



JV Hongo t/a Hongo & Associates v Nyaseme t/a Joel ED Nyaseme & Associates & another; Ghataurhae & 2 others (Proposed Interested Parties) (Civil Case 1159 of 2000) [2026] KEHC 1571 (KLR) (Commercial and Tax) (12 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1571 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 1159 OF 2000
BK NJOROGE, J
FEBRUARY 12, 2026**

BETWEEN

JV HONGO T/A HONGO & ASSOCIATES PLAINTIFF

AND

JOEL ED NYASEME T/A JOEL ED NYASEME & ASSOCIATES 1ST DEFENDANT

VICTORIA COMMERCIAL BANK LIMITED 2ND DEFENDANT

AND

GURJEET SINGH GHATAURHAE PROPOSED INTERESTED PARTY

AMRITPAL SINGH GHATAURHAE PROPOSED INTERESTED PARTY

JASWINDER SINGH GHATAURHAE PROPOSED INTERESTED PARTY

RULING

1. The Proposed Interested parties/Applicants filed the Notice of Motion dated 24th November, 2023 seeking the following orders;
 - a. The Court to reinstate the suit herein and accord the interested parties an opportunity to be heard and prosecute their case.
 - b. The Court to enjoin Gurjeet Singh Ghataurhae, Amritpal Singh Gataurhae and Jaswinder Singh Ghataurhae as the first 1st, 2nd and 3rd interested parties respectively in this suit.
 - c. The costs for this application be in the suit.



2. The Application was supported by the affidavit of Amritpal Singh Ghataurhae who stated that the proposed interested parties claim a purchaser's interests in the suit property, L.R. No. Nairobi/Block 90/221. That they claim to have bought it from Joel E.d Nyaseme the 1st Defendant (now deceased) through an agreement for sale dated 24th August 2007. Although the transfer process had commenced, it was not completed due to the death of the vendor. However, the family of Joel E.d Nyaseme, acknowledges the sale. The Applicants later discovered that the Plaintiff had placed a restriction on the property pursuant to orders issued in Nairobi HCCC No. 1159 of 2000, which directly affects their interests.
3. They therefore seek reinstatement of the suit and joinder as interested parties. This is to enable the Court to fully and effectively determine all issues in dispute. It will also allow them a fair hearing and an opportunity to apply for the lifting or removal of the restriction in the interests of justice.
4. There was no response to the Application by either the Plaintiff or the Defendants.

Issues for determination

5. The Court has carefully considered the Application and the submissions therewith and frames the following issues for determination;
 - a. Whether the suit should be reinstated.
 - b. Whether the Applicants have a Right to be enjoined as Interested Parties.

Analysis

6. This Application relates to the acquisition of land, specifically L.R No. Nairobi/Block 90/221, which is subject to a restriction placed by the Plaintiff through orders in these proceedings. The Applicants, having purchased the property from the 1st Defendant, Joel Elijah Dolfus Nyaseme (now deceased), pursuant to an agreement for sale dated 24th August 2007, seek to lift this restriction to complete the transfer process.
7. Prior to the 1st Defendant's death, the Applicants had initiated the execution of transfer documents, but the process was halted due to his demise. A subsequent search revealed the Plaintiff's restriction, which directly affects their proprietary rights. The deceased's family is said to acknowledge the sale, reinforcing the Applicants' interest.

Whether the suit should be reinstated

8. On whether the suit should be reinstated? The Applicants argued that reinstatement of the suit is necessary to allow the Applicants to prosecute their case and protect their proprietary rights over the suit property. This is in line with Article 159(2)(d) of *the Constitution*, which mandates the administration of justice without undue technicalities. It is also in line with Section 3A of the *Civil Procedure Act* which empowers the Court to prevent injustice.
9. The suit was last dealt with in Court on 13th July 2007 when a consent order was recorded allowing the Judgement Debtor to liquidate the decretal sum by installments. The Applicants sought to have it reinstated through the present Application. They averred that they were not parties to the proceedings ab initio and only recently discovered the restriction placed on the property, hence their non-involvement was not deliberate.
10. As already stated, the proposed Interested Parties and the said Joel Elijah Dolfus Nyaseme (now Deceased) had started the process of execution of the transfer document for registration when



unfortunately, the deceased passed away. Upon the proposed Interested Parties conducting a search over the said property, that it was established that the Plaintiff herein had placed a restriction over the suit property known as L.R No. Nairobi/Block 90/221.

11. In *John Nahashon Mwangi v Kenya Finance Bank Limited (in Liquidation)* [2015] eKLR [2015] KEHC 6789 (KLR) it was stated that the fundamental principles of justice are enshrined in Article 159 of *the Constitution*, coupled with Article 50, with respect to the right to be heard, and to serve substantive justice to all.
12. It is notable that the Applicants and the deceased entered into an agreement in the year 2007; while the Applicants acknowledge that they were aware of the deceased's passing away they do not offer any explanation as to why it took them so many years to conduct a search over the said property, whereupon they discovered the restriction therewith.
13. However, reinstating a suit is the discretion of a Court, which discretion ought to be exercised judiciously as was held in *Bilha Ngonyo Isaac vs. Kembu Farm Ltd & another & another* [2018] eKLR, which echoed the decision of the Court in *Shah vs. Mbogo & Another* (1967) EA 116. In that decision the Court stated on the matter of discretion:

“The discretion is intended so as to be exercised to avoid injustice or hardship resulting from inadvertence or excusable mistake or error but is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the course of justice.”
14. The question before this Court is whether this suit should be reinstated. The Court has perused the file and it is not clear why this suit needs to be reinstated. There is no evidence that this suit was ever dismissed through any orders made in this Court. Even the last substantive order made on 13th July, 2007 is a consent order made on liquidation of the claim by way of instalments. The Court notes that Judgement was delivered in this matter on 25th June, 2002. If judgement has already been delivered in this matter, what remains in light of the above are post judgement or execution proceedings. The Applicants have not in their Affidavit set out why the suit needs to be reinstated.
15. The Court takes note that there is a restriction that needs to be lifted if the Applicants are to proceed and have the land registered in their favour. However, in order to do so, it is not clear which order in this suit is a bar to such an application, such that the suit needs to be reinstated. It should not be lost to the Court that it does not issue orders in vain. For the reason that the justification for the reinstatement is not clear, the prayer sought is declined.

Whether the Applicants have a Right to be enjoined as Interested Parties

16. The procedural law on joinder of Interested Parties in matters flows from the provisions of Order 1 Rule 10 of the Civil Procedure Rules, as amended in 2020, as read with related provisions enacted subsequent thereto. It provides for the addition of “a necessary” party. It provides that

“The court may at any stage of the proceedings, either upon or without the application of either party...order 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. The Applicants, submitted that they meet the threshold for joinder as Interested Parties under Order 1 Rule 10(2) of the Civil Procedure Rules, 2010, as their participation is necessary for the effective and



complete determination of the dispute relating to L.R. No. Nairobi/Block 90/221. They purchased the property from the 1st Defendant pursuant to a sale agreement dated 24th August 2007 and acquired a direct proprietary interest, demonstrated by the initiation of the transfer process prior to the 1st Defendant's death and the subsequent acknowledgment of the sale by the deceased's family. The restriction placed by the Plaintiff through orders of this Court directly impairs their proprietary rights, giving them an identifiable legal stake within the meaning of Rule 2 of "the Mutunga Rules".

18. They also argued that their joinder does not introduce a new cause of action but is limited to addressing the existing restriction, which lies at the core of the dispute before the Court. As such, they are proper parties whose participation will enable the Court to conclusively determine all issues relating to the property's encumbrances, thereby avoiding fragmented litigation. Their inclusion upholds the right to a fair hearing under Article 50(1) of *the Constitution* and advances the interests of justice without altering the character of the suit.
19. The Supreme Court set out guidance on the requirements for a successful application for joinder as an Interested Party. This was in the case of Francis Kariuki Muruatetu & Another v Republic & 5 Others, Petition 15 as consolidated with 16 of 2013 [2016] eKLR. In it the apex Court gave three principles to be followed. At paragraph 37 the Court state that the Applicant(s) must show:
 - 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 remote.
 - iii. Lastly, a party must, in its application, set out the case and/or submissions 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.
20. To clarify the definition of an Interested Party, the Supreme Court in Communications Commission of Kenya & 4 Others v. Royal Media Services Limited & 7 Others, Petition Number 7 of 2014, eKLR, stated

“An interested party is one who has a stake in the proceedings, though he/she was not a party to the cause ab initio. He/she is one who will be affected by the decision of the Court when it is made, either way a person feels that his interest will not be articulated unless he or she himself/herself appears in the proceedings and champions his or her cause.”
21. Guided by the above case laws, it is evident that the proposed Interested Parties were directly affected by the restriction that was placed and/put on the suit property known as L.R No. Nairobi/Block 90/221 which restriction was placed through orders emanating from these proceedings in the suit.
22. Therefore, the Court finds that the proposed Interested Parties have an identifiable interest, as their joinder will facilitate a just resolution of the dispute.
23. The Application for reinstatement and joinder as Interested Parties is hereby allowed.
24. As to costs, since the Application was not opposed, there will be no orders as to costs.



Determination

25. The Interested Parties/Applicants' application by way of a Notice of Motion dated 24th November, 2023 is allowed in the following orders;
- a. The Court hereby enjoins Gurjeet Singh Ghataurhae, Amritpal Singh Gataurhae and Jaswinder Singh Ghataurhae as the first 1st, 2nd and 3rd interested parties respectively in this suit.
 - d. There be no orders as to costs.
26. It is so ordered.
27. The file is marked as closed.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 12TH DAY OF FEBRUARY, 2026.

NJOROGE BENJAMIN K.

JUDGE

In the presence of:

Miss Karimi holding brief for Mr. Macharia for the Interested Parties/Applicants

N/A Plaintiff/Respondent

N/A for the Defendants/Respondents

Peter Wabwire - Court Assistant.

