



**Gilbert v District Land Adjudication and Settlement Officer, Igamba Ng'ombe Sub-County & 2 others; Nyaga & another (Interested Parties); Kunga (Intended Interested Party) (Environment and Land Judicial Review Case E003 of 2022) [2024] KEELC 1100 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 1100 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**  
**ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E003 OF 2022**  
**CK YANO, J**  
**FEBRUARY 29, 2024**

**BETWEEN**

**JAPHET NJAGI GILBERT ..... EXPARTE APPLICANT**

**AND**

**THE DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER,  
IGAMBA NG'OMBE SUB-COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**THE DEPUTY COUNTY COMMISSIONER ..... 2<sup>ND</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**MUGENDI NYAGA ..... INTERESTED PARTY**

**IGNATIUS MUTEGI MUGA ..... INTERESTED PARTY**

**AND**

**NICHOLAS NGECE KUNGA ..... INTENDED INTERESTED PARTY**

**RULING**

1. By a notice of motion dated 22<sup>nd</sup> June, 2023 brought pursuant to order 1 Rule 3, Order 1 Rule 10 (2) and (4), Order 51 of the [Civil Procedure Rules](#), 2010 and Section 1A, 1B and 3A of the [Civil Procedure Act](#), the applicant is seeking for orders:
  1. Spent.
  2. That the Applicant/Intended Interested Party be enjoined as an interested party in this suit.



3. That the *Ex-parte* Applicant be ordered to serve the Applicant/Intended Interested Party with all the court processes.
  4. That upon prayer No. 1 & 2 above being granted, the Applicant/Interested Party be granted leave and be allowed to file his pleadings.
  5. That costs for the Application be provided for.
2. The application is supported by the affidavits of Nicholas Ngece Kunga and is based on grounds that:
- a. That the subject matter of this suit is LR No. Marembo/Rianthiga/264 measuring approximately 4.08 Hectares (10 Acres).
  - b. That the Applicant herein purchased the said parcel of land, LR No. Marembo/Rianthiga/264 from one M'nyiri Rinkuri (now deceased) and who was the previous interested party herein.
  - c. That the Applicant conducted the requisite due diligence where he established that the suit property was actually registered in M'nyiri Rinkuri'S name and there were no encumbrances whatsoever.
  - d. That the Applicant paid the full consideration thereof on diverse dates to the said M'nyiri Rinkuri (now deceased) and took actual possession and occupation of the suit property thereof.
  - e. That the said M'nyiri Rinkuri and the Applicant executed all the requisite transfer documents and the suit property was registered in the Applicant's name.
  - f. That it is therefore in the interest of justice and fairness that the Applicant be enjoined as a party to the suit because any determination delivered in this suit will directly affect him.
  - g. That if the orders sought are not granted, the Applicant will suffer prejudice, loss and irreparable damage.
  - h. That it is in the interest of justice, equity and fairness that the orders sought herein be granted.
3. In his affidavit in support of the application, the applicant reiterated the above facts and annexed copies of the sale Agreement, title deed in name of M'nyiri Rinkuri, bundle of receipts and acknowledgments and title deed in the Applicant's name marked "NNK 1", "NNK 2", "NNK 3" AND "NNK 4" respectively.
4. The ex-parte Applicant filed his replying Affidavit dated 10<sup>th</sup> July 2023 wherein he stated that the application is unmerited and should be disallowed. That her advocate on record advises him that his claim is seeking to quash the decision of the minister in relation to the implementation of the adjudication proceedings while the applicant's cause of action is that of a breach of contract between himself and the 1<sup>st</sup> interested party which does not warrant the applicant's presence in the proceedings. That the certificate of title the applicant is referring to was automatically revoked by this court order and that is why they were sent back to the Minister to have the appeal canvassed first. He has annexed a copy of a ruling marked "JNG 1".
5. The ex-parte Applicant states that the fact that the applicant acquired a certificate of title for land parcel Marembo/Rianthiga/264 before the adjudication proceedings were concluded is contrary to the procedure laid out in the *Land Adjudication Act*, Cap 284. That the said certificate of title was acquired through irregular, illegal dealings and therefore the applicant cannot lay any claim over the same on the doctrines of equity. That the agreement for sale of land between he applicant and the 1<sup>st</sup>



