



REPUBLIC OF KENYA



**Mbiti v Rugiri & 4 others; Njiru & 14 others (Applicant) (Civil Case
79 of 2005) [2023] KEHC 20540 (KLR) (19 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20540 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL CASE 79 OF 2005
LM NJUGUNA, J
JULY 19, 2023**

BETWEEN

NDATHI MBITI PLAINTIFF

AND

JOHN NGARI RUGIRI 1ST DEFENDANT

JOSEPH NJERU IRERI 2ND DEFENDANT

CHRISTIANO NJERU 3RD DEFENDANT

NJIRU MBECA 4TH DEFENDANT

THE LAND REGISTRAR MBEERE NORTH 5TH DEFENDANT

AND

SILVESTER NJUKI NJIRU APPLICANT

DOROTHY NJERI BENSON APPLICANT

JOHN NJAGI NJERU APPLICANT

PETER NJERU NJIRU APPLICANT

PETER NJAGI MUGO APPLICANT

CYRUS NTHUMBI NYAGA APPLICANT

THOMAS KINYUA MUGO APPLICANT

ANASTACIA GAAJI KAVURIA APPLICANT

JOHN KIURA IRERI APPLICANT

JOSPHAT NJIRU APPLICANT

NJIRU KIMATU APPLICANT



GODFREY NJIRU APPLICANT
CHARLES NYAGA APPLICANT
SALESIO NYAGA ITA APPLICANT
JOHN NJERU MBECA APPLICANT

RULING

1. The applicants filed a notice of motion dated September 23, 2022 premised on the grounds on the face of it seeking orders that:
 - i. The 15 applicants/proposed interested parties be enjoined in the suit as interested parties;
 - ii. The proposed interested parties be granted leave to participate in the suit by filing such pleadings, affidavits and submissions and other pleadings subsequent to the joinder; and
 - iii. The costs be in the cause.
2. In the supporting affidavit, the applicants/proposed interested parties averred that they are aware that the plaintiff had filed a suit involving parcels of land situated in Nthawa/Gitiburi Adjudication belonging to Mungao sub-clan. That they are also members of the same clan and have the same interest in the property which is the subject of the suit. That their inclusion in the matter will help the court in reaching a determination on the issues raised by the plaintiff. They further averred that they are owners and they occupy the property and if they are not included, they will be condemned unheard. Copies of ownership documents were produced. That the plaintiff will not suffer prejudice if the application is allowed.
3. The court directed that the application be dispensed with by way of written submissions. Only the applicants/proposed interested parties complied.
4. In their submissions, the applicants/proposed interested parties argued that they have met the threshold for them to be included as interested parties in accordance with rule 2 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* where an interested party is defined as “a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation.” They stated under order 1 rule 10(2) of the *Civil Procedure Rules 2010* their application is rightly placed before this court. They relied on the case of *Francis Kariuki Muruatetu & another v Republic & 5 others* (2016) eKLR where the courts outlined the elements to be considered before enjoining interested parties. It was also their case that in the spirit of sections 1A, 1B and 3A of the *Civil Procedure Act*, the court should allow them to be enjoined as interested parties in order to achieve a just, proportionate and efficient determination.
5. The record shows that through an order of the court dated December 9, 2009, the 5th defendant was compelled to register in the name of the plaintiff title numbers Nthawa/Gitiburi/1702, 1715, 1710, 1721, 1705, 1703, 1708, 1864, 1720, 1855, 1862, 1856, 1858, 1860, 1706, 1709, 1848, 1841, 1852, 1854, 1863, 1853, 1722, 1761, 1704, 1865, 1836, 1799, 1600, 1793, 1791, 1866, 1763, 1838, 1840, 1849, 1796, 1861, 1842, 1797, 1847 and titles resultant from 1600 being 2416, 2417, 2418, 2420, 2421, 2422, 2534 and 2535. Titles resulting from 1853 being 2423, 2424, 2425, 2426 and 2427. Titles resulting from 1855 being 2478 and 2479. The order stated that the registration be done in the absence



of the original titles. The order has not been executed to date. I note that some of the properties included in the order are registered to some of the applicants/proposed interested parties.

6. The issue for determination is whether or not the applicants/proposed interested parties qualify to be enjoined in this suit as interested parties.

7. Enjoinment of interested parties is provided for under rule 7 of the [Constitution of Kenya \(Protection of Rights and Fundamental Freedoms\) Practice and Procedure Rules, 2013](#) which states:

- “(1) A person, with leave of the court, may make an oral or written application to be joined as an interested party.
- (2) A court may on its own motion join any interested party to the proceedings before it.”

Order 1 rule 2(b) states: “(2) 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.”

8. This court is also guided by the case of [Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others](#) [2015] eKLR where the court stated:

“...Consequently, 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.”

9. Further, this position was reiterated in the case of [Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others](#) [2017] eKLR in which the High Court held that the test of joinder is whether an intended interested party has an identifiable stake or a legal interest or duty in the proceedings.

According to the landmark case of [Francis Kariuki Muruatetu & another v Republic & 5 others](#) petition 15 as consolidated with 16 of 2013 [2016] eKLR the court discussed the guiding principles of enjoining interested parties:

“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.”

10. I have noted that of all the 15 proposed interested parties, only 9 of them can prove that their entitlement to the properties will be affected by the decision of the court. That is to say, only 9 proposed interested parties’ properties appear in the title numbers which are the subject of the plaint. According to annexure SNN1 of the supporting affidavit sworn by Silvester Njuki Njiru the following properties are registered to these 9 proposed interested party:

- a. Nthawa/Gitiburi/1797 is registered to John Kuria and Generio Namu
- b. Nthawa/Gitiburi/1842 is registered to Sivio Njeru Murage Nyaga and Peter Njeru Njiru
- c. Nthawa/Gitiburi/1862 is registered to Ita Njari and Nyaga Ita
- d. Nthawa/Gitiburi/1838 is registered to Peter Muriuki Ngari, Nahashon Njeru Ngari and Geoffrey Karanja Kienji

11. Basing my findings on the case of *Francis Kariuki Muruatetu & another v Republic & 5 others* petition 15 as consolidated with 16 of 2013 (supra) as stated above, it appears that not all the applicants have completely demonstrated to this court that they should all be enjoined as interested parties. It is only after their joinder that they will have an opportunity to demonstrate to the court their full interest in the subject matters.

12. I have noted the sentiments by the respondents to the effect that the proceedings herein were finalized but in my view, the only way the applicants can challenge the judgment/outcome of the proceedings is by being enjoined. This will give them an opportunity to put across their case either way.

13. In the upshot, the application is allowed and I hereby make the following orders:

- a. That the proposed interested parties are hereby enjoined as interested parties in the suit.
- b. The costs for this application shall be in the cause.

14. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 19TH DAY OF JULY, 2023.

L. NJUGUNA

JUDGE

.....Applicant

.....Respondent

