



Kinyanjui & 2 others v Kamau & 2 others; Javisapa Enterprises Limited (Interested Party) (Environment & Land Case E060 of 2022) [2024] KEELC 5997 (KLR) (16 September 2024) (Ruling)

Neutral citation: [2024] KEELC 5997 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E060 OF 2022
CA OCHIENG, J
SEPTEMBER 16, 2024**

BETWEEN

**DANSON NJOROGE KINYANJUI 1ST PLAINTIFF
JOSEPH MUGUCIA KERU 2ND PLAINTIFF
PATRICK KARIUKI KABUBI 3RD PLAINTIFF**

AND

**JACKSON WAINAINA KAMAU 1ST DEFENDANT
NEEMA TRUST COMPANY LIMITED 2ND DEFENDANT
THE LAND REGISTRAR 3RD DEFENDANT**

AND

JAVISAPA ENTERPRISES LIMITED INTERESTED PARTY

RULING

1. What is before Court for determination is the Interested Party's Chamber Summons Application dated the 15th March, 2024 brought pursuant to Section 3A and 3B of the *Civil Procedure Act* as well as Order 1 Rule 14 of the *Civil Procedure Rules*. The Interested Party seeks the following Orders:-
 - a. That the name of the Interested Party be struck out and removed as a party in these proceedings.
 - b. That the costs of this application be provided for which.
2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of Jacqueline Njeru. The Interested Party contends that it was a Plaintiff in the HCCC No 5 of 2018 filed against



Neema Trust Company Limited, that is the 2nd Defendant herein. It confirms that on 2nd June, 2021, Judgment was entered against Neema Trust Company Limited. It claims the suit land known as Mavoko Town Block 3/2104 was attached for sale by public auction to realize the Decree in its favour. Further, on 9th August, 2022, a Prohibitory Order in execution of a Decree was filed against the suit land pending its sale. It confirms the firm of messrs Westminster Merchant Auctioneers sold the suit land by public auction on 2nd August, 2023 to User Care Limited for the sum of Kshs 100,000,000. Further, User Care Limited instituted Machakos HCOM E013 of 2023 against the Interested Party, the 2nd Defendant, Westminster Auctioneers, Kenneth Mwangi Mburu & Associates & Jacqueline Njeru seeking to enforce the public sale and on 8th November, 2023, an order was issued protecting the purchase price. It avers that the Interested Party filed Machakos HCOM E009 of 2023 seeking to set aside the aforementioned public auction and stay warrants issued to Westminster Merchants Auctioneer in HCCC No 5 of 2018 pending resolution of the dispute. It explains that parties entered into a consent before Justice Rayola whereby the effects of the Consent Orders issued on 11th December, 2023 was to withdraw HCC No E013 of 2023, HCC No E009 of 2023 and transfer suit land to User Care Limited, which has since been done. Further, that it has received part of the purchase price but pursuing balance of the proceeds from the 2nd Defendant, hence has no interest over this matter.

3. The Plaintiff opposed the instant Application and filed a Replying Affidavit sworn by Danson Njoroge Kinyanjui, where he contends that the Interested Party is dishonest, seeks to disobey Court Orders and mislead the Court. He explains that in the Application dated the 5th November, 2022, the Interested Party sought joinder in this suit, contending that its presence was crucial for the effective determination of this suit, which was allowed. Further, it filed its Statement of Defence on 18th November, 2022 and it is hence estopped from running away from these proceedings. He contends that the Interested Party disposed of the suit land contrary to a valid court order. Further, it failed to inform the Judges about the instant suit. He insists that the Interested Party's presence in this suit is more critical.
4. The Application was canvassed by way of written submissions.

