



Zyke Limited v I &M Bank Limited & another; Kibera Development Company Limited (Intended Interested Party) (Environment and Land Case E288 of 2024) [2025] KEELC 7259 (KLR) (21 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7259 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E288 OF 2024**

**JG KEMEL, J
OCTOBER 21, 2025**

BETWEEN

ZYKE LIMITED PLAINTIFF

AND

I &M BANK LIMITED 1ST DEFENDANT

ANTIQUA AUCTIONEERS 2ND DEFENDANT

AND

KIBERA DEVELOPMENT COMPANY LIMITED INTENDED INTERESTED PARTY

(In respect of the Intended Interested Party’s Application dated 27/01/2025)

RULING

1. What is before this Court for determination is the Intended Interested Party’s Chamber Summons application dated 27/01/2025. The application is premised to brought under the provisions of Sections 1A,1B, 3A and Section 63 (e) of the *Civil Procedure Act* as well as Orders 1 Rule 10 (2), (4) 7 (25) and Order 51 of the Civil Procedure Rules. The Applicant substantively prays for orders that;
 - a. This Honourable Court be pleased to grant leave to enjoin and/or add the Intended Interested Party/Applicant as a necessary party to this suit.
 - b. Pursuant to the prayer above being granted, this Honourable Court be pleased to order the Plaintiff & Defendants to serve the Applicant herein their pleadings and subsequently grant leave to the Interested Party to file its pleadings and responses to the suit.



- c. The Honourable Court be pleased to issue an interim order that all the rental income being generated from the suit premises from 19/6/2024 when the Applicant /Interested Party herein purchased the suit property (Nairobi/Block 141/536) be deposited in the Intended Interested Party Bank Account.
 - d. In the alternative to the above order, the Honourable Court issues an order directing that all the rental income being generated from the suit property from 19/6/2024 when the Interested Party purchased the suit property be remitted in an escrow joint interest earning Bank Account between the 1st Defendant herein and the Interested Party/ Applicant pending the hearing and determination of the Plaintiff's application.
 - e. The Costs of this application be provided for.
2. The application is based on the grounds on the face of it and further supported by the Affidavit of Peter Mburu Kariuki, a Director of the Intended Interested Party, deponed on 27/1/25. The deponent states that the Applicant is the beneficial owner of the suit property. He alleges that on 3/6/2024, the Defendant placed an advertisement in the Daily Nation inviting bids for a public auction of the suit property on 19/6/2024. He states that pursuant to the said advertisement, the Intended Interested Party paid a deposit of Kshs. 100,000/= as a condition for participating in the auction. He adds that the public auction was conducted on the said date and that, at the fall of the hammer, the Intended Interested Party was declared the highest bidder at Kshs. 12,300,000/=.
 3. Subsequently, the Intended Interested Party paid the purchase price to the 1st Defendant, who was exercising its statutory power of sale, and became the beneficial owner of the suit property. It is for that reason that the Applicant seeks to be joined in the proceedings. He urges the court to grant the orders sought in the interest of justice.

The Plaintiff's Replying Affidavit

4. The Plaintiff filed a Replying Affidavit sworn by Paul Maina Ndemi dated 24/3/2025. The deponent states that the Plaintiff initiated this suit to prevent the unlawful sale of its properties, being LR 20727/109 and Nairobi Block 141/536, by the 1st Defendant. He claims that the Plaintiff had made efforts to regularise its loan accounts but the 1st Defendant unreasonably rejected them.
5. The deponent states that although the Applicant has attached documents such as a Certificate of Sale and an Auction Register for a public auction held on the same date, the Plaintiff argues that these documents are central to the dispute in the main suit. The Plaintiff has accused the 1st Defendant of bad faith during the process leading up to the purported sale. The Plaintiff contends that the suit property was sold below its market value.
6. The deponent further affirms that the Plaintiff reserves the right to contest the validity and legality of the alleged public auction and the purported sale of Nairobi Block 141/536 to the Applicant. He states that the Applicant is therefore a necessary party in these proceedings for a full and fair resolution of the issues in dispute. In addition, he noted that the inclusion of the Intended Interested Party will enable it to present evidence regarding the alleged purchase.

The Intended Interested Party's Supplementary Affidavit

7. The Applicant filed a supplementary Affidavit sworn by Peter Mburu Kariuki dated 27/3/2025. The deponent states that it is clear from the Plaintiff's assertion that it fell into loan arrears and the 1st Defendant exercised its statutory power of sale. He emphasizes that it is following the said sale that the Applicant was declared the highest bidder at the fall of the hammer. He contends that after the



fall of the hammer, the Plaintiff has no claim over the said property. Moreover, since the equity of redemption of the Plaintiff was extinguished at the fall of the hammer, the property in the suit passed to the Applicant herein.

8. The deponent argues that having invested their financial resources and paid the full purchase price of the property, they are being denied the right to enjoy the benefits and possession of the suit property by the Plaintiff, who continues to collect rent unlawfully to the Applicant's disadvantage. He urges the court to grant the orders sought in the interest of justice.
9. The Defendants did not file any response to the application.

Court's direction

10. The application was canvassed through written submissions. The Intended Interested Party/Applicant and the Plaintiff each filed their respective submissions in support of their positions. The Intended Interested Party/Applicant's submissions are dated 10/6/2025, whereas the Plaintiff's submissions are undated. The Court has read and considered the said submissions.

