



Mbugua (Suing as the Administrator of the Estate of the Rosemary Wanjiku) v Maina (Administrator Estate of Joseph Maina Munyua); Munyua & another (Proposed Interested Parties) (Environment & Land Case 556 of 2010) [2024] KEELC 759 (KLR) (15 February 2024) (Ruling)

Neutral citation: [2024] KEELC 759 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 556 OF 2010
EK WABWOTO, J
FEBRUARY 15, 2024**

BETWEEN

FLORENCE WANJIRU MBUGUA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE ROSEMARY WANJIKU) PