



St John Everlasting Gospel Churd Registered Trustees v Okeyo; Githua (Intended Interested Party) (Civil Suit E1249 of 2022) [2025] KEMC 171 (KLR) (15 May 2025) (Ruling)

Neutral citation: [2025] KEMC 171 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
CIVIL SUIT E1249 OF 2022
P ACHIENG, CM
MAY 15, 2025**

BETWEEN

ST JOHN EVERLASTING GOSPEL CHURD REGISTERED TRUSTEES PLAINTIFF

AND

BARRACK OMBWAYO OKEYO DEFENDANT

AND

GEOFFREY NGUGI GITHUA INTENDED INTERESTED PARTY

RULING

1. The Intended Interested Party/Applicant filed the application dated 25th October 2024 seeking the following orders;
 1. The Intended Interested Party, Geoffrey Ngugi Githua, be enjoined as an Interested Party in this suit.
 2. Pending the hearing and determination of this application, this Honourable Court be pleased to issue an order restraining the Plaintiff and Defendant from evicting, harassing, or in any way interfering with the Intended Interested Party’s peaceful occupation of the suit premises, LR No. 209/11363, Imara Daima Estate, Nairobi.
 3. The costs of this application be provided for.
2. The application is premised on the grounds that;
 1. That the Intended Interested Party, Geoffrey Ngugi Githua, has been in possession and occupation of the suit premises since the 15th day of January 2023, having taken over from the Defendant with the knowledge and consent of the Plaintiff.



2. That the Plaintiff has sought orders for eviction and injunction that would directly affect the Intended Interested Party's tenancy and business operations on the suit premises.
 3. That the Plaintiff and Defendant have been aware of the Intended Interested Party's occupation and have accepted rent from him, effectively recognizing his tenancy.
 4. That the Intended Interested Party has undertaken various developments on the suit premises and leased portions to third parties, who are also at risk of eviction if the orders sought by the Plaintiff are granted.
 5. That the Intended Interested Party was not served with any reference or notice under the *Landlord and Tenant (Shops, Hotels, and Catering Establishments)* Act, Cap 301, Laws of Kenya, making the orders sought by the Plaintiff prejudicial and unjust.
 6. That the value of the property in dispute exceeds the pecuniary jurisdiction of this Honourable Court, and the Intended Interested Party intends to raise a preliminary objection on this point, as the case should be transferred to a court with the appropriate jurisdiction.
 7. That the Intended Interested Party's rights to property under Article 40 of the *Constitution* of Kenya would be infringed upon if the orders sought are granted without his participation in the suit.
 8. That it is in the interest of justice that the Intended Interested Party be enjoined to protect his interests and prevent a miscarriage of justice.
3. The Plaintiff opposed the application *vide* the Grounds of Opposition dated 11th November 2024 as follows;
1. That, the Application does not meet the test for joinder of an interested party laid down by the Supreme Court of Kenya in Francis Kariuki Muruatetu & another v Republic Petition No. 15 of 2015.
 2. That, the Petitioners' case before this Honourable Court is for the enforcement of the judgment in default of the Business Premises Rent Tribunal following the termination on 1st April 2021, and therefore the Applicant lacks any legal or Proprietary Interest capable of being enforced by this Honourable Court.
 3. That, the Applicant is a complete stranger in law to the Plaintiffs under the doctrine of Privity of Contract and in respect of the course of action currently before the Honourable Court.
 4. That, owing to the doctrine of laches, such an application this late in the day will lead to undue prejudice against the Plaintiffs, who not only are not receiving any sums on investment but also will impact on the fair resolution of the case.
4. The application was canvassed by way of written submissions. I have considered the application, the Grounds of Opposition filed and the written submissions. Order 1 Rule 10 (2) of the *Civil Procedure Rules* which provides for joinder of parties in a suit 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 and settle all questions involved in the suit, be added.”

5. From the above provision, a party can seek to be joined in a suit not only as a plaintiff or defendant, but also as an interested party, when their presence before the court is necessary to enable the court effectually and completely determine all questions in the suit. The *Black's Law Dictionary*, 11th Edition at page 1351 defines an Interested Party as “a party who has a recognizable stake (and therefore standing) in a matter”.
6. In *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others* [2017] eKLR, Mativo. J. explained when an interested party ought to be enjoined in a proceeding. He stated: -

“A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights. In determining whether or not an applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party the true test lies not so much in an analysis of what are the constituents of the applicant's rights, but rather in what would be the result on the subject-matter of the action if those rights could be established. It is apparent that a party claiming to be enjoined in proceedings must have an interest in the pending litigation, but the interest must be legal identifiable or demonstrate a duty”.
7. In the case of *Francis Kariuki Muruatetu & Another v Republic & 5 Others* [2016] eKLR, the Supreme court referred to the case of *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others* [2014] eKLR, where an interested party was defined as;

“...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...”
8. 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 following reasons:
 - i. Joinder of a person because his presence will result in the complete settlement of all the questions 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.
9. The Applicant herein seeks to be joined as an Interested Party on the basis that he is in possession and occupation of the suit land having taken over from the defendant, and he will be affected should the orders sought by the Plaintiff in the suit be granted. Having considered the pleadings filed by the Plaintiff and the defendant, and the fact that the defendant states in his defence that he sub-let the suit land, I find that the Interested Party has a stake in the proceedings and he ought to be joined as an interested party.
10. In regard to prayer 2, by virtue of having sought to join the suit as an interested party, an order for injunction cannot be granted as prayed since the same is not pegged on any claim made against the Plaintiff or the defendant.



11. I therefore allow the present application in terms of prayer 1. Costs of the application shall be in the cause.

DATED DELIVERED AND SIGNED AT NAIROBI THIS 15TH DAY OF MAY 2025

HON. P. ACHIENG

CHIEF MAGISTRATE

Plaintiff/respondent – Mr. Ogada

Defendant/respondent – Ms. Mache h/b for Njagi

Interested Party/applicant – Absent

Court Assistant- Duncan

