



Homebay Property Limited v Fan & another; Minxue (Interested Party) (Land Case E017 of 2025) [2025] KEELC 4655 (KLR) (24 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4655 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E017 OF 2025
CG MBOGO, J
JUNE 24, 2025**

BETWEEN

Homebay Property Limited PLAINTIFF

AND

Min Fan 1ST DEFENDANT

Quinhai Lui 2ND DEFENDANT

AND

Qin Minxue INTERESTED PARTY

RULING

1. Before this court for determination is the notice of motion dated 31st January, 2025 filed by the intended interested party/applicant, and it is expressed to be brought under Order 40 Rule 1, 2 & 4 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the *Civil Procedure Act* seeking the following orders: -
 - a. Spent.
 - b. The applicant herein be and is hereby granted leave to be joined in this suit as an interested party and by an order of the honourable court, be allowed to participate in the court proceedings relating to the suit property herein.
 - c. Pending the hearing and determination of this application, this honourable court be pleased to stay orders issued on the 24th January 2025 in the interest of justice.
 - d. This suit be struck off and/or dismissed.
 - e. This honourable court be pleased to issue such other and/ or further orders as it shall be necessary for the ends of justice to be met.



- f. Costs of this application be provided for.
2. The application is premised on the grounds inter alia that the intended interested party/applicant is the majority shareholder, and the managing director of the plaintiff/respondent, and he ought to be joined in these proceedings as any decision made in this suit affects him and his interests.
 3. The application is supported by the affidavit of the intended interested party/applicant sworn on even date. The intended interested party/applicant deposed that the plaintiff/respondent is owned by himself, Qin Minxue, Liu Yong and Qian Zhiuha, and that it has come to his attention that the firm of Mutuohoro Gakuru & Co. Advocates has filed an application and the suit on its behalf. He deposed that he has perused the matter, and there is no resolution approving the institution of the suit and that neither has there been any special meeting to discuss the same. Further, he deposed that the authority to plead and sue was duly executed by the shareholders, and neither did the company authorise Liu Yong to swear the verifying affidavit.
 4. The intended interested party/applicant deposed that the failure to secure the approval of the Board of Directors goes to the root of the matter rendering the suit incompetent for want of proper authorization. That in the absence of such a resolution, the present suit is improperly before the court and ought to be struck out. Further, that the plaintiff/applicant has no claim against the defendants/respondents as they are bonafide purchasers of the suit property. He reiterated that the suit is incurably defective as it contravenes the express provisions of the Companies Act, the Civil Procedure Rules and the company's memorandum and articles of association.
 5. The application was opposed vide the replying affidavit of Liu Yong, the co-director and shareholder of the plaintiff/respondent sworn on 13th February, 2025. The plaintiff/respondent deposed that the firm of Metto & Company Advocates cannot represent the intended interested party/applicant as it is in violation of Rule 9 of the Advocates Practice Rules, for the reason that they are potential witnesses and there will be a serious conflict of interest having acted for the plaintiff/applicant in HCCOMMPET/E013/2022 which is still actively in court. The plaintiff/applicant deposed that the application is unmerited as it fails to meet the threshold set out in Mutunga Rules, and that there is no prejudice that it will suffer if the intervention was denied. Further, that the intended interested party/applicant is married to Jiang Yi aka Joy the agent of the respondent, and failure to disclose this is in violation of Sections 143, 146 and 151 of the Companies Act. Further, that he is not the managing director/shareholder of the plaintiff/respondent. Further, that as a director of the plaintiff/respondent he has the authority to plead and sue dated 20th January, 2025.
 6. The intended interested party/applicant filed his further affidavit sworn on 21st March, 2025 in response to the replying affidavit. He deposed that the mere fact that the firm previously provided legal services related to the plaintiff's company does not automatically bar it from representing him. He denied any conflict of interest for the reason that the issues in HCCOMMPET/E013/2022 are separate and distinct from the present matter. The intended interested party/applicant deposed that there was no meeting held to discuss the institution of the suit, and that if there was any, then he was not issued with a notice. Further, that there is no resolution authorizing Liu Yong to swear the verifying affidavit. He deposed that it is evident that the directors/shareholders of the plaintiff/respondent have personal difference, and that this court is not the proper forum for settling disputes between the directors/shareholders of a company.
 7. Liu Yong, the director of the plaintiff/respondent filed his further replying affidavit in response thereto sworn on 10th April, 2025. While reiterating the contents of his replying affidavit, he deposed that the firm of Metto and Company acted for both the plaintiff and the defendants in the registration



of shares of the suit property, which are issues that cannot be waived as purported. He deposed that the directors of the company have the right to swear legal documents even where there is no company resolution unless it is provided to the contrary under the company articles. The plaintiff/respondent further deposed to the issues around the sublease agreement, and it was further contended that the suit raises issues of fraudulent acquisition of title which this court is invited to determine, and that the intended interested party/applicant should not be allowed to aid the defendants/respondents reap the benefits of fraud.

