



**Mihandisi Enterprise Limited v Kamiti Farmers Company Limited;
Macharia & another (Interested Parties) (Environment & Land Case
571 of 2016) [2025] KEELC 998 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 998 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 571 OF 2016
JG KEMEL, J
FEBRUARY 28, 2025**

BETWEEN

MIHANDISI ENTERPRISE LIMITED PLAINTIFF

AND

KAMITI FARMERS COMPANY LIMITED RESPONDENT

AND

MICHAEL KAMAU MACHARIA INTERESTED PARTY

BERNADETE WAMBUI MACHARIA INTERESTED PARTY

RULING

1. Before me for determination is the Plaintiff's application dated 18/12/24. The application is expressed to be brought pursuant to Section 1A, 2A, 3A of the *Civil Procedure Act* and Order 1 Rule 10 (2) of the Civil Procedure Rules. The Applicant principally prays for orders that;
 - a. The Court do issue an order enjoining the following persons as interested parties in this suit: Penina Wanjiru Njenga, Robert Njuguna, Samuel Mwangi, Stephen Njau Njoroge, Jane Wambui Muigai and Peter Mwangi.
 - b. Costs of this application be provided for.
2. The application is based on the grounds that; the persons mentioned above are in actual occupation of the subject suit known as Plot No. 80/324/8570 and/or Nairobi Block 117/255. That the joinder is necessary to enable the court settle the issues once and for all. That it is in the interest of justice that the orders sought be granted.



3. The application is further supported by the Affidavit of John Morison Litondo, the Plaintiff's Director deponed on 18/12/24. The deponent avers that the suit is slated for hearing on 3/3/25 after being previously adjourned for one reason or the other. He avers that while preparing for the said hearing, he came across some crucial documents from the current Chairman of the Defendant which revealed some fraudulent schemes by the 1st and 2nd Interested Parties in attempting to alienate the suit property.
4. He avers that the intended Interested Parties claim ownership of suit property by way of actual possession as well as purchasers for value. It is therefore necessary that they be joined in the suit to enable the issues and claims of various persons to be adjudicated in a timely manner.

1st Defendant's Replying Affidavit

5. The application is vehemently opposed by the Defendants. The 1st Defendant opposed the application vide the Replying Affidavit of Simon Kinyanjui dated 4/2/25. The 1st Defendant contends that the Plaintiff has not attached evidence to show how the Intended Interested Parties are in any way associated with the property. That no evidence has been adduced on the value the intended interested parties shall add to this suit. That the annexures attached to the application do not in any way mention the Intended Interested Parties.
6. The deponent further avers that the Plaintiff/Applicant has not even indicated when they discovered that the proposed interested parties entered into the suit property. Further, that no proper service has been effected upon the Intended Interested Parties to allow them file their necessary responses. The 1st Defendant therefore accuses the Plaintiff of merely delaying the hearing and determination of the suit to its detriment.

2nd and 3rd Defendant's Replying Affidavit

7. The 2nd and 3rd Defendants opposed the application vide the Replying Affidavit of Michael Kamau Macharia, the 2nd Defendant, sworn on 5/5/25. They contend that they are the legal and beneficial co-owners of the suit property having acquired it from the 1st Defendant. That the Plaintiff has not proved that there are persons who are in actual occupation of the said property as no evidence proving the same has been adduced. They aver that they are not aware of any occupants in the suit property.
8. The Deponent states that the Applicant has failed to meet the threshold of joinder of parties under Order 1 of the Civil Procedure Rules since the rules stipulate the procedure of adding defendants and not joining interested parties. That the Applicant has not shown an identifiable stake the intended interested parties have over the suit property. That the applicant's application is a delaying tactic to frustrate the proceedings and the hearing of the suit hence the application ought to be dismissed with costs.

Plaintiff's further Affidavit

9. The Plaintiff filed an undated Supplementary Affidavit sworn by John Morison Litondo, its Director in response to the issues raised in the Defendants' Replying Affidavits. The deponent adduced a map showing that the suit plot has been subdivided. He further attached photos of the various developments on the suit property. He also annexed pleadings by the 1st and 2nd Defendant confirming that the suit parcel has been subdivided and developed by various people. He maintains his assertion that the application ought to be allowed.



