



Meshack Kibe Muiruri, John Njoroge Gacho, Francis Kinuthia Kibe, Julius Kanyiri Wambui & Mary Mugeci Mburu (suing on behalf of 850 others) v Murang’a County Government & Land Registrar Munga’a; Delmonte Kenya Limited (Proposed Interested Party) (Environment and Land Case 47 of 2020) [2021] KEELC 2542 (KLR) (15 July 2021) (Ruling)

Meshack Kibe Muiruri & 4 others (suing on behalf of 850 others) v Murang’a County Government & another; Delmonte Kenya Limited (Proposed Interested Party) [2021] eKLR

Neutral citation: [2021] KEELC 2542 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND CASE 47 OF 2020**

JG KEMEI, J

JULY 15, 2021

BETWEEN

**MESHACK KIBE MUIRURI 1ST APPLICANT
JOHN NJOROGE GACHO 2ND APPLICANT
FRANCIS KINUTHIA KIBE 3RD APPLICANT
JULIUS KANYIRI WAMBUI 4TH APPLICANT
MARY MUGECI MBURU 5TH APPLICANT**

AND

**MURANG’A COUNTY GOVERNMENT 1ST RESPONDENT
LAND REGISTRAR MURANG’A 2ND RESPONDENT**

AND

DELMONTE KENYA LIMITED PROPOSED INTERESTED PARTY

RULING

1. The Applicants filed suit on the 18/12/2020 seeking orders inter alia of adverse possession over the suit land known as land reference Number 9XX3/1 and 9XX3/2 measuring 975 acres situate in Muranga County along Kabuku River adjacent to Kenyatta Farm Mitumbiri Ward Muranga County.



2. It is their case that they have occupied the land uninterrupted and exclusively for a period in excess of 15 years
3. On the 16/6/2021 the proposed interested party sought orders for joinder as an interested party in this case.
4. The application is supported by the grounds adduced thereon and the supporting affidavit of Harry Odoni, the learned in-house Counsel of the proposed interested party. He stated that the proposed interested party has cause to believe that the suit property belongs to it and that the Plaintiffs have concealed it by referring to a non-existent land reference number. That to the best of their knowledge there is no such land with land reference 9XX3/1 and 2 in the area. That the size of the land referred to can only be the plantations of the proposed interested party given the size and location intimated by the Respondents/Plaintiffs. That given the past conduct of the Applicants in purporting to litigate over its properties without enjoining it, the proposed interested party is apprehensive that the Applicants may be using this suit to obtain adverse orders against it in a disguised manner. That their fears are buttressed by the failure of the Applicants not to adduce a copy of the title in support of their claim.
5. That the interest and rights of the proposed interested party would not be articulated unless the proposed interested party is enjoined as a party to the proceedings. Further that its input and participation would aid the Court in determining the suit fairly and conclusively.
6. The application was served upon the respondents but neither filed any response. The same is therefore undefended.
7. Counsel for the proposed interested party argued the application in open Court on the 5/7/2021. He reiterated the contents of the supporting affidavit referred to earlier.
8. . Joinder of parties is the inclusion of a party or parties to a suit who have the same rights or against whom rights are claimed as co-Plaintiffs or co-Defendants. There are two other areas that joinder may apply which are joinder of causes of action and joinder of issues. An Applicant seeking to be enjoined to a suit must demonstrate that he is a necessary and proper party and that his presence is necessary to enable the Court to effectively and completely adjudicate and settle all the questions in the suit.
9. Black's Law Dictionary 9th Edition at page 1232 defines an interested party as;

“a party who has a recognizable stake (and therefore standing) in a matter”.
10. The provisions of Order I rule 10(2) of the Civil Procedure Rules, 2010 states 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 effectually and completely to adjudicate upon and settle all questions involved in the suit, be added”.
11. In the case of Trusted Society of Human Rights Alliance vs. Mumo Matemo and 5 others (Supreme Court petition no. 12 of 2013) thus

“Consequently, an interested party is one who has a stake in the proceedings, though he or she was not a 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.....”

12. Courts have taken a liberal application to joinder of parties to a suit. In the case of Kingori vs. Chege (2002) 2 KLR 243, Warsame J (as he then was) had this to say;

“In my view in deciding an application for joinder, the Court must exercise a liberal approach so as not to shut out a genuine litigant who is effectively interested or is bound by the outcome of the suit, however the Court must guard against the frivolous or vexatious litigant whose sole motivation is to complicate and confuse issues that are before Court for determination”.

13. The threshold of joinder was set out in the case of Francis Kariuki Muruatetu & Anor. Vs Republic & 5 Others (2016) eKLR where the Court held that the Applicant must demonstrate the personal interest that it has in the matter by laying sufficient grounds before the Court; the prejudice it would suffer if it is not enjoined as interested party; set out the case that it intends to make before the Court and demonstrate the relevance of the evidence being proffered to the Court in determining the issue in controversy.
14. In all the above cases the Court is clear that the interested party must demonstrate; interest or stake in the suit; that he will be affected by the outcome of the suit; his presence is necessary to enable the effectual and complete adjudication of the suit and that finally that the party’s interest will only be articulated if allowed to in the proceedings.
15. In this case the proposed interested party has informed the Court that it has cause to believe that the suit property in question belongs to it. That given the size of the land, it can only be referring to the proposed interested party estates/plantation. That the Plaintiffs have in the past litigated over its properties without joinder.
16. From the annexures presented by the proposed interested party on record, I note that the previous litigation between the proposed interested party and the Plaintiffs was based on Land Reference Number 12XX7 while the current suit is Land Reference Number 9XX3/1 and 9XX3/2. The proposed interested party has confirmed that it is not the registered owner of the suit lands in this case.
17. Although I subscribe to a liberal approach to joinder of a party in a suit however in this case it is the finding of the Court that the Applicant has failed to demonstrate any of the grounds for joinder cited in para 15 above. It therefore becomes difficult to determine the interest or stake of the proposed interested party in the matter based on the mere belief and speculation of the Applicant.
18. In the end I am of the considered view that the application lacks merit.
19. It is struck out with no orders as to costs.
20. It is so ordered.

DATED, SIGNED & DELIVERED AT MURANGA THIS 15TH DAY OF JULY 2021.

J G KEMEI

JUDGE

Delivered in the presence of;

1st – 5th Respondents: Absent

1st – 2nd Respondents: Absent



Kiragu HB for Thuo for the Proposed Interested Party

Kuiyaki: Court Assistant