8. The application was canvassed by way of written submissions. The intended interested party/applicant filed his written submissions dated 21st March, 2025 where he raised three issues for determination as follows: -
 - a. Whether the intended interested party should be enjoined in this suit.
 - b. Whether the suit is properly before this honourable court.
 - c. Who shall bear the cost of the application.
9. On the first issue, the intended interested party/applicant submitted that his presence is essential for the just and effective determination of the suit. That as a director and majority shareholder, he has direct and substantial interest in these proceedings. He submitted that his presence is necessary and is essential to contest the legitimacy of the plaintiff's/respondent's claim, and prevent the misuse of court process. That failure to join him may result in orders that prejudice his right, impose financial obligations on non-parties and deny affected persons the right to be heard. To buttress on this issue, the intended interested party/applicant relied on the cases of *Kingori v Chege & 3 others* [2002] 2 KLR 243, *Civicon Limited v Kivu Watt Limited & 2 others* [2015] eKLR, and *Departed Asians Property Custodian Board v Jaffer Brothers Ltd* [1999] 1 EA 55.
10. On the second issue, the intended interested party/applicant submitted that the lack of a company resolution authorizing Liu Yong to swear the verifying affidavit makes the suit incompetent and the same should be struck out. Reliance was placed in the case of *Wambeye Kimweli Marakia v Board of Directors, Nzoia Water Services Co. Ltd & 2 Others; Nzoia Water Services Co. Ltd (Interested Party)* [2021] eKLR.
11. On the third issue, the intended interested party/applicant submitted that the application ought to be allowed as prayed and with costs.
12. The plaintiff/respondent filed its written submissions dated 10th April, 2025 where it raised three issues for determination as follows:-
 - a. Whether the intended interested party ought to be enjoined as a party.
 - b. Whether the applicant is deserving of the orders sought.
 - c. Costs.
13. On the first issue, the plaintiff/respondent submitted that the application is grounded on the wrong provisions of law, and that his representation is in violation of the law and code of conduct. Reliance was placed on the case of *David M. Mereka t/a Mereka & Co. Advocates v County Government of Nairobi* [2021] eKLR. While further relying on the case of *Francis Kariokio Muruatetu & Another v Republic & 5 Others* [2016] eKLR, the plaintiff/respondent submitted that the intended interested party/applicant interest is to protect his wife, and as a director of the plaintiff/applicant, he is under obligation to avoid conflict of interest. It was submitted that the application is thus fatally defective and it does not meet the threshold laid down in law.



14. On the second and third issues, the plaintiff/respondent submitted that the application is replete with false statement, fraudulent and defunct documents and the wrong interpretation of the law. To buttress on this issue, the plaintiff/respondent relied on the case of Arthi Highway Developers Limited v West End Butchery Limited & 6 others [2015] eKLR. In conclusion, the plaintiff/respondent submitted that the award of costs is not cast in stone, and in exercising discretion, the court must not only look at the outcome of the suit, but also the circumstances of each case. Further reliance was placed in the case of Morgan Air Cargo Limited v Everest Enterprises Limited [2014] eKLR.
15. I have considered the application, the replies thereof, and the written submissions filed by the plaintiff/respondent and the intended interested party/applicant. In my view, the issue for determination is whether the application has merit.
16. Order 1 Rule 10(2) of the Civil Procedure Rules provides that:-

“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.”
17. In Civicon Limited versus Kivuwatt Limited and 2 Others [2015] eKLR the court observed as follows:

“Again the power given under the rules is discretionary which discretion must be exercised judicially. The objective of these rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”
18. The intended interested party/applicant sought to be joined in these proceedings on the grounds that he is a majority shareholder and director of the plaintiff/respondent, and thus has an interest in the suit. In support thereof, he annexed a copy of the records of the company’s directors and shareholders. On the other hand, the plaintiff/respondent did not have solid grounds to oppose the joinder, save to argue that the intended interested party/applicant is married to the agent of the defendant/respondent and further engaged in fraudulent transactions regarding the property that is the subject in this suit. From my analysis, I am satisfied that based on the material placed before the court, the intended interested party/applicant is a necessary party to this suit, and ought to be joined in order to enable the proper and just determination of all the issues in the suit.
19. Besides, the application for joinder, the intended interested party/applicant sought for the striking out of the suit on the grounds that the suit property was lawfully sold to the defendants/respondents and



thus they are bona fide purchasers for value. More importantly, the intended interested party/ applicant argued that the suit was incompetent for lack of a resolution of the company giving instructions for the institution of the suit. Further, that there was no meeting that was held where it was agreed that the law firm on record for the plaintiff/respondent to institute the suit against the defendants/respondents. The plaintiff/respondent on the other hand contended that the firm of Metto & Company ought not to represent the intended interested party/applicant as it is on record on its behalf in a matter that is actively before the high court. It was argued that the said law firm would be a potential witness and that there is conflict of interest.

20. Striking out a suit is such a radical act that the court can only exercise in the clearest of cases. In this case, the parties are yet to conduct pre-trial directions. This goes to say that there is still room for a party to tidy up their case in readiness for hearing. The articles of association governing the affairs of the plaintiff/respondent have not been supplied to this court. This court is thus unable to comment on whether there is need for a majority decision or otherwise to enable proper filing of a suit. This goes to say that the lack of a company resolution at this stage is not fatal to the suit, and I decline to strike it out on those grounds.
21. The plaintiff/respondent has also sought that the law firm of Metto & Company Advocates to cease acting for the intended interested party/applicant for the reason that there is conflict of interest owing to an active matter that is in court, and the likelihood of being a potential witness. While the reasons advanced may be valid, the plaintiff/respondent has not sought the cessation of acting against the said law firm but towards a party which may be having its own agreement or arrangement with the said law firm. I decline to grant this in the circumstance.
22. Arising from the above, this court finds merit in the notice of motion dated 31st January, 2025 and grants the following orders: -
 - i. The intended interested party/applicant herein is hereby joined in this suit as the 3rd defendant.
 - ii. The 3rd defendant is at liberty to file the necessary pleadings if any within the next fourteen days from the date hereof.
 - iii. The plaintiff/respondent is also granted leave of fourteen days to file and serve pleadings if necessary upon service by the third defendant.
 - iv. Costs in the cause.Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 24TH DAY OF JUNE, 2025.

HON. MBOGO C.G.

JUDGE

24/06/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Opere for the 1st and 2nd Defendants

Mr. Gakuru for the Plaintiff

Ms. Chekemoi holding brief for Ms. Metto for the Intended Interested Party