Court's direction

10. On 5/2/25, the Court directed that the application be canvassed by way of written submissions. However, by the time compliance lapsed only the 1st Defendant had filed its submissions. The other parties did not comply. The Court has read through the submissions by the 1st Defendant which in any case form part of the Court's record and considered accordingly.

Analysis and Determination

11. After considering the application, the Affidavits thereto and the 1st Defendant's submissions, the only issue for determination is: Whether the Intended Interested Parties should be joined as Interested Parties in the proceedings herein.
12. The Plaintiff/Applicant herein has sought to be enjoined as Interested Parties to the suit for the reason that they are currently in occupation of the suit property. It has adduced a map and photographs showing some developed structures allegedly undertaken on the suit property. The Defendants/ Respondents on the other hand content that the Plaintiff has not demonstrated any proprietary interest by the proposed interested parties to warrant their joinder as such.
13. First and foremost, who is an Interested Party? Order 1 Rule 10(2) of the Civil Procedure Rules states as follows: -

“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 or settle all questions involved in the suit, be added.”

14. Black's Law Dictionary defines an Interested Party as

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

15. Further, The Supreme Court of Kenya in *Communications Commission of Kenya and 4 Others –vs- Royal Media Services Limited & 7* held as follows:

“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. Similarly, in the case of *Meme v. Republic*, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- i. Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;
- ii. Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- iii. Joinder to prevent a likely course of proliferated litigation.



We ask ourselves the following questions: a) what is the intended party's state and relevance in the proceedings and b) will the intended interested party suffer any prejudice if denied joinder.?"

16. Subsequently, having defined who an Interested Party is, it is important to then determine whether the Applicant has satisfied the criteria to warrant the joinder of the proposed Interested Parties in the proceedings.
17. The law on joinder of interested parties to suits has been settled by the Supreme Court of Kenya in the case of *Francis K. Muruatetu and Another vs. Republic & 5 Others* (2016) eKLR, the court set out identifiable key elements for consideration in an application for joinder as an Interested Party. The elements are as follows: -
 - a. 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.
 - b. 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.
 - c. Lastly, a party must, in its application, set out the case and/or submission 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."
18. Further, in *Skov Estate Limited & 5 Others -vs- Agricultural Development Corporation & Another* [2015] eKLR Justice Munyao Sila in dealing with the issue of an Interested Party seeking to be joined in a suit stated as follows;

"In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party.

In other words, there needs to be a demonstration that the interest of the person goes further than "merely being affected" by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to join a person



as an interested party, must be looked at within the context and surrounding circumstances of each particular case.”

19. To the extent that the Applicant alleges that the Intended Interested Parties are in occupation of the suit property and the acknowledgement by the 2nd and 3rd Defendants at Paragraph 40 of their Defence and Counterclaim, that the suit property has been subdivided and disposed to other parties, it is evident that there are parties in occupation of the suit property who are currently not parties to this suit. The likelihood of such occupants being affected by any decisions made by this Court with respect to the suit property cannot be discounted. I find that they are therefore necessary parties to this suit. It is therefore in the interest of justice that they be accorded a chance to be heard.

Final orders for disposal

20. To that end, I make the following orders;
- a. allow the application as prayed
 - b. The Intended Interested Parties be and are hereby enjoined in this suit as is appropriate;
 - c. The Plaintiff shall amend the Plaint accordingly to include the Interested Parties within 7 days from the date of this Ruling and serve them with the all the pleadings herein.
 - d. The Interested Parties will be at liberty to file their documents within 14 days of service from the date of service.
 - e. The Defendants will be at liberty to file their amended defence and further documents within 14 days of service by the Interested Parties.
 - f. Thereafter parties to expeditiously prepare the suit for hearing.
 - g. Costs shall be in the cause.
21. It is so ordered

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 28TH DAY OF FEBRUARY 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Coram

Mrs Matage HB for Mr Wangalwa for the Plaintiff

Mr Kahama HB for Mr Kibet for the Defendant

Mr Kahama HB for Mr Ojijo for the Interested Parties

CA – Ms Yvette

