



REPUBLIC OF KENYA

IN THE SENIOR PRINCIPAL MAGISTRATE'S COURT AT MAKINDU

ENVIRONMENT AND LAND CASE NO E034 OF 2021

**PHILIP MUTUA KILONZO.....PLAINTIFF/
RESPONDENT**

VERSUS

DOMINIC MUSYOKI.....DEFENDANT/RESPONDENT

AND

**CHARLES MURIITHI MUTHURI.....PROPOSED INTERESTED
PARTY**

RULING

THE APPLICATION

Before me is an application dated 3/10/2025 filed by the proposed interested party herein, Charles Muriithi Muthuri (hereinafter referred to as the applicant). The application is brought pursuant to the provisions of sections 1A, 1B and 3A of the Civil Procedure Act and Order 1 rule 10(2) and Order 51 rule 1 of the Civil Procedure Rules. The same seeks the following main orders:

- 1) That the Honourable court be pleased to order that the applicant/intended interested party be enjoined to this suit as interested party;

- 2) That this Honourable court be pleased to set aside all the proceedings and orders made herein;
- 3) That this Honourable court be pleased to grant leave to the applicant/intended interested party to fully participate in the proceedings herein and file such pleadings, affidavits, submissions and other documents, subsequent to joinder;
- 4) That the costs of this application be provided for.

The application is supported by the affidavit sworn by the applicant and is premised on the following summarized grounds:

- i. The applicant obtained a letter of offer in respect of the suit land as well as a letter of acceptance, confirming him as the legal owner of the land;
- ii. Before being confirmed as legal owner of the suit land, the applicant later sold the suit land to the defendant and even signed an instrument of transfer;
- iii. The outcome of this matter will directly affect the proposed interested party;
- iv. It is in the best interest of justice that the proposed interested party be joined to facilitate the final and effectual determination of the issues arising herein.

In the affidavit, the applicant reiterated the grounds in the application and annexed copies documents in support of the application.

THE PLAINTIFF'S RESPONSE

The plaintiff opposed the application by filing a Replying affidavit sworn by himself. He deposed that the application is an afterthought, frivolous, vexatious, and calculated to achieve unfair, unmerited, unwarranted adjournment and a collusive ploy by the defendant to frustrate the expeditious disposal of this matter which has already proceeded for hearing and the plaintiff closed his case. That the applicant and even the defendant have been aware of the existence of this matter since inception yet no steps were taken since 2021. The plaintiff further deposed that the application herein has been brought belatedly, in bad faith and amounts to an abuse of the court process as the matter has proceeded substantially (scheduled for defense hearing) and that a joinder at this stage would cause unnecessary delay and prejudice to me which is contrary to the overriding objectives of the Civil Procedure Act and Article 159 of the Constitution of Kenya 2010.

The plaintiff deposed that according to the documents filed by the applicant, he purported to pay the deposit after expiry of the offer. That he purported to sale the land even before payment of the deposit, an indication that he sold what he did not own. It was deposed that the applicant's documents, including the alleged transfer letters and consent are of no legal effect as they emanate from an invalid and expired offer and no title or discharge has ever been produced to show ownership by either the applicant or the defendant. That the applicant has no subsisting legal or proprietary interest in the suit property and his presence is not necessary for the just and effectual determination of this matte as he is just a bystander.

The plaintiff deposed that he was the registered owner of the suit property and that the applicant has no audience and/or standing before this Honourable court to seek substantive orders as it is trite law that only parties properly on record may move the court for such relief. That if the application is allowed as prayed, it would cause the plaintiff grave prejudice since he has diligently prosecuted his case to the defence stage and will also defeat the principles of the overriding objectives and the Constitution of Kenya 2010 which require expeditious disposal of cases. The plaintiff argued that allowing the application would defeat those principles and continues to increase costs herein. The plaintiff deposed that the applicant has not demonstrated any identifiable stake, legal interest, or prejudice that would warrant his joinder as an interested party. He urged the court to dismiss the application.

