



**Okoba v SMEP Microfinance Bank Limited; Nkpoi (Intended Interested Party)
(Civil Suit E024 of 2023) [2024] KEHC 16653 (KLR) (11 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 16653 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CIVIL SUIT E024 OF 2023
JL TAMAR, J
NOVEMBER 11, 2024**

BETWEEN

JOHANES BOY OKOBA PLAINTIFF

AND

SMEP MICROFINANCE BANK LIMITED DEFENDANT

AND

KAMANGA OLE NKOPOI INTENDED INTERESTED PARTY

RULING

1. This ruling relates to the application dated 9th January 2024 seeking leave of the court to join and participate in these proceedings as an interested party. I shall dispose the two applications sequentially starting with the latter.

Application dated 9th January 2024

2. By a notice of motion application filed on 9th January 2024, and brought under the provisions of Section 1A, 1B, and 3A of the *civil procedure Act*; Order 51 Rule 1 and 3 of the civil procedure rules, the applicant sought for orders of stay of proceedings in this matter pending the hearing and determination of the this application and in the main, leave to join and participate in these proceedings as interested parties and to be allowed to file such affidavits and or defences to buttress his interest in the suit property and in respect of this proceedings. The application is based on the grounds on the face of the application and further elaborated in the supporting affidavit of KAMANGE OLE NKOPIO sworn 9th day of January 2024 and the annexures thereto. The applicant contend that he is the legal owner of suit property Kajiado/Loodariak/4840 as evidence by title deed issued to him on 27th march 2015 and marked as annexure KOM2. By a sale agreement dated 7th September 2015, the applicant agreed to sell the suit property to the plaintiff herein at an agreed purchase price of ksh. 20,000,000. It was an



understanding between the parties that the plaintiff once the property is transferred to him, he would obtain a loan facility from a Bank and pay the applicant the purchase price as agreed. The applicant avers that on that understanding, the suit property was thus transferred to the plaintiff and a title issued in his favour on 25th September 2015.

3. The applicant avers that despite transferring the suit property to the plaintiff for him to obtain a loan and pay the consideration as agreed in the sale agreement, the plaintiff has reneged on the agreement and consequently agreed to transfer the property back to him vide a transfer document and the consent of the land control board annexed and marked KOM5 and KOM6. It was during the lodging of the application with the Land Control Board that he did an official search and realized that his property had been charged in favour of the defendant to guarantee a loan offered to a third party without his knowledge.
4. Early this year, the applicant after making a report at the police station in Kiserian and several follow up with the plaintiff on the status of the matter, learnt that the plaintiff had filed a suit against the defendant as the proprietor of the suit property. In the circumstances, the applicant contends that as a legal owner of the suit property, he has a huge stake in the suit and he is directly affected by the subject matter and his participation in the case is necessary in order for this court to effectively adjudicate and settle all questions involved in the suit.
5. The application for joinder as interested party in these proceedings by the intended interested party is not opposed by the defendant. The plaintiff is however opposed to the said application and has filed a replying affidavit in that regard sworn on 14th February 2024 and contends that he is the registered owner of the suit property which was charged in favour of the defendant herein for a loan advanced to a third-party Evans Nyakundi Nyangau t/a cool motors ltd. The plaintiff avers that he never re-transferred the suit property to the intended interested party and that the alleged transfer instrument and application for consent of the Land Control Board are forgeries and fraudulently doctored documents as he has never executed such documents authorizing the transfer of his interest in the property. Further the attached spousal consent alleged to have been executed by his wife to facilitate the application for consent of the Land Control Board is equally forgeries. Further that the applicant has not availed any written agreement of sale between himself and the plaintiff or evidence of acknowledgement of receipt of ksh. 5,000,000. He however agrees that he purchased the said property with the intention of charging it in favour of a financial institution.
6. The issue for determination is;

Whether the Applicant should be enjoined as an Interested Party in the proceedings herein.
7. The statutory underpinning for joinder as an interesting party is anchored in order 1 rule 10(2) of the Civil Procedure Rules 2010 which 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 or settle all questions involved in the suit, be added.”



8. Further Rule 2 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 defines who an interested party is;

“interested party” means 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;

9. Black’s Law Dictionary defines an Interested Party as “a party who has a recognizable stake (and therefore standing) in the matter.”

10. The Supreme Court of Kenya in *Communications Commission of Kenya and 4 Others ...Vs... Royal Media Services Limited & 7 Others* Petition No. 15 OF [2014] eKLR relied on its earlier decision in the MUMO MATEMO case where the Court in defining who an Interested Party is, and held as follows:

“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. 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 question 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.

We ask ourselves the following questions:

- a) what is the intended party’s state and relevance in the proceedings and
- b) will the intended interested party suffer any prejudice if denied joinder.”

11. It is therefore important having defined who an interesting party is in law to determine whether the applicant herein has satisfied the statutory requirement to be enjoyed in these proceedings.

12. The law on joinder of interested parties to suits has been settled by the Supreme Court of Kenya in the case of *Francis K. Muruatetu and another v. Republic & 5 others* (2016) eKLR, referred by the applicant. The court set out identifiable key elements for consideration in an application for joinder as an Interested Party. The elements are as follows: -

- a. 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.
- b. 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.
- c. Lastly, a party must, in its application, set out the case and/or submission 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.”

- 1.3 In *Skov Estate Limited & 5 others v Agricultural Development Corporation & another* [2015] eKLR Justice Munyao Sila in dealing with the issue of an Interested Party seeking to be enjoined in a suit stated as follows;

“In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party.

14. A court would allow an applicant to be joined as an interested party in pending or ongoing proceedings primarily if by so doing, the court would be able to effectively settle the issue(s) in controversy and if the interested party has an identifiable claim of his own to protect alongside that of the plaintiff.
15. In the instant suit, the intended interested party lay claim to the suit property and has tendered affidavit evidence and attached documents to demonstrate that he owned the suit property which he had initially sold to the plaintiff on certain conditions which were not fulfilled, hence the process of re-transfer of the property by the plaintiff back to him. While admitting that he bought the property from the intended interested party, the plaintiff does not mention the consideration passed or if the same was indeed paid or not. The application for joinder is not opposed by the defendant who in paragraph 12 of the Isaiah Munguti’s replying affidavit filed on 15th November 2023, alludes to an assertion that the suit property had not been properly acquired and the matter reported to the police, hence the difficulty by Vision Auctioneers to sell the charged property.
16. In my view these are matters that can only be canvassed at the main trial where all the parties will have an opportunity to canvass and prove their respective cases.
17. At this stage, the court is only required to establish whether the intended interested party has satisfied the requirement and the criteria for joinder. I am of the view, and having read the pleadings herein, that as regards the suit property, the applicant has shown direct personal interest and/or stake which is clearly identifiable and proximate enough that he needs to defend and can only do so if he is allowed into the proceedings as an interested party. The applicant has also demonstrated that he will suffer great prejudice and irreparable loss were the court to proceed and determine the ownership of the property without his participation.
18. In the circumstances, I find merit in the application dated 9th January 2024 and allow the same as prayed. Cost shall be in the cause.

DATED AND DELIVERED AT KAJIADO THIS 11TH DAY OF NOVEMBER 2024

JOHN T. LOLWATAN

JUDGE

In presence of;



1. Ben Simiyu for the defendant
2. Juma Ochieng for the plaintiff
3. wanjiku Thiongo for the interested party
4. kenny –court Assistant

