a fair trial. Additionally, she asserted that the alleged sum of Kshs.34,000,000 has no connection to the purchase of the maisonette or the refund of the 10% deposit. The Respondent urged the Court to dismiss the application with costs.
6. The Proposed Interested Party did not oppose the application. Through a Replying Affidavit sworn by its Director, Dedan Njenga Nganga, on 14th November 2024. He confirmed that a sale agreement had indeed existed between the Respondent and the Proposed Interested Party, but that it had since been terminated. He stated that the Proposed Interested Party intends to refund the sum of Kshs.3,200,000 to the Respondent, but only upon completion of construction of Maisonette No. 61, its resale of the unit, and full payment of the purchase price by the new purchaser.
7. Notably, the proposed interested party expressed no objection to being enjoined in the suit for purposes of addressing the refund, of kshs.3,200,000/= stating that their participation would uphold the principles of justice and assist the Court in achieving the intent and purpose of the present application and the eventual judgment.
8. In compliance with directions issued by the Court, the parties filed their respective written submissions. The Applicant's submissions are dated 29th October 2024, while the Respondent's are dated 15th November 2024. Although the Proposed Interested Party filed a response to the application, it did not file any written submissions.

### **Applicant's Submissions**

9. The Applicant commenced his submissions by providing a brief factual background of the case, as outlined in the grounds of his application. The Applicant identified three issues for determination, that is: whether the Honourable Court should enjoin the Proposed Interested Party as a party to the suit; whether the Honourable Court should issue a Mareva injunction against the Proposed Interested



- Party, thereby freezing all monies held by it for and/or on behalf of the Respondent; and who should bear the costs of the application.
10. On the first issue the Applicant submitted that the Proposed Interested Party is currently holding funds belonging to the Respondent, which are critical for satisfying any potential judgment in this matter. Citing Order 1 Rule 10 of the *Civil Procedure Rules*, he argued that a party may be joined to a suit if they have an interest in the subject matter. In this case, the Applicant contended that the funds held by the Proposed Interested Party are directly connected to his claim against the Respondent. He further submitted that, to ensure the effectiveness of any Mareva injunction and to prevent the frustration of a future judgment, the Respondent must be restrained from dissipating what appears to be her only known asset. In support of this position, the Applicant relied on the case of *Ng'ang'a v National Bank of Kenya Limited* [1997] eKLR, to submit that if the Proposed Interested Party holds funds on behalf of the Respondent, their inclusion in the proceedings will facilitate the effective enforcement of the Mareva injunction.
  11. On the second issue the Applicant invoked Section 63 of the *Civil Procedure Act* and Order 40 of the *Civil Procedure Rules*, which empower the Court to issue injunctive relief to preserve the subject matter of a suit. He submitted that freezing the Respondent's funds held by the Proposed Interested Party is necessary to prevent any eventual judgment from being rendered nugatory. In support, he cited *Beta Healthcare International Limited v Grace Mumbi Githaiga & 2 Others* [2016] eKLR and *Ogunwusi & 4 Others v National Bank of Kenya Limited & 3 Others (Interested Parties)* (Civil Case E209 of 2023) [2024] KEHC 3038 (KLR), arguing that he has demonstrated a good arguable case with a reasonable prospect of success.
  12. The Applicant reiterated that he was induced by the Respondent into financing a fictitious meat supply contract, transferring a total of Kshs.38,088,000 based on fraudulent purchase orders allegedly issued by the Embassies of Kuwait and Qatar. He noted that the parties subsequently entered into a loan agreement dated 4th February 2022, acknowledging the Respondent's indebtedness after a partial repayment of Kshs.4,930,000. He submitted that the existence of both this civil suit and a concurrent criminal case against the Respondent underscores the legitimacy of his claim and satisfies the threshold for a Mareva injunction.
  13. The Applicant further submitted that the cause of action arose in Kenya, and therefore this Court has jurisdiction to hear and determine the matter. Relying on the English case of *Ninemia Maritime Corporation v Trave Schiffahrtsgesellschaft mbH und Co KG* [1983] EWCA Civ J0726-3, he urged the Court to extend the Mareva injunction to cover the Respondent's assets held by the Proposed Interested Party, arguing that the Respondent retains a legal or beneficial interest in the monies. He expressed concern that the Respondent may conceal, transfer, or otherwise dissipate the funds to frustrate enforcement of a judgment.
  14. The Applicant emphasized that the anticipated refund of Kshs.3,200,000 is substantial and could significantly contribute toward satisfying the outstanding debt. He therefore submitted that the balance of convenience favours the grant of the injunction, which would preserve the status quo and serve the interests of justice pending the final determination of the suit.
  15. In conclusion, the Applicant urged the Court to allow the application in its entirety, as prayed.