Analysis and Determination

5. Upon consideration of the instant Notice of Motion Application dated the 15th March, 2024 including the respective Affidavits and rivaling submissions, the only issue for determination is whether the name of the Interested Party should be struck off and removed as a party in these proceedings.
6. The Interested Party has sought for its name to be struck off these proceedings contending that it is not a necessary party herein, a fact that has been opposed by the Plaintiff.
7. In its submissions, the Interested Party contends that this Court does not have jurisdiction to handle this matter. Further, that it cannot supervise orders of the High Court. To buttress its averments, it relied on the following decisions: *Joseph Kibowen Chemjor v William C Kiseru* [2013] eKLR; *R v Karisa Chengo & 2 others* [2017] eKLR; *Cooperative Bank of Kenya Ltd v Patrick Kangethe Njuguna & 5 others*, Civil Appeal No 83 of 2016 [2017] eKLR and *Robert Alai Onyango v Cabinet Secretary in Charge of Health & 7 others* [2017] eKLR.
8. The Plaintiff in their submissions insist that the Interested Party is still a necessary party to the proceedings herein since it is the one that sought joinder. To support their arguments, they relied on the case of *Tom Onyango Omboya v Zum Zum Investment Limited & 3 others* [2021] eKLR.



9. Order 1 Rule 10 (1) and (2) of the *Civil Procedure Rules* stipulates that:-

- “(1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit. (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.”

10. In the case of *Civicon Limited v Kivumatt Limited & 2 others* [2015] eKLR, the Court of Appeal observed as follows:-

“Under Order 1 of the *Civil Procedure Rules*, the trial court has wide discretionary powers to make necessary amendments as to the parties to a suit by adding, substituting or striking them out and to make all such changes in respect of parties as may be necessary to enable an effectual adjudication to be made concerning all matters in dispute between them. The court has a separate, independent duty from the parties themselves to ensure that all necessary and proper parties, and no others, are before it so that it may effectually and completely determine and adjudicate upon all matters in dispute. For this reason, at any stage of the proceedings, the court may on such terms as it thinks just and either on its own motion or on application, order for the joinder of a party where the party is a person who ought to have been joined as a party or; whose presence before the court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon. the party is any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed which in the court’s opinion it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.”

11. In this instance, I note the Interested Party vide its Notice of Motion application dated the 5th November, 2022 sought for joinder to these proceedings. This Court after considering the said Application allowed it, be enjoined to these proceedings. The Interested Party thereafter filed its Statement of Defence dated the 18th November, 2022 wherein it raised pertinent issues in respect to litigation surrounding the fulcrum of the dispute herein. I note the Interested Party now seeks to be struck off this suit before it has been set down for hearing, claiming this court has no jurisdiction to handle the matter. It is interesting to note that, the Interested Party voluntarily sought joinder, obtained orders, filed a defence, proceeded to enter into a consent in the High Court related matters, during the pendency of this suit, then now seeks to have it struck off, from it, claiming this court lacks jurisdiction. To my mind, it seems there is an element of bad faith on the part of the Interested Party. From the pleadings filed herein, I note the fulcrum of the dispute herein revolves around proprietary interest including title to land which falls squarely within the ambit of this court by dint of Section



13 of the *Environment and Land Court Act*. Further, the Plaintiff has raised issues touching on fraud committed by the Defendants in respect to the suit land and to my mind, this needs to be dealt with.

12. Based on the legal provisions I have cited above while relying on the two Court of Appeal decisions, and applying them to the circumstances at hand, I find that since it is the Interested Party that had initially sought joinder in these proceedings insisting it was a necessary party, I opine that it can only be discharged when the Court has heard and determined this matter on merits. It is my considered view that the instant Application actually amounts to an abuse of the process of court.
13. In the circumstance, I find the Chamber Summons Application dated 15th March, 2024 unmerited and will proceed to dismiss it with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 16TH DAY OF SEPTEMBER, 2024

CHRISTINE OCHIENG

JUDGE

In the presence of:

Lichuma for Plaintiff

Kivuva for Interested Party

No appearance for Defendants

Court Assistant – Simon/Ashley

