



**Dakane v Buscar East Africa Limited & another (Civil Appeal  
E054 of 2022) [2023] KEHC 20640 (KLR) (13 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20640 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
CIVIL APPEAL E054 OF 2022  
SM GITHINJI, J  
JULY 13, 2023**

**BETWEEN**

**AMINA RASHID DAKANE ..... APPELLANT**

**AND**

**BUSCAR EAST AFRICA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**STANBIC BANK KENYA LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**CORAM:** Hon. Justice S. M. Githinji

Mr Kilonzo Wambua for the Appellant

M/S Busaidy Mwaura is for the Respondent

1. This appeal arises from the ruling of Hon. Dr. Julie Oseko in CMCC No. E09 of 2021 wherein she allowed the Notice of Motion dated November 22, 2021 in the following terms;
  - a. Stanbic Bank Kenya Limited be joined in this suit as an interested party for purposes of the just determination of this matter by the honourable court.
  - b. This court be pleased to set aside the sale conducted on October 22, 2021 in respect of motor vehicle registration number KWC 002V.
  - c. That any transfer of the suit motor vehicle in favour of any third party be reversed.
  - d. In the alternative to prayers (b) and (c) above, an order for compensation of the applicant for the value of the motor vehicle be issued.
  - e. Costs.



- f. Motor vehicle registration number KWC 002V be released forthwith to the defendant.
  - g. The defendant be exempted from paying auctioneer charges or storage charges to be levied by the auctioneer.
2. Aggrieved by the ruling, the appellant lodged the instant appeal on the following grounds;
1. The learned trial magistrate erred in law and in fact in finding that the interested party is a necessary party to this suit and thus enjoining it when judgment had already been entered and the matter concluded.
  2. The learned trial magistrate erred in law and in fact in finding that the interested party has a stake in this matter and yet refused to appear at the earliest opportunity possible.
  3. The learned trial magistrate erred in law and in fact in finding that the attachment and sale was irregular when the same was done in accordance with the auctioneer's rules.
  4. The learned trial magistrate erred in law and in fact in finding that the sale of the motor vehicle registration number KWC 002V is invalid and void when the sale had been conducted in accordance with the auctioneer rules.
  5. The learned trial magistrate erred in law and in fact in ordering that motor vehicle registration No. KWC 002V be released to the respondent when the sale was absolute and ownership vested upon a 3<sup>rd</sup> party and such it presented a miscarriage of justice.
  6. The learned trial magistrate erred in law and in fact in finding that the interested party had any legal or equitable claim over the attached property despite the fact that the interested party had not filed objector proceedings.
  7. The learned trial magistrate erred in law and in fact when he condemned the auction purchaser without being heard against the principles of natural justice.
  8. The learned magistrate erred in law and in fact in failing to consider section 44 of the *Civil Procedure Act* that whether the property is held in his name or in the name of another but on behalf, shall be liable to attachment and sale of a decree.
  9. The learned trial magistrate erred in law and in fact when she converted an application to enjoin an interested party to objection proceedings without following the laid down procedure.
  10. The learned magistrate erred in law and in fact by failing to consider the appellant's submissions and judicial authorities on joinder of parties, objector proceedings and sale by public auction.

### **Analysis and Determination**

3. I have considered the grounds of appeal and submissions by the parties and the issue for determination is whether the interested was properly joined to the suit.
4. Who is an interested party and at what stage can joinder of an interested party be entertained? According to the Black's Law Dictionary, 9th Edition a "Necessary Party" is defined as;

"A party who being closely connected to a lawsuit should be included in the case if feasible but whose absence will not require dismissal of proceedings"



5. The *Black Law Dictionary*, 9th Edition at page 1232 further defines an interested party as;

“A party who has a recognizable stake (and therefore standing) in the matter”.

Whereas the *Civil Procedure Act*, cap 21 is silent on the subject as to who is an “interested party”, order 41 rule 5 of the *Civil Procedure Rules* 2010, does make a reference to the term “interested party” and states as follows;

“The court may either on its own motion or on application by any interested party, remove a receiver appointed pursuant to this order on such terms as it thinks fit”

Besides, reference to the word “interested party” can also be traced to *the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, Legal Notice No. 117 of 2013, which 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”

6. In *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others* [2017] eKLR, Mativo, J. explained circumstances when an interested party ought to be enjoined in a proceeding. He stated thus;

“A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally, that is by curtailing his legal rights. In determining whether or not an applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party the true test lies not so much in an analysis of what are the constituents of the applicant’s rights, but rather in what would be the result on the subject-matter of the action if those rights could be established. It is apparent that a party claiming to be enjoined in proceedings must have an interest in the pending litigation, but the interest must be legal, identifiable or demonstrate a duty”.

7. In the case of *Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 others* [2014] eKLR the Supreme Court of Kenya held that;

(22) In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court’s Ruling in the Mumo Matemo case where the Court (at paragraphs 14 and 18) held:

“[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...”

8. Similarly, in the case of *Meme v. Republic*, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- (i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
- (ii) joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;



- (iii) joinder to prevent a likely course of proliferated litigation.”
9. Further in *Elton Homes vs Davis & others* (2019) e KLR, the court allowed joinder of an interested party after judgment had been entered between two principals without involving him yet he was in occupation of the property from which he was being evicted. The court recognized that the intended interested party had a constitutional right to be heard; The court observed that;
- “*the constitution* of Kenya is very clear on the right to protection of ones property and the said property cannot be arbitrary(sic) be taken away from such an owner without being heard or accorded an opportunity to ventilate his case”
10. It is trite that joinder of an interested party is meant to safeguard parties who may otherwise be ignored or side lined by a malicious party/s with the sole purpose of disenfranchising a party’s inalienable right of being heard before being condemned. I have reviewed the record of the trial court. From the Motor Vehicle Copy of Records filed in the plaintiff’s list of documents as at September 24, 2020, the vehicle was jointly registered between the 1<sup>st</sup> respondent and Equity Bank (Kenya) Limited. The Interested party who is the 2<sup>nd</sup> respondent herein, in its application dated December 7, 2021 declared its interest in the subject motor vehicle on account of an outstanding loan owed by the 1<sup>st</sup> respondent. There was no supporting evidence to back up their claims in the application regarding their interest in the motor vehicle. As such, I am of the view that they lacked *locus standi* to join the suit as an interested party as they had no rights that were being infringed.
11. Therefore, in the circumstances, I am of the view that the trial court misdirected itself by reversing the sale of the said motor vehicle. In any case, had the interested party had a stake in the motor vehicle and attachment had been effected, the proper procedure to follow is well laid under order 22 rule 51 (1) of the *Civil Procedure Rules* of which procedure was not followed. That said, I find that the appeal succeeds in its entirety and the same is hereby allowed with no orders as to costs.

**JUDGMENT READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 13<sup>TH</sup> DAY OF JULY, 2023.**

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**S.M. GITHINJI**

**JUDGE**

**In the Presence of; -**

1. Mr Kilonzo for the Appellant
2. Mr Wafula for the 2<sup>nd</sup> Respondent
3. Mr Kavasa for 1<sup>st</sup> Respondent