Analysis and Determination

11. After considering the application, the Affidavits thereto and the submissions, the issues for determination are:
 - a. Whether the Intended Interested Party should be joined as an Interested Party in the proceedings herein.
 - b. Whether the rental income being generated from the suit premises from 19/6/2024 when the Applicant purchased the suit property be deposited in the Intended Interested Party's Bank Account.
 - c. Whether the Court should grant the alternative prayer sought by the Intended Interested Party/Applicant.
 - d. Who should bear the costs of the application?

Whether the Intended Interested Party should be joined as an Interested Party in the proceedings herein

12. The applicant herein has sought to be joined in the proceedings as an interested party to the suit because it is the beneficial owner of the suit property. The applicant states that it purchased the suit property at the public auction held on 19/6/2024, when the hammer fell, and was declared the highest bidder.
13. While the Defendants did not respond to the application, the Plaintiff recognises that a public auction was held but claims that proper procedures were not followed. The Plaintiff maintains that, indeed, the Applicant is a necessary party to the proceedings.
14. Who is an Interested Party? Order 1 Rule 10(2) of the Civil Procedure Rules 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.”



15. Black's Law Dictionary defines an Interested Party as "a party who has a recognizable stake (and therefore standing) in the matter."
16. Further, the Supreme Court of Kenya in *Communications Commission of Kenya and 4 Others –vs- Royal Media Services Limited & 7* (2014) 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.?"

17. Subsequently, having defined who an Interested Party is, it is essential to determine then

whether the Applicant has met the criteria to justify the joinder of the proposed Interested Parties in the proceedings.

18. The Supreme Court of Kenya has clarified the law regarding the joinder of interested parties to lawsuits in the case of *Francis K. Muruatetu and Another vs. Republic & 5 Others* (2016) eklr. The court outlined key elements that must be considered when applying 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.”



19. Further, in *Skov Estate Limited & 5 Others -vs- Agricultural Development Corporation & Another* [2015] eKLR Justice Munyao Sila in dealing with the issue of an Interested Party seeking to be joined 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.

In other words, there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.”

20. The Plaintiff’s suit concerns the legality or otherwise of the alleged public auction and the purported sale of Nairobi Block 141/536 to the Applicants. Whether the public auction was lawful and/or valid, as claimed by the Plaintiff, is a matter to be determined at trial after evidence has been presented. As an alleged beneficial owner, the Applicant will undoubtedly be affected by any decisions this Court makes regarding the suit property.
21. In conclusion, therefore, the Court finds that the Interested Party is a necessary party to this suit, and it is in the interest of justice that it be given an opportunity to be heard.

Whether the rental income generated from the suit premises from 19/6/2024, when the Applicant purchased the suit property, should be deposited into the Intended Interested Party’s bank account.

22. As previously noted, the Applicant claims to have purchased the suit property through a public auction. The Applicant submitted documentary evidence of the auction process. This assertion was supported by the Plaintiffs’ confirmation that there was indeed a public auction creates a prima facie case in its favour. The Plaintiff did not oppose the grant of this prayer.
23. On the face of it, the Applicant appears to hold a proprietor’s interest in the suit property that should be protected. The Applicant has urged that the rental income be deposited into their account. In my view, this is a final order that cannot be granted at the interlocutory stage. Allowing the Applicant to



singly collect rent is equivalent to ruling that the impugned public auction was lawful and/or valid before the parties are heard. Therefore, I decline to grant the said orders.

Whether the Court should grant the alternative prayer sought by the Intended Interested Party/Applicant

24. The Applicant sought an alternative order directing that all rental income generated from the suit property from 19/6/2024, when it was purchased, be remitted into an escrow joint interest-earning bank account between the 1st Defendant herein and the Interested Party/Applicant, pending the hearing and determination of the Plaintiff's application.

25. I am satisfied that the Applicant has established a prima facie case. The balance of convenience herein leans in favour of the Applicant, who has invested its financial resources in the suit property but has been unable to enjoy its use. In my considered view, it is inequitable and prejudicial to keep the Applicant away from the property while the Plaintiff, who is aggrieved by how the chargee exercised its statutory power of sale, continues to collect and enjoy the rent derived therefrom.

26. It is my finding, therefore, that all rental income generated from the suit property from 19/6/2024 shall be remitted into an escrow joint interest-earning bank account between the 1st Defendant herein and the Interested Party/Applicant, pending the hearing and determination of the Plaintiff's suit.

27. Final orders for disposal

Based on the foregoing, the application dated 27/1/2025 is determined in the following terms;

- a. Kibera Development Company Limited shall be joined in the suit as the 3rd Defendant.
- b. The Plaintiff and 1st and 2nd Defendants are hereby directed to serve the 3rd Defendant herein with their pleadings within 14 days from the date of this Ruling.
- c. The 3rd Defendant is at liberty to file their statements and documents (if any) within 14 days from the date of service.
- d. All rental income from the suit premises from 19/6/2024 onwards shall be deposited into a joint escrow interest-bearing bank account managed by the Plaintiff and the 3rd Defendant / Interested Party until the hearing and judgement of the Plaintiff's suit.
- e. Each party to bear its own costs.

28. It is so ordered

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 21ST DAY OF OCTOBER 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the presence of:

1. Ms OmukokoHB for Mr Ahmed for the Appellant
2. N/A for the 1st Respondent
3. Mr Ken Murgor H B for Mr Ouma for the 2nd Respondent
4. N/A for the 3rd Respondent
5. N/A for the Interested Parties



6. CA- Ms Yvette Njoroge

