



**Likizo Homes Housing Cooperative Society & another v Ibrahim;  
Hassan (Proposed Interested Party) (Environment & Land Case  
829 of 2017) [2025] KEELC 1026 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 1026 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 829 OF 2017  
MD MWANGI, J  
FEBRUARY 27, 2025**

**BETWEEN**

**LIKIZO HOMES HOUSING COOPERATIVE SOCIETY ..... 1<sup>ST</sup> PLAINTIFF**

**ISMAEL MUCHIRI GACHAU ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**ADAN MAALIM IBRAHIM ..... DEFENDANT**

**AND**

**ABDIRASHID ADAN HASSAN ..... PROPOSED INTERESTED PARTY**

**RULING**

(In respect to the applications dated 3<sup>rd</sup> February 2025, 21<sup>st</sup> March 2024 & 25<sup>th</sup> March 2024, all by the proposed Interested Party)

**Background**

1. Vide the Notice of Motion dated 3<sup>rd</sup> February, 2025, the proposed interested party/Applicant prays that the Honourable Court be pleased to issue a ruling with respect to his applications dated 21<sup>st</sup> March 2024 and 25<sup>th</sup> March 2024; alternatively, the court be pleased to issue directions on the two applications.
2. The proposed interested party asserts that the court through its ruling delivered on 11<sup>th</sup> December, 2024 only determined his application dated 4<sup>th</sup> July, 2024 yet it anticipated the applications dated 21<sup>st</sup> & 25<sup>th</sup> March, 2024 to be determined as well to finality.



3. The Application is opposed by the 2<sup>nd</sup> Plaintiff/Respondent who asserts that the court through its ruling delivered on 11<sup>th</sup> December, 2024 took notice of all the application while making its determination.
4. Having perused the ruling by my brother, Justice Gicheru, I agree with the Applicant that indeed a ruling was not delivered in respect to the two applications dated 21<sup>st</sup> March 2024 and 25<sup>th</sup> March 2024.
5. I will proceed to consider the two applications and deliver a ruling as requested by the Applicant.
6. Before proceedings any further, it is important to state what the two application which is the subject of this ruling are all about.
7. A reading of the proposed interested party applications dated 21<sup>st</sup> & 25<sup>th</sup> March, 2024 reveals that they are similar. The Applicant first and foremost seeks to be joined in this suit. Upon joinder, he prays that the consent judgement entered on 29<sup>th</sup> November, 2022 and subsequent decree issued on 11<sup>th</sup> January, 2023 be reviewed, varied and set aside. The Applicant also prays for an order of temporary injunction restraining the Respondents, their servants, employees, agents, assigns or any other person claiming under or through them from evicting him from the parcels of land known as L.R Plot No. SAINA ESTATE/C23A/RESIDENTIAL, formerly known as A3/RES and SAINA ESTATE/C23B/RESIDENTIAL, formerly known as A5/RES.
8. The Application is premised on the grounds that the Respondents intentionally misled the court into adopting the consent judgment entered on 29<sup>th</sup> November, 2022 yet they were fully aware of the dispute arising from the suit property between the Applicant, the 3<sup>rd</sup> Respondent and Keitan Solution limited. The Respondents were also aware of KAJIADO MCELC E009 of 2022, (Abdirashid Adan Hassan v Adan Maalim Ibrahim) pending hearing and determination where the Applicant seeks ownership of plot No. C27.
9. Even though the Applicant only recently learnt of the consent judgement, the Respondent together with 45 goons broke into his homestead on 15<sup>th</sup> March, 2024 and caused chaos and attempted to forcefully evict him and the tenants therein. This was done notwithstanding orders that had been issued on 30<sup>th</sup> November, 2023 in MCELC E009 of 2022 restraining the Respondent from interfering with Plot C27 until the suit is heard and determined. Accordingly, the Respondent's actions are illegal and unprocedural as they seek to dispose of the property despite existence of court orders.
10. The Applicant alleges that he bought Plot C23, C24 & 27 on 12<sup>th</sup> June, 2017 for Ksh.15,000,000/=. Subsequently, he subdivided Plot C23 into 8 portions among them SAINA ESTATE/C23A & C23B Residential and begun construction after obtaining the requisite approval. However, when he sought to obtain allotment letters for the 8 portions, he discovered that C23A/C23B was illegally allocated to Keitan Solutions Limited without his consent and involvement.
11. He asserts that upon reporting the matter to Kajiado DCIO Office, they entered into plot compensation agreement with Keitan Solution Ltd on 24<sup>th</sup> January, 2024. According to the agreement, the Applicant paid Ksh. 7,000,000/= to Keitan Solution Ltd on condition that it transfers the suit property to him. He deposes that when Keitan Solution failed to honor the agreement terms, he instituted legal proceedings in MCELC E032 of 2023. The proposed interested party asserts that he has only managed to successfully register plot C23 in his name. However, transfer of plot C27 is yet to be effected because the 3<sup>rd</sup> Respondent refused to sign transfer forms yet he had paid the entire purchase price of Ksh. 5,000,000/=. This is what prompted the Applicant to institute Kajiado MCELC E009 of 2022, Abdirashid Adan Hassan v Adan Maalim where orders were issued restraining the Respondents from interfering or selling plot C27 until the suit is heard and determined.



