



**Loise Wambui & Others Company Limited & another v Chumo
& another; Chumo (Interested Party) (Environment & Land Case
E009 of 2023) [2024] KEELC 38 (KLR) (18 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 38 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE E009 OF 2023
MN MWANYALE, J
JANUARY 18, 2024**

BETWEEN

LOISE WAMBUI & OTHERS COMPANY LIMITED PLAINTIFF

AND

ELIZABETH JEPKIRONG CHUMO APPLICANT

AND

KIPKETER CHUMO 1ST DEFENDANT

MILCA CHERUTO PINAT 2ND DEFENDANT

AND

ELIZABETH JEPKIRONG CHUMO INTERESTED PARTY

RULING

1. Vide her application dated November 9, 2023, Elizabeth Jepkirong Chumo, the Applicant seeks joinder as an Interested Party in this matter.
2. The grounds in support of the application is that she is the wife of the 1st defendant Kipketer Chumo and together they have 7 children and the 1st defendant transferred Nandi/Ndalat/633 to the Plaintiff without her knowledge and consent and she thus seeks joinder in order to be heard on the matter.
3. The application is supported by the Applicant's affidavit where she annexed copies of the birth certificates of her children as well as an affidavit of marriage and photographs of houses on the suit land.
4. The application is opposed by the Plaintiff who has filed both grounds of opposition and a replying affidavit.



5. In opposition to the application, the Plaintiff/ Respondent states that by virtue of a mediation order in Kapsabet ELC No. 124/2021, the Plaintiff's interests were confirmed and that interests of the Interested Party are resjudicata.
6. That the Plaintiff/Respondents rights are protected under section 26 of the Land Registration Act, and that the application herein is meant to obstruct the ends of justice, it is inept ambiguous and bad in law.
7. In the replying affidavit the Respondent states that neither the Interested Party nor her children reside on the suit land since the children are beyond the age of majority and reside elsewhere.
8. The Respondent further depones that the proposed Interested Parties claim is resjudicata in view of Kapsabet ELC No. 124/2021 where through the Court annexed mediation the claim of the Defendant and the Plaintiff were settled and that the Interested Party's joinder application seeks to reopen the said issues. For the above reason, the Respondent/Plaintiff sought for a dismissal of the joinder application.
9. The Applicant sought and was granted leave to file a Further Affidavit. In her Further Affidavit the Applicant depones that she intends to join the proceedings so as to protect what is rightfully hers. That the property was transferred to the Plaintiff without her consent yet the same was a matrimonial home, and that she was not part of the mediation agreement reached at in Kapsabet ELC No. 124/2021 and that her joinder to the suit is to bring the said issues to the fore.

Parties were directed to file submissions in respect of the application.

10. The Respondent/Plaintiff had filed her submissions by 4/12/2023 and the proposed Interested Party/ Applicant had not filed submissions by 4/12/2023 and time was enlarged to file submissions by 14/12/2023 and Ruling reserved for 18/01/2024.
11. At the time of writing the ruling, the Applicants submissions were not on the Court file and were thus not considered.
12. The two defendants Kipketer Chumo and Milca Cheruto Pinat did not file any responses to the application and neither did they file any submissions. They simply did not take part in the application.

Plaintiff/Respondents Submissions: -

13. It is the Respondents submission that the application before Court is fatally defective as the issues therein were settled in the Mediation process in Kapsabet ELC No. 124/2021 hence the mediation order was final and the Plaintiff places reliance on the decision in the case of Flora N. Wasike v Destimo Wamboko (1998) eKLR and in the Board of Trustees National Social Security Fund and Michael Mwalo (2015) eKLR hence in terms of section 7 of the Civil Procedure Act, the issues raised in the application are *resjudicata*, so submits the Plaintiff/Respondent.

Issues for Determination: -

14. I have perused the application before Court, the pleadings filed by the parties as well as the submissions on record, and the Court frames the following as issues for determination; -
 - i) whether the interested party has a different interest from the 1st defendant's interests.
 - ii) whether the application meets the principles for joinder of an interested party
15. In the application before Court the Interested Parties interest entitling her to make the instant application for joinder is set out at paragraphs 1 to 5 of the grounds in support of the application.



16. In a nutshell the Applicant stated that her interest in Nandi/ndalat/663 is that of a spouse of the 1st Defendant and that she did not give her consent for purposes of transfer to the Plaintiff.
17. This same interest expressed by the interested party, is to be found at paragraph 4, 5, 9, 12 and 13 of the 1st defendant's statement of defence.
18. It follows therefrom that the Interested Party's disclosed interest in the suit property and the reason for joinder is not severable from the interest of the 1st Defendant.

The application is thus made to further the case of the 1st Defendant's defence and counterclaim.

19. On issue number 1 the Court finds that the Interested Parties does not have a different interest from the 1st Defendant.

On issue number 2, the principles for joinder of an Interested Party were set out in the Supreme Court decision in the case of *Francis Muruatetu and another v Republic and 5 others* (2016) eKLR, where the element to be proved, were stated to be, *interalia*,

- 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 the case of non-joinder, must also be demonstrated for 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 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 Court."

20. Subjecting the instant application to the elements as stated above and having found on issue 1, that the intended Interested Party interest is similar to the 1st Defendants interest as pleaded it follows then the submissions the interested Party will be making are similar to the 1st Defendants and the Interested Party to that extent has not met element (c) cited above and the application before Court, does not meet the threshold and must thus fail.
21. The interested Interested Party application for joinder fails, but the 1st Defendant is at liberty to call the intended interested party Elizabeth Jepkiring Chumo as a witness should he so desire.
23. Costs of the application in the cause.

RULING, DELIVERED AND DATED AT KAPSABET THIS 18TH OF JANUARY OF 2024.

Hon. M. N. Mwanyale,

JUDGE

In the presence of;

1. Ms. Barmao holding brief for Mr. Mwangi for Respondent
2. Ms. Koech for intended Interested Party/Applicant