### **Respondent's Submissions**

16. The Respondent submitted that the Proposed Interested Party has no connection to the subject matter of the suit and that the application is premature, as the case has not yet been determined and no judgment has been issued to justify the issuance of preservative or injunctive orders. She argued that



the application was brought in bad faith, with the intention of derailing the proceedings by introducing an unrelated party. The Respondent further contended that there was no documentary proof of the alleged sale agreement between herself and the Proposed Interested Party, and therefore the Court should not grant orders based on hearsay or speculation.

17. On the issue of injunctive relief, the Respondent submitted that the application fails to meet the legal threshold for the grant of an injunction. She argued that the Applicant had not established a *prima facie* case against the Proposed Interested Party, nor had he demonstrated that the balance of convenience tilted in his favour. The Respondent maintained that the Applicant was improperly attempting to preempt the outcome of the suit before it proceeds to pre-trial conference and case management under Order 11 of the *Civil Procedure Rules*, where parties are expected to fully disclose their positions. She further submitted that the application was a tactical move aimed at depriving her of her right to a refund of the deposit of the purchase price, which she is entitled to under the terms of the terminated sale agreement.
18. The Respondent also argued that there was no legal or factual basis for enjoining the Proposed Interested Party in the suit. She maintained that the Applicant had failed to demonstrate any nexus between himself, the Respondent, and the Proposed Interested Party that would justify such joinder. Additionally, she urged the Court to take judicial notice that the notice to withdraw the application, dated 14th August 2023, had not been adopted as an order of the Court. She submitted that if the notice were to be adopted, then the application should be deemed withdrawn with costs.
19. In conclusion, the Respondent urged the Court to dismiss the application with costs.

### **Analysis and Determination**

20. I have considered the affidavits filed by parties and submissions made in respect of the motion and it is my view that the following issues are for determination: -
  - a. Whether the Proposed Interested Party should be enjoined as a party to the suit.
  - b. Whether a Mareva injunction should issue against her proposed interested party freezing monies held by it on behalf of the Respondent.

### **Whether the proposed interested party should be enjoined in the Suit**

21. In *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others* [2015] eKLR, where the Supreme Court defined an interested party as:

“..., 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.”
22. Further in the landmark case of *Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae)*



(Petition 15 & 16 of 2015 (Consolidated)) [2016] KESC 12 (KLR) (Civ) (28 January 2016) (Ruling), the court discussed the guiding principles of enjoining interested parties:

“37. 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.”

23. From the above authorities, it is evident that the purpose of enjoining an interested party is to ensure the complete and just resolution of all issues in the proceedings, to protect parties who may be adversely affected by the outcome, and to avoid multiplicity of suits.
24. In the present case, the Applicant seeks to recover approximately Kshs.29 million from the Respondent, arising from an alleged fraudulent business transaction and a subsequent loan agreement. Separately, the Respondent entered into a property sale agreement with the Proposed Interested Party, which was later terminated, entitling her to a refund of Kshs.3,200,000. The Applicant is not a party to that agreement. His basis for seeking the joinder is that the said refund constitutes an asset of the Respondent that could be used to satisfy a potential judgment in his favour.
25. However, the Applicant has not demonstrated that the Proposed Interested Party has a sufficient legal interest in the subject matter of this suit. While the Proposed Interested Party has indicated a willingness to be enjoined, it has not shown that it has a direct stake in the dispute between the Applicant and the Respondent. A party cannot be joined merely because they hold funds that may be used to satisfy an intended judgment. There must be a legal or beneficial interest in the actual subject matter of the dispute. The mere fact that the Proposed Interested Party holds money owed to the Respondent does not, by itself, justify joinder unless a legal issue involving that party arises directly in the suit.
26. The dispute before the Court is between the Applicant and the Respondent, concerning alleged fraud and a loan repayment contract. The Proposed Interested Party is not involved in that dispute and



has no claim or defence to advance against the Applicant. It has merely acknowledged that it owes the Respondent a refund of Kshs.3,200,000. The Applicant’s claim does not arise from the property transaction, nor has he alleged any wrongdoing on the part of the Proposed Interested Party. On that basis, the Proposed Interested Party does not meet the threshold for joinder as an interested party.

- 27. In light of the above, the Court finds no merit in addressing the second issue regarding the issuance of a Mareva injunction. Such an order cannot be issued against a third party who is not properly joined to the suit.
- 28. Accordingly, the Notice of Motion dated 23<sup>rd</sup> September 2024 is hereby dismissed and costs shall be in the cause.

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 11<sup>TH</sup> DAY OF JULY, 2025**

**RHODA RUTTO**

**JUDGE**

In the presence of;

.....for Plaintiff

.....for Defendant

