



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT ELDORET**

**E & L. NO. 246 OF 2016**

**COUNTY GOVERNMENT OF UASIN GISHU.....PLAINTIFF/ RESPONDENT**

**VERSUS**

**ATTORNEY GENERAL & 20 OTHERS.....DEFENDANTS/RESPONDENTS**

**RULING**

This ruling is in respect of an application dated 24<sup>th</sup> May 2018 brought by way of notice of motion by the interested party/applicant one JOHN KEMELI seeking to be enjoined in this suit as such.

The application was only opposed by the 4<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 13<sup>th</sup>, and 19<sup>th</sup> Defendants/Respondents who relied on the replying affidavit filed by Wilson Busienei dated 23<sup>rd</sup> October 2018 filed in court the same day. The other parties in this suit had no objection to the application.

**Interested Party's Submissions**

Counsel for the proposed interested party submitted that the applicant has a beneficial interest over part of the suit parcel of land which initially belonged to his late father and having been named one of the administrators in the Succession Cause 29 of 1988 and that he has been in possession of part of the said parcel of land to date.

Further that the applicant has annexed documents to show the stake that he has in the suit property including several correspondences with relevant bodies to support his averments for this Honourable court to peruse, confirm and make a determination on the application.

Counsel relied on the provisions of Order 1 Rule 10 (2) of the Civil Procedure Rules provides that: -

*"2. 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 court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added. "*

Counsel therefore submitted that it is clear from the above provision that the court can, upon satisfying itself that the person whose presence before the court may be necessary in order to enable or assist it effectually and completely determine all questions involved in a dispute, add such person as a party.

Counsel cited the case of *Francis Kariuki Muruatetu & Another vs Republic & 5 others Petition 15 as consolidated with 16 of 2013 [2016] eKLR* to demonstrate elements applicable where a party seeks to be enjoined in proceedings as an interested party, they are: -

*One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:*

*(i) 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.*

(ii) *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 that is merely peripheral.*

(iii) .....

Further in the case of **Judicial Service Commission -vs- Speaker of the National Assembly & Another (2013) eKLR**, the court defined an interested party as:-

*“From the foregoing it is clear that an interested party as opposed to an amicus curiae or a friend of the court may not be wholly indifferent to the outcome of the proceedings in question. He is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly nonpartisan as he is likely to urge the court to make a determination favourable to his stake in the proceedings.”*

The Black's Law Dictionary defines an interested party as "A party who has a recognizable stake (and therefore standing) in the matter. "

The elements to be satisfied where a party seeks to be enjoined in proceedings as an interested party are that: -

a he intended interested party must have “an identifiable stake”

b or legal interest

c or duty in the proceedings

The issue before this court is or to whether the proposed interested party has an identifiable stake, legal interest or duty in the proceedings in this case.

Mr. Kirui submitted that the test is not whether the joinder of the person proposed to be added as an interested party would be according to or against the wishes of the Plaintiff/Respondent or Defendants/Respondents or whether the joinder would involve an investigation into a question not arising on the cause of action averred by the Plaintiff/Respondent or Defendants/Respondents.

In the **High Court of Kenya Nairobi Constitutional Petition, No. 37 of 2017** it was held that:

*“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 in the proceedings directly identifiable by examining the questions involved in the suit...*

Counsel therefore urged the court to find that the proposed interested party is a person who is interested in the subject matter in dispute as he has proved he is an administrator of the estate of his late father and in actual possession of the part of the suit property.

The respondents who opposed the application vide a replying Affidavit sworn on 23<sup>rd</sup> October 2018 by Wilson Busienei averred that the proposed interested party's application lacks merit as he has not demonstrated a legitimate interest over the suit parcel. Counsel urged the court to disallow the joinder and dismiss the application.

### **Analysis and determination**

I have considered the application, the submissions of the applicant and the replying affidavit and have come to the conclusion that the issues for determination are as follows:-

- 1) Whether the applicant may be enjoined as an interested party in this suit in accordance with order 1 rule 10 (2) of the Civil Procedure Rules?
- 2) Whether the applicant has demonstrated that it has a stake or an interest in the subject of the suit or in other relevant matter affecting the suit?
- 3) Whether the interested party will be affected by the decision in this suit and finally that enjoining the interested party will avoid multiplicity of suits and save judicial time?

Courts have often used the provisions of Order 1 Rule 10 (2) to have persons come into a case as interested parties. That provision of the law provides as follows :-

*2) 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.*

It should be noted that there is no procedure under the Civil Procedure Act and Rules for the joinder of 'interested parties'. The procedure for joining a necessary party is indicated by the Order 1 rule 10 (2) of the Civil Procedure Rules is to be available to either party to move the court, so that a person who is not a party but who seeks to join may be joined in the case and invoke the inherent jurisdiction of the court and the overriding objective of the civil process.

The question therefore is whether it is in the interest of justice for the applicant to be enjoined as interested party to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit, be added. On this question I find that Order 1 Rule 10 (2) gives the court discretion to order joinder of an interested party.

The applicant has demonstrated that he has a beneficial interest over part of the suit parcel of land which initially belonged to his late father and having been named one of the administrators in the Succession Cause 29 of 1988 and that he has been in possession of part of the said parcel of land to date. What other interest would a person want to show that they have an interest in the case. This application was not opposed by the plaintiff and the other respondents apart from the 4<sup>th</sup> 8<sup>th</sup> 9<sup>th</sup> and 19<sup>th</sup> defendants. The joinder of the applicant will not change the substratum of the case. It will in fact help the court determine the issues in totality not piecemeal where other parties will mushroom after a decree has been issued. What are these parties afraid of? The worst that can happen is to unearth the truth which will be beneficial to all the parties and help the court in arriving at a just decision.

In the case of *Trusted Society of Human Rights vs Mumo Matemo & 5 others [2014]eKLR* the Supreme Court held that: "*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.*"

Further in the case of *Joseph Njau Kingori vs. Robert Maina Chege & 3 others [2002]eKLR* Nambuye J as she then was, provided the guiding principles to be adhered to when an intending interested party is to be joined in a suit: "*When the above principles are applied to the facts of these applications it is clear that the guiding principles when an intending party is to be joined are as follows:- (1) He must be a necessary party; (2) He must be a proper party; (3) In the case of the Defendant there must be a relief flowing from that Defendant to the Plaintiff; (4) The ultimate order or decree cannot be enforced without his presence in the matter; (5) His presence is necessary to enable the Court to effectively and completely to adjudicate upon and settle all questions involved in the suit.*"

I find that the applicant has met the threshold for being enjoined as an interested party as per the guidelines for joinder. He has proved that he has a stake and interest in the case and his presence in the case will assist in the determination of all the issues in respect of the suit property.

I therefore order that the applicant do file and serve his documents if any within the next 14 days. Costs of the application in the cause.

**Dated and delivered at Eldoret this 08<sup>th</sup> day of May, 2019**

**M.A ODENY**

**JUDGE**

**RULING** read in open court in the presence of Miss.Awiya holding brief for Mr.Kuloba for 4<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 13<sup>th</sup> and 19<sup>th</sup> defendants and Miss.Kiplagat for Kirui for proposed IP, and in the absence of others.

Mr.Mwelem – Court Clerk