- Interested party is dated 2015 when the adjudication case before the Minister had not even been heard contrary to the laws of adjudication.
6. The ex-parte Applicant avers that it is quite absurd for the applicant to claim he has been in occupation of the suit land contrary to the findings of the DCC which allegations would be misleading. That the applicant is barking up the wrong tree by claiming his parcel of land which was obtained through illegal dealings under the wrong set of proceedings. The Ex-parte applicant prayed that the application be dismissed with costs to the ex-parte applicant.
  7. The application was canvassed by way of written submissions. The applicant filed his submissions dated 14<sup>th</sup> August 2023 through the firm of M/S Waklaw Advocates.
  8. The Applicant submitted that he has vividly and clearly indicated and demonstrated his personal interest in the sit property that he is seeking to be joined in the suit to ensure, safeguard and protect his interests. The applicant state that he is the absolute registered proprietor of the parcel of land LR No. Marembo/Rianthiga/264 (the suit land) measuring approximately 4.08 Hectares (10 Acres) and therefore, has an identifiable personal interest in the proceedings in this suit.
  9. The Applicant cited the provisions Order 1 Rule 10 of the Civil Procedure Rules, 2010 as amended in 2020. The Applicant further submitted that in 2013, the procedure was clearly and firmly anchored in our Country's Rules in Legal Notice No. 117 of 2013 titled as the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 which was Gazetted on 28<sup>th</sup> June, 2013 (referred to herein as the Mutunga Rules, 2013) Which provide for this procedure. He cited Rule 2 of the Mutunga Rules, 2013 which define an interested party and the procedure on how one is to be enjoined under Rule 7. Sub-rule 1 of Rule 7 states that "A person, may make an oral or written application to be joined as an interested party."
  10. The Applicant's counsel relied on the case of Francis Kariuki Muruatetu & Another -vs- Republic & 5 Others Petition No. 15 as consolidated with No. 16 of 2013 [2016] eKLR where the Supreme Court set out guidance on the requirements for successful application for joinder as an Interested Party.
  11. The Applicant's counsel relied on the Supreme Court Case of Trusted Society of Human Rights Alliance -vs- Mumo Matemo & 5 Others [2015] eKLR and also Skov Estate Limited & 5 Others -vs- Agricultural Development Corporation and another [2015] eKLR.
  12. Learned Counsel for the Applicant submitted that the Applicant will be directly and personally affected by any decision of the court affecting the suit land and demonstrate there is a direct link to the present case and the outcome thereof. The applicant's counsel relied on the case of Judicial Service Commission -vs- Speaker of the National Assembly and Another [2013] eKLR.
  13. The Applicant's counsel submitted that the suit is still in its preliminary stages and joinder of the Applicant as an interested party at this stage will not prejudice any party. He relied on the cases of Florence Nafula Ayodi & 5 Others -vs- Jonathan Ayodi Ligure -vs- John Tabalya Mukite & Another; Benson Girenge Kidiavai & 67 Others (applicants/intended interested parties) [2021] eKLR, Elizabeth Nabausala Wekesa -vs- Erick Omwamba & 3 Others; Esther Momanyi Omwamba (applicant) [2021] eKLR, and Leonard Kimeu Mwanthi -vs- Rukaria M'twerandu M'iringu; Nathaniel Kithinji Ikiugu & 4 Others (Intended Interested Parties) [2021] eKLR.
  14. The Applicant's Counsel urged the court to exercise its discretion and find that the application is merited and allow the same as prayed.
  15. The ex-parte Applicant field his submissions dated 11<sup>th</sup> November 2023 through the firm of M/S Kijaru Lydiah & Co. Advocates wherein they submit that the cause of action in the application is



that of a breach of contract to which the ex-parte applicant was not a party or privy to. That it would then not be prudent for the applicant to be joined in these proceedings for the reasons that the application would introduce a new cause of action. It is the ex-parte applicant's contention that there is no prejudice that will be occasioned to the applicant if the application for joinder is disallowed. The ex-parte applicant accuses the applicant for coming to this court with unclean hands for having acquired title irregularly when adjudication proceedings were still ongoing and while there was a case pending before the minister. The Ex-parte Applicant's counsel urged the court to dismiss the application with costs to the ex-parte applicant.

16. I have considered the application, the response and the submissions by the parties. The issue for determination is whether the court should allow the interested party to be joined in the suit.
17. Joinder of parties is governed by Order 1 of the *Civil Procedure Rules*. In law, joinder should be permitted of all parties in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally; or in the alternative, where if such persons brought separate suits, any common question of law or fact would arise. See also Order 7 Rule 9 of the *Civil Procedure Rule*. The court may even in its own motion add a party to the suit if such party is necessary for the determination of the real matter in dispute or whose presence is necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit. Therefore, joinder of parties is permitted by law and it can be done at any stage of the proceedings. But, joinder of parties may be refused where such joinder will lead into practical problems of handling the existing cause of action together with the one of the party being joined; is unnecessary; or will just occasion unnecessary delay or costs on the parties in the suit. In other words, joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible to or totally different from existing cause of action or the relief. The determining factor in joinder of parties is that a common question of fact or law would arise between the existing and the intended parties. This is the test I shall apply in this case.
18. In case of *Communications Commission of Kenya & 4 Others –vs- Royal Media Services Ltd. & 7 others*, [2014] eKLR, the Supreme Court pronounced itself on the conditions to be satisfied before a party can be made an interested party. The court held: -

“In determining whether the applicant should be admitted into these proceedings as an interested party we are guided by this court's decision in the *Mumo Matemo case* where the Court (at paragraphs 14 and 18) held: “[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 questions 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 stake and relevance in the proceedings? And
- b) will the intended interested party suffer any prejudice if denied joinder?"

19. Similarly, in *SKOV Estate Ltd. & 5 Others -vs- Agricultural Development Corporation and Another* Hon. Justice Sila Munyao held similar views thus:

“ 18. 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 manner. 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 enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.” (Emphasis added)

20. The Applicant has pleaded that it is in the interest of justice and fairness that he be joined as a party to the suit because any determination delivered in this suit will directly affect him. He also holds a title to the suit land. Consequently, he has a stake in the matter.
21. In the light of the above, and for the interest of justice, this court finds that the applicant has demonstrated that he has a legitimate interest in the matter before court and he is a proper person to be made a party in this Judicial Review proceedings.
22. Consequently, the application dated 22<sup>nd</sup> June 2023 is allowed in terms of 2, 3 and 4 thereof. The applicant to file his pleadings within 14 days of service by the Ex-parte Applicant.
23. Costs of the application to abide the outcome of the substantive motion.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 29<sup>TH</sup> FEBRUARY, 2024**

In the presence of:

Court Assistant – Martha

No appearance for Applicant but Ex-Parte applicant present in person.



No appearance for Respondent

No appearance for Interested Parties

**C.K YANO,**

**JUDGE**