THE DEFENDANT'S RESPONSE

The defendant filed a Replying affidavit in which he supported the applicant's application. The defendant confirmed that he bought the land from the applicant and was of the view that the applicant should be joined as an interested party.

MAIN ISSUES FOR DETERMINATION

In my opinion, the main issues for determination are as follows:

- i. Whether the applicant has given sufficient grounds to warrant the granting of the orders sought;
- ii. Whether the applicant should be joined to this suit;

- iii. Whether the proceedings should be set aside and the matter re-opened;
- iv. Who should bear costs of the application?
- v. What other orders can the court make?

SUBMISSIONS BY THE APPLICANT

The applicant filed written submissions, wrongly titled as submissions for the plaintiff/applicant. The applicant relied on his application and affidavit in support thereof and submitted that has not only a good case but he is also a necessary party in this proceedings because the results of this litigation will directly affect him for having sold the suit property to the Defendant/Respondent thus his credible testimony would probably have an important effect on this court's judgment. The applicant argued that the application has been brought in good faith and it is clear that the plaintiff/respondent has not established any prejudice or irreparable harm he will suffer should this Honourable court join the applicant in this suit, set aside all the proceedings and orders made herein and grant him leave to fully participate in the proceedings herein and file such pleadings, affidavits, submissions and other documents subsequent to the joinder.

The applicant purported to testify through submissions. I will disregard the submissions that mount to testimony not on record. The applicant submitted that it is general practice that a court can set aside proceedings or orders for various reasons, primarily focusing on ensuring fairness and the integrity of the judicial process. That the court exercises discretion in setting aside its proceedings and/or orders by considering the merits of the case, the potential for injustice, and the principle of proportionality. The applicant argued that in essence, such decision is a balancing act, weighing the need to ensure the integrity of the judicial process against the fundamental right of a party to be heard and defend themselves on the merits of the case.

That there is no iota of evidence adduced by the plaintiff/respondent proving any irreparable harm or prejudice that will be suffered if the reliefs sought by the applicant are granted. The applicant argued that any prejudice suffered by the plaintiff is substantially cured by Order 1 Rule 10 (4) of the Civil Procedure Rules. The applicant urged the court to allow the application with costs to him. The applicant cited and listed 15 authorities which he relied upon but did not bother to file copies of such authorities. It is improper for counsel

to cite authorities and expect the court to go out and look for the authorities. That is not the work of the court. If a party relies on any authorities, it is the duty and responsibility of such party to file copies of such authorities. An advocate, being an officer of the court, should know better. The court cannot look for authorities on behalf of a party.

SUBMISSIONS BY THE PLAINTIFF/RESPONDENT

The plaintiff also filed written submissions. The plaintiff submitted that joinder of parties is governed by Order 1 Rule 10(2) of the Civil Procedure Rules, 2010, which empowers the Court to add a party only where such party's presence is necessary to enable the Court effectually and completely adjudicate upon all issues. The plaintiff argued that the operative word is "necessary", not convenient, speculative, peripheral and/or tactical. The plaintiff further argued that under Order 1 rule 10(2) of the Civil Procedure Rules, the proper party to make an application for joinder are the parties themselves in the suit or by the Court on its own motion. That the operative word in Order 1 rule 10(2) is "either party" to denote that the party moving the Court has to be an existing party and the intending party cannot invite himself and stake the position that he wants in the suit.

The plaintiff submitted that his claim is solely against the defendant. That the Intended Interested party/Applicant has not demonstrated how this Honourable Court cannot determine the issues before it in his absence, particularly where he admits having sold the land, he holds no title and his alleged rights collapsed upon expiry of the letter of offer. The plaintiff contended that the intended interested party/Applicant has failed the necessity test and does not meet the statutory threshold for joinder. The plaintiff gave the litigation history of the matter and argued that the application was made in bad faith and that the applicant and defendant were colluding to frustrate the matter.