12. The Applicant asserts that while subdividing plot C23, he discovered that it had been subdivided by the 3<sup>rd</sup> Respondent. Further, one of the portions being plot No.C27H had been illegally transferred to Keitan Solutions Ltd without his consent despite him having fulfilled his legal obligations in the sale agreement dated 12<sup>th</sup> June, 2017.
13. The Applicant further alleges that he peacefully enjoyed his rights of use and occupation of plot A31/RES, C27A & A5/RES until 15<sup>th</sup> March, 2024 when the Respondents encroached, trespassed and forcefully evicted him claiming ownership.
14. The Applicant asserts that he was surprised when he was served with the consent judgment dated 29<sup>th</sup> November, 2022 on 11<sup>th</sup> January, 2023 yet there were pending cases in relation to Plot C23A, C2B and C27A.

### **2<sup>nd</sup> Plaintiff/Respondent's Response**

15. The Applications are opposed by the 2<sup>nd</sup>Plaintiff/Respondent through his Replying Affidavit sworn on 24<sup>th</sup> May, 2024. The deponent denies the allegations by the Applicant and asserts that the consent judgement was entered into legally and procedurally in full awareness and consideration of relevant facts and parties involved in plots A2/RES, C27A & A5/RES. He deposes that the Applicant's assertions of sole ownership of plot No.C23, C24 & C27 are disputed and that they ought to be litigated in a separate suit. He avers that the Applicant is guilty of forum-shopping as demonstrated in Kajiado CMELC No. ELC E009 of 2022 and E032 of 2024. The Respondent asserts that litigation must come to an end.
16. The 2<sup>nd</sup> Plaintiff/Respondent also filed a Notice of Preliminary Objection dated 24<sup>th</sup> May, 2024 opposing the applications which is premised on the following grounds;
  - i. The matter is res judicata as per Section 7 of the *Civil Procedure Act* CAP 21 because the consent judgement entered on 29<sup>th</sup> November,2022 and subsequent decree issued on 11<sup>th</sup> January, 2023 have settled the dispute between the original parties in this suit. Abdirashid Adan Hassan was not party to the original suit and cannot now raise issues that have already been adjudicated upon.
  - ii. The principle that litigation must come to an end applies in this case. The consent judgement and decree constitute a final determination of the rights and obligations of the parties involved. Allowing the proposed interested party to re-open the matter would undermine the integrity of the judicial process and contravene the principle of finality.

### **Issues for determination**

17. In view of the applications dated 21<sup>st</sup> & 25<sup>th</sup> March, 2024, the issues for determination are as follows;
  - a. Whether the proposed interested party's application seeking to be enjoined in these proceedings is merited.
  - b. Whether the proposed interested party has made a case to warrant review and setting aside of the consent order herein.

