



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC APPEAL NO. 81 OF 2019

BEATRICE KURI FRANCIS.....APPELLANT

VERSUS

SUSAN GATIRIA M'MUKIRA.....1ST RESPONDENT

CATHERINE MAKANDI MUTWIRI.....2ND RESPONDENT

DAVID MUTUMA M'IRINGO.....3RD RESPONDENT

EDITH KAIRUTHI.....4TH RESPONDENT

DOREEN MUKUBA.....5TH RESPONDENT

ECO BANK LIMITED.....APPLICANT

RULING

1. By an application dated **16.4.2021 Eco Bank Limited** seeks to be joined as an interested party in this appeal. The application is supported by an affidavit of **Sammy Muring'u** sworn on **16.4.2021**.
2. The grounds upon which the application is made are that there existed a legal charge in favor of the bank over the suit land for monies advanced to the appellant following which they joined as parties in the lower court and that given the banks stake, the interested party prays it be allowed to participate in this appeal.
3. The application is opposed by the respondent through a replying affidavit sworn on 13.5.2021.
4. While the respondents admit the applicant was a party in the lower court, it is averred their input was minimal; they did not file any pleadings; they had submitted the total loan be paid by the appellant, their interest was clearly protected by the judgment; no prejudice would be suffered if they are not made a party, the bank did not prefer any appeal, ;by allowing the applicant they will most likely be on the side of the appellant; the bank's claim is statutorily time barred, the application is an afterthought, a waste of court's time and lacks merit.
5. By way of a supplementary affidavit, Mr. Sammy Muring'u swore another affidavit on 16.6.2021. It is averred the interested party was an active participant to the lower court proceedings, knowledge of the existence of the appeal was through letters exchanged in April 2021 over a proposed out of court settlement negotiations and that the law allows joinder of parties.
6. With leave of court parties opted to file written submissions dated 18.6.2021 and 13.7.2021 respectively.
7. The interested party submits the lower court judgment and which is appealed against called for the unconditional discharge of the suit land and the appellant to offer alternative security for the loan advanced it. In their view therefore, the holding alone shows they are directly affected by the judgment and subsequently the outcome of this appeal.
8. Secondly, it is submitted by the applicant that the entire judgment affects them hence they are entitled to protect this discernable interest even at the appeal stage.
9. The interested party relies on **John Harum Mwau –vs- Simore Hayson & 2 Others: Attorney General & 2 Others (Interested Parties [2021] eKLR, Yusuf Abdi Adan & Another –vs- Hussein Ahmed Farah & 3 Others [2016] eKLR and Meshallum W. Wanguku –vs- K. Kania 1982-88] K.A.R.**

10. On the other hand the respondents submit the interests of the interested party are fully taken care of in the judgment and that there is no factual or legal justification for enjoining them; no prejudice or injustice shall be occasioned and lastly no appeal has been preferred.
11. **Order 42 rule 22** of the **Civil Procedure Rules** grants the court power to admit any party to the suit in the court from whose decree the appeal is preferred but who has not been made a party to the appeal and is interested in the result of the appeal to be made a respondent.
12. In ***Communications Commission of Kenya and 4 Others –vs- Royal Media Services Ltd & 7 Others [2014] eKLR*** the Supreme Court of Kenya stated an interested party is one who has a stake in the proceeding and who will be affected by the courts’ decision either way it is made.
13. In ***David Kiptugen –vs- Commissioner of Land, Nairobi & 4 Others [2016] eKLR*** the Court of Appeal dealing with an application for a party seeking to be enjoined allowed the application and stated by not allowing the party who was likely to be affected by its outcome, would be tantamount to depriving him an opportunity to be heard.
14. In the instant case the interested party was a party to the suit out of a request and which request the lower court allowed in line with **Order 1 rule 10 (2)** of the **Civil Procedure Rules**. Both appellant and the respondents did not appeal against the order enjoining the interested party in the lower court. It does not matter what role however insignificant a party plays in the arena of litigation. There are no minor or major players in the court of litigation. What is primary is that all are participants, be they active or passive are present, so long as their rights as enshrined in our Constitution are protected.
15. Secondly, the interested party is in possession of the title deed of the suit land as a lender with legitimate interests, rights and privileges under Article 40 of the Constitution. The trial court acknowledged and proceeded to declare those rights and sought to have them protected through orders that the outstanding loan be cleared by the appellant or in the alternative another security be offered to the interested party.
16. An order was also made that the property be discharged forthwith and unconditionally by the interested party and for the title deed to be cancelled.
17. In my considered view the aforesaid orders places the interested party at the very center of the controversy. It cannot be true as submitted that their interests will not be affected by the outcome of the appeal and or that their role in the appeal would be peripheral, ceremonial or insignificant.
18. Additionally, ground no 3 of the memoranda of appeal directly places the interested party at the dispute before this court. It therefore matters not if they preferred an appeal.
19. In the premises, I find the application with merits. The same is hereby allowed with no order as to costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 8TH DAY OF DECEMBER, 2021

In presence of:

Mutisya for respondents

Mutuma for appellant

Court Assistant - Kananu

HON. C.K. NZILI

ELC JUDGE