



Mavoko Land Development Co. Ltd v Kasina Housing Scheme Society & 4 others; Nzioka & another (Intended Interested Party) (Environment & Land Case 366 of 2009) [2024] KEELC 369 (KLR) (31 January 2024) (Ruling)

Neutral citation: [2024] KEELC 369 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 366 OF 2009
CA OCHIENG, J
JANUARY 31, 2024**

BETWEEN

MAVOKO LAND DEVELOPMENT CO. LTD PLAINTIFF

AND

KASINA HOUSING SCHEME SOCIETY 1ST DEFENDANT

PETER MUINDE MBITI 2ND DEFENDANT

ERICKSON KIMEU MULWA 3RD DEFENDANT

FRANCIS KIRAGU NGOTHO 4TH DEFENDANT

HON. ATTORNEY GENERAL 5TH DEFENDANT

AND

FREDRICK MUTHAMA NZIOKA INTENDED INTERESTED PARTY

JULIA NDUNGE NZIOKA INTENDED INTERESTED PARTY

RULING

- 1 What is before Court for determination is the Intended Interested Parties'/Applicants' Notice of Motion Application dated the 19th September, 2022 where they seek the following Orders:-
1. Spent.
 2. That this Honourable Court do enjoin Fredrick Muthama Nzioka and Julia Ndunge Nzioka as Interested Parties in these proceedings.
 3. That cost of this Application be provided for.



- 2 The Application is premised on the grounds on the face of it and the Supporting Affidavit of Fredrick Muthama Nzioka where he deposes that he is a member of Kasina Housing Scheme Society who are the 1st Defendant's herein. He confirms that Judgment in this case was delivered on 31st May, 2019. He explains that by virtue of being a member of the 1st Defendant, he was allotted a parcel of land being Athi River/Athi River Block 9/19 that formed part of LR 11895/27. He states that the dispute in this suit was in respect to Land Parcel LR 11895/27 whereof his land parcel number Athi River/Athi River Block 9/19 originated from. Further, that the Court in its Judgment declared that the title LR 11895/27 was fake and of no consequence. He claims when the case was pending, he had filed ELC No 308 of 2017 against Peter W. Mathenge which was stayed pending the outcome of the instant suit. Further, after the outcome of this case, the Defendant filed an Application seeking to strike out his suit for being res judicata as a result of the findings in this case, which suit was struck out. He avers that after the decision in this case, he has since discovered very vital information which was not available when the court made its decision. He insists that the discovery of new and important evidence confirms that the court was misled to make a decision based on forged documents. He reiterates that the Director of Survey in his letter dated Ref AC/CAD/ 78/VII/342 confirmed that there are two survey plans of FR 213/82 with different shapes and that they do not know how they are both in existence in respect to LR 25062. He contends that he has discovered six (6) different forgeries and forged documents which if the court had, in its possession when making its decision, it would not have arrived at the present decision. Further, that the said decision has had far reaching implication to him since he was denied a chance to be heard and his proprietary interests have been taken away on forged documents which inevitably renders useless the title he holds to his parcel of land. He reiterates that it is only fair and just for him to be joined in this suit. Further, that he is desirous in making an Application for review in this matter once joined in the proceedings. He reaffirms that no prejudice will be suffered by the parties herein.
- 3 The Plaintiff opposed the instant Application by filing Grounds of Opposition as well as a Replying Affidavit sworn by Jackson Makali Kalolwe, its Secretary General where he deposes that this suit was heard inter partes and Judgment delivered on 31st May, 2019 and no Appeal exists in the matter. He confirms that the intended Interested Parties are members of Kasina Housing Scheme Society which was the Defendant herein and their issues of concern were addressed by their society in the proceedings. He insists that the Applicants have no right to address the Court as no leave has been granted in the first instance. He avers that no specific remedy is sought. Further, that the Applicants are strangers to these proceedings and hence cannot reopen a matter which was heard and Judgment delivered. He reiterates that the Applicants have no right to seek to review a matter which they were not parties to. He contends that the instant Application is incompetent and malicious.
- 4 The Application was canvassed by way of written submissions.

Analysis and Determination

- 5 Upon consideration of the instant Notice of Motion Application, Grounds of Opposition, respective Affidavits and rivalling submissions, the only issue for determination is whether the Applicants should be joined in these proceedings as Interested Parties.
- 6 The Applicants in their submissions reiterated their averments and contended that they have a stake in this suit post Judgment since they were locked out without being heard. Further, that they seek joinder so as to apply for review of the Judgment. They insist that they are necessary and proper parties who deserve to be heard. To support their averments, they relied on Order 1 Rule 1(2) of the Civil Procedure Rules as well as the following decision: Kingori v Chege & 3 others (2002) eKLR 243; ELC No 1159 of 2000 Michael Muobi Gature & 9 others v Lika Kimen Mutevu & 6 others.



- 7 The Plaintiff in its submissions insists the Application before court does not seek appeal or review. It avers that once Judgment is delivered the Applicants should have sought leave to join the suit before addressing the Court. It further submits that there exists a Judgment which is yet to be set aside and it cannot be opened for a party to adduce evidence.
- 8 It is not in dispute that the intended Interested Parties were members of Kasina Housing Scheme Society. Further, that they obtained their title Athi River/Athi River Block 9/19 that formed part of LR 11895/27 which had belonged to Kasina Housing Scheme Society. It is further not in dispute that this court vide its Judgment delivered on 31st May, 2019 declared title LR 11895/27 fake. The Applicants contend that the Judgment was obtained by use of fake documents. Further, that they seek joinder as Interested Parties in this suit so as to seek a review of the Judgment. I note after the Judgment, the 1st, 2nd and 3rd Defendants filed a Notice of Appeal on 7th June, 2019. Further, vide the Replying Affidavit filed by the Plaintiff to the Application by the 1st Defendant seeking stay of execution pending Appeal, it confirmed a resurvey had already been done in June, 2019.
- 9 On joinder, Order 1 Rule 10 of the *Civil Procedure Rules* stipulates as follows:-
- (1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit. (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.”
- 10 In the case of *Trusted Society of Human Rights v 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.”
- 11 Further in the case of *Joseph Njau Kingori v 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 and stated thus:-
- 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.”
- 12 I note the intended Interested Parties seek joinder in a matter where the Decree has already been executed. Further, they claim to have acquired their land which was a portion of the suit land owned by



the 1st Defendant herein but have not annexed their title, indicated when the same was issued nor any documents to support their mode of acquisition of the said land. Further, I note that the Judgment herein was entered on 31st May, 2019 which is more than three (3) years ago and the intended Interested Parties have not explained why they took so long to seek joinder. I opine that since Judgment had already been entered against the 1st Defendant culminating in declaration that the title to the suit land that it held was fake, even though the intended Interested Parties claim to have acquired a portion of the said land, at this juncture I find that they have come too late in the day and their only remedy is to pursue compensation against the 1st Defendant. In the circumstances, while relying on Order 1 Rule 10 of the Civil Procedure Rules and associating myself with authorities I have cited, I am unable to find that the intended Interested Parties were necessary parties to the concluded suit. To my mind and due to lack of documentation, I find that the intended Interested Parties have failed to demonstrate the need for joinder in this matter.

13 It is against the foregoing that I find the instant Notice of Motion Application unmerited and will disallow it.

14 Costs will be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 31ST DAY OF JANUARY, 2024

CHRISTINE OCHIENG

JUDGE