### **Determination**

18. I will handle the two issues for determination concurrently.



19. While submitting on the issues, the proposed interested party claims and asserts that his application must be allowed because has a stake in this suit.
20. A party seeking to be enjoined in a suit must demonstrate that they have a stake in the matter before court as was pronounced by the Supreme Court in the case of *Methodist Church in Kenya vs Fugicha & 3 others (Petition 16 of 2016)* [2019] KESC 59 (KLR) (23 January 2019) (Judgment) (with dissent- JB Ojwang, SCJ) in where the court held as follows;

“One of the principles for admission of an interested party is that such a party must demonstrate that he/she has a stake in the matter before the court. That stake cannot take the form of an altogether a new issue to be introduced before the court”
21. Further, the Supreme Court in *Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated))* [2016] KESC 12 (KLR) (Civ) (28 January 2016) (Ruling) stated that the following elements are applicable for a party who seeks to be enjoined in proceedings;
  1. 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.
  2. 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.
  3. Lastly, a party must, in its application, set out the case and/or submissions 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.
22. Undoubtedly, this court has powers under Order 1 Rule 10 of the Civil Procedure Rules, 2010 to join a party to a suit either as a Defendant or a Plaintiff or even an interested Party upon the party demonstrating its stake in the suit and satisfying the other conditions outlined in the Muruatetu case.
23. This application is however unique in that the suit is already concluded. What submissions then does the proposed Interested Party intend to make before the court in a closed matter?
24. I do not think that the Applicant appreciates the status of an interested party in a suit. As stated in the case of the Methodist Church (*supra*), the issues to be determined remains the issues between the principal parties in the suit. The court stated thus;

“Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the court will always remain the issues as presented by the principal parties, or as framed by the court from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues or introduce new issues for determination by the court.”
25. An interested Party is not entitled to seek substantive orders in a suit neither is he entitled to file pleadings.



26. In Francis Kariuki Muruatetu & Another v. Republic & 5 others, SC Petition 15 & 16 of 2015 (consolidated); [2016] eKLR, the Supreme Court was categorical that;

“Having carefully considered all arguments, we are of the opinion that any party seeking to join proceedings in any capacity, must come to terms with the fact that the overriding interest or stake in any matter is that of the primary/principal parties’ before the Court. The determination of any matter will always have a direct effect on the primary/principal parties. Third parties 6 Petition No. 9 (E011) of 2022 admitted as interested parties may only be remotely or indirectly affected, but the primary impact is on the parties that first moved the Court. This is true, more so, in proceedings that were not commenced as Public Interest Litigation (PIL), like the proceedings now before us. Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed by the Court from the pleadings and submissions of the principal parties.”

27. Again in Mumo Matemu v. Trusted Society of Human Rights Alliance & 5 Others, Civil Appeal No. 290 of 2012; [2013] eKLR the Supreme Court was clear that:

“A suit in Court is a ‘solemn’ process, ‘owned’ solely by the parties. This is the reason why there are laws and Rules, under the Civil Procedure Code, regarding Parties to suits, and on who can be a party to a suit. A suit can be 7 Petition No. 9 (E011) of 2022 struck out if a wrong party is enjoined in it. Consequently, where a person not initially a party to a suit is enjoined as an interested party, this new party cannot be heard to seek to strike out the suit, on the grounds of defective pleadings.”

28. The intention of the Interested Party upon joinder into these proceedings is purportedly to set aside the consent judgement entered into between the principal parties in this suit. From the foregoing, an interested party is not entitled to seek for such substantive orders. He is in any event a stranger to that consent judgement.

29. Consequently, the application for joinder by the proposed Interested party lacks merit. Joining the Applicant as an interested party will serve no purpose whatsoever. It will be an act in vain. The court refuses to make an ineffective order.

30. The upshot is that the applications dated dated 21<sup>st</sup> March 2024 and 25<sup>th</sup> March 2024 are hereby dismissed in their entirety with costs to the 2<sup>nd</sup> Plaintiff/Respondent.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 27<sup>TH</sup> DAY OF FEBRUARY 2025**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Ms. Onsembe for the Proposed Interested Party/Applicant

Ms. Mwangi h/b for Mr. Muli for the 2<sup>nd</sup> Plaintiff/Respondent

Court Assistant: Mpoye

**M.D. MWANGI**



**JUDGE**