The plaintiff pointed out that the applicant was listed as a defence witness and signed a witness statement that was filed in court in 2022. That a person who is merely a witness cannot be elevated to the status of an Interested Party for the purpose of reopening proceedings already substantially heard. The plaintiff argued that the role of an Interested Party is not to patch up weaknesses in a party's case, to fill evidentiary gaps and/or revive collapsed or untenable claims through the back door. That the applicant's evidence, if any,

could sufficiently be canvassed through testimony as a witness, without necessitating joinder, setting aside of proceedings and/or reopening of the Plaintiff's case.

The plaintiff contended that to allow such joinder would offend the principle of finality and undermine the overriding objective under sections 1A and 1B of the Civil Procedure Act. The plaintiff also submitted on some matters of evidence which I will disregard at this stage. The plaintiff urged the court to dismiss the application and relied on the following authorities, whose copies were filed:

- a) *Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties) [2016] KESC 12 (KLR);*
- b) *Nduva & 3 others v Ndar & 3 others; Ng'ang'a (Intended Interested Party) [2024] KEHC 8118 (KLR);*
- c) *Kagiri v Business Registration Service; Mwangi (Interested Party) [2024] KEHC 1213 (KLR);*
- d) *Jason Njuru Mwangi & Anor v Nyambura Mwangi & 2 others [2018] eKLR.*

SUBMISSIONS ON BEHALF OF THE DEFENDANT

The defendant did not bother to file submissions.

ANALYSIS AND DETERMINATION

I have considered the application, the response by the plaintiff and defendant and given due regard to the submissions made by the plaintiff and applicant. Section 1A of the Civil Procedure Act provides as follows:

"(1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.

(2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).

(3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court".

Section 1B provides thus:

"(1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims— (a) the just determination of the proceedings;

(b) the efficient disposal of the business of the Court;

(c) the efficient use of the available judicial and administrative resources;

(d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and

(e) the use of suitable technology".

Section 3A provides:

"Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court".

Articles 159(2)(b) and (d) of the Constitution provides that in exercising judicial authority, the courts and tribunals shall be guided by the principle that justice shall be administered without undue regard to procedural technicalities and justice shall not be delayed.

The main provision upon which the application is premised is Order 1 rule 10(2) of the Civil Procedure Rules which provides:

"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.” (Emphasis supplied)

The **Blacks’s Law Dictionary, 10th edition** at page 1298 defines the phrase “interested party” as:

“A party who has a recognizable stake (and therefore standing) in a matter.”

The same dictionary at the same page defines the phrase “necessary party” as:

“A party who, being closely connected to a lawsuit, should be included in the case if feasible, but whose absence will not require dismissal of the proceedings.”

In my view, the question that is germane to these proceedings is whether the applicant has established that he has a recognizable stake in the proceedings and whether he is closely connected to the suit so as to be included as a party for the court to be able to effectually and completely adjudicate upon and settle all questions involved in the suit. There is a litany of authorities on the subject but I will only highlight a few from the apex court. In the authority of ***Muruatetu & another*** (*supra*), the Supreme Court held that a party seeking to be joined as an interested party must make a formal application and meet the following conditions:

- 1) The application would have to disclose the personal interest or stake that the party has in the matter. That interest has to be clearly identifiable and proximate enough to be distinguished from anything that was merely peripheral;
- 2) The prejudice that would be suffered by the non-joinder of the intended interested party has to be demonstrated to the court's satisfaction. The prejudice would have to be one that is not remote but one that is clearly outlined;
- 3) The intended submissions and their relevance has to be set out in the application. The party seeking to be joined has to demonstrate that the submissions are not merely a replication of what other parties were going to submit to the court.

