



REPUBLIC OF KENYA



**Achikwa & another v Enterprises & 2 others; Igonyi (Interested Party) (Environmental and Land Originating Summons E014 of 2023) [2025] KEELC 5956 (KLR) (27 August 2025) (Ruling)**

Neutral citation: [2025] KEELC 5956 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E014 OF 2023  
CG MBOGO, J  
AUGUST 27, 2025**

**BETWEEN**

**DAVID K ACHIKWA ..... 1<sup>ST</sup> PLAINTIFF**

**KOKAYI OLE NECHUYU KOITEE ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**BHUTA ENTERPRISES ..... 1<sup>ST</sup> DEFENDANT**

**EPCO BUILDERS LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**JOHN MANOTI IGONYI ..... INTERESTED PARTY**

**RULING**

1. Before this court for determination is the notice of motion dated 14<sup>th</sup> March, 2025 filed by the intended interested party, and it is expressed to be brought under Order 1 Rule 10(2), Order 21 Rule 7 (1), Order 40 Rules 1,2 & 3 of the Civil Procedure Rules and Sections 1A, 1B 63E and 99 of the Civil Procedure Act and Article 159 (2)(d) of the Constitution of Kenya, seeking the following orders:-
  1. Spent.
  2. That John Manoti Igonyi be joined into the proceedings as interested party.
  3. That this honourable court be pleased to issue an injunction restraining the applicants by themselves, agents, legal representatives and servants from interfering, blocking, trespassing, alienating and or dealing in any manner with the property known as LR. No. 21937 (IR 91347) pending the hearing and determination of this application.



4. That this honourable court be pleased to issue an injunction restraining the applicants by themselves, agents, legal representatives and servants from interfering, blocking, trespassing, alienating, and or dealing in any manner with the property known as LR. No. 21937 (IR 91347) pending the hearing and determination of this suit.
2. The application is premised on the grounds inter alia that the intended interested party is the registered owner of property known as LR. No. 21937 (IR 91347) situate in Nairobi having acquired the same on 28<sup>th</sup> October, 1998. The application is supported by the affidavit of the intended interested party sworn on even date. He deposed that he learnt about these proceedings from a friend, and that he intends to be joined in the same for being the sole registered owner. The intended interested party further deposed that he is in actual possession and use of the property, and that the issues before this court cannot be effectively adjudicated upon in his absence. That to avoid a multiplicity of suits, it is necessary that he is enjoined for the court to make a final determination on the subject matter.
3. The application was opposed vide the replying affidavit of Mayur R. Varsani, the director of the 2<sup>nd</sup> defendant/respondent sworn on 28<sup>th</sup> April, 2025. The 2<sup>nd</sup> defendant/respondent deposed that the application is frivolous and that the claim by the plaintiffs and the intended interested party are vastly different, and cannot be handled in the same suit. That the intended interested party has not demonstrated how his interest if any, would be affected by the decision of this court.
4. The 2<sup>nd</sup> defendant/respondent deposed that its rights in relation to the suit property has been affirmed by this court in ELCLC/E182/2023, where orders were issued on 21<sup>st</sup> November, 2023 preventing any party from dealing with the suit property until the hearing and determination of the suit. Further, that he has not indicated what prejudice he will suffer in the event that this suit is determined without his joinder.
5. The intended interested party filed his supplementary affidavit in response thereto sworn on 12<sup>th</sup> June, 2025. The intended interested party deposed that all the parties have an interest in the suit property and the fact that there is another suit does not mean that he cannot pursue his claim on the suit property. Further, that if ELC No. E182 of 2023 is pending before a court with concurrent jurisdiction, nothing bars this court from calling for the file and consolidating the same with this file. He deposed that no pleadings in ELC No. E182 of 2023 have been attached and the court can only be left to speculate what the matter may be about.
6. The court directed that the application be canvassed through written submissions. None of the parties filed their written submissions. I have considered the pleadings on record and the issue for determination is whether the application has merit.
7. Order 1 Rule 10(2) of the Civil Procedure Rules provides that:-

“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.”
8. The relevant tests for determination whether or not to join a party in proceedings were restated by Nambuye, J (as she then was) in the case of Kingori versus Chege & 3 Others [2002] 2 KLR 243 where the learned Judge stated 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 effectively and completely adjudicate upon and settle all questions involved in the suit.
9. The intended interested party contended that he is the sole proprietor of the suit property having been registered on 28<sup>th</sup> October, 1998. He contended that he learnt of these proceedings from a friend and sought to be joined so as to avoid a multiplicity of suits and to enable the court make a conclusive determination. The 2<sup>nd</sup> defendant/respondent in challenging the application argued that its ownership of the suit property has been solidified by the orders in ELC No. E182 of 2023 which bars any party from dealing with the suit property.
10. Having considered these arguments, the injunction orders in place said to be contained in ELC No. E182 of 2023 have not been provided, and the court is unable to comment any further. On the other hand, the intended interested party has provided a copy of the title of the suit property, which shows he has an interest in the suit property and on this ground alone, I find it necessary that he participates in these proceedings.
11. Having found that the intended interested party is a necessary party, the question then is whether it has met the grounds for grant of interlocutory orders. The grounds for grant of interlocutory injunction were set out in the case of *Giella vs Cassman Brown Co. Ltd* (1973) 358 that the applicant must establish a prima facie case with a probability of success, an interlocutory injunction will not normally be granted unless the applicant would suffer irreparable injury which would not adequately be compensated in damages and that when the court is in doubt, it will decide the application on a balance of probabilities.
12. A prima facie case was defined by the Court of Appeal in *Mrao Ltd vs First American Bank Kenya Ltd & 2 others* [2003] eKLR as follows:-
- “a prima facie case in a civil application includes but is not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
13. By a copy of the certificate of title, it is not difficult to find that the intended interested party has a prima facie case. However, there is need for the court to be satisfied as to whether he will suffer irreparable loss that cannot be compensated by way of damages if the orders are not granted. On this, the intended interested party did not demonstrate by evidence any loss to be suffered. While he contended to be in possession of the suit property, there was no evidence to confirm this position. In my view, the intended interested party has not met the threshold for the grant of a temporary injunction.
14. From the above, the notice of motion dated 14<sup>th</sup> March, 2025 partially succeeds in terms of allowing the intended interested party to be joined in these proceedings. Costs shall be in the cause.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY**



**THIS 27TH DAY OF AUGUST, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

**27/08/2025.**

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Rukwaro for the intended Interested Party

Mr. Allan Kamau for the 3rd Respondent

Mr. Wachira for the 3rd Respondent