The apex court further gave the following directions:

- a) An interested party would join proceedings on terms that the overriding interest or stake is always that of the primary or principal parties before the court;
- b) Interested parties are only remotely or indirectly affected but the primary impact is on the parties who moved the court first;
- c) Whether or not interested parties are joined to a suit, the issues to be determined by the court would still be the issues presented by the principal parties or as framed by the court from the pleadings and submissions of the principal parties;
- d) An interested party cannot frame its own fresh issues or introduce new issues for determination by the court. The stake that the interested party is required to have in the matter cannot form an altogether new issue introduced to the court.

The above principles were reiterated by the Supreme Court in the authority of ***Fanikiwa Limited v Sirikwa Squatters Group & 20 others; Mibei & 10 others [2023] KESC 39 (KLR)***. Being guided by the Supreme Court authorities, I will proceed to determine the first key question. The contention by the applicant is that he received a letter of offer in respect of the suit land and before he was confirmed as the legal owner, he sold the parcel of land to the defendant herein. Going by the applicant's own averment, it would mean that he has no legal interest in the suit land since he sold it to the defendant. The applicant has not alleged that he has an interest in the land even after selling it.

From the affidavit in support of the application and the documents in support thereof, it would mean that the only information that the applicant seeks to present to court is that he was the original allottee of the land and that he sold it to the defendant. In my view, that is information that can be presented by the defendant with the applicant attending court as a witness. He does not have to be joined as a party to the suit in order to present the information. Having purportedly sold his interest in the suit land, the applicant has nothing to fight for in these proceedings. His interest in these proceedings, if any, is not identifiable and proximate enough to warrant the orders being sought.

The applicant has no interest in the suit land but claims that the plaintiff obtained the title to the land through fraud, an allegation that was not even pleaded by the defendant herein. In fact, the defendant did not even allege in his statement of defence that he bought the suit land from the applicant. As guided by the Supreme Court, an interested party

cannot frame its own fresh issues or introduce new issues for determination by the court. The stake that the interested party is required to have in the matter cannot form an altogether new issue introduced to the court. The applicant herein seems to be introducing a new cause of action, not being pursued by the defendant.

Contrary to the submissions by the applicant, it is not for the plaintiff to demonstrate that he will be prejudiced by the joinder of the applicant. It is for the applicant to demonstrate that he will be prejudiced by the non-joinder as a party to the suit. In my view, the applicant has failed to demonstrate that he will be prejudiced if the application is disallowed. He claims that the outcome of the matter will affect him but does not show how he will be affected. The applicant is not in occupation and use of the land and as per his own allegation, he sold the land to the defendant. How then will he be affected by the outcome if he has no recognizable interest in the land?

It is not even clear what remedies he will be seeking in the event he is joined in the proceedings or even what value he will add to the proceedings. From the record, the judgment herein is unlikely to affect the applicant's rights, duties, or legal position. I agree with the plaintiff that there could be a collusion between the defendant and the applicant to derail the matter and/or make up for the defendant's lapses in the proceedings through introduction of further documents through the back door. The defendant was granted leave to file further documents on 20/11/2023 but has never bothered to do so. This was after closure of the plaintiff's case on 7/8/2023.

If the applicant has decided to be the defendant's mouthpiece, he should attend court as a witness as earlier scheduled and not purport to take the position of the defendant. It is alleged in the plaintiff's submissions that the applicant even filed a witness statement in 2022, although I do not see any on record, yet he claims that he was not aware of the proceedings herein. Be that as it may, I find that the applicant has failed to meet the threshold for granting of the orders sought and in particular, the order of being joined as an interested party herein. If the applicant really wants the court to hear him, let him attend as a defence witness. The issues being raised by the applicant can still be addressed by the witnesses from the relevant lands registry. The application must of necessity fail. Having

found as above, it would be unnecessary for me to pronounce myself on the other pending issues, save for the issue of costs.

DISPOSITION

In view of the foregoing, I find the application devoid of merit. I make the following orders:

- a) The application dated 3/10/2025 is hereby DISMISSED;
- b) The matter shall be set down for defence hearing as earlier scheduled;
- c) The costs of the application shall be borne by the applicant.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 31ST DAY OF MARCH,
2026.**

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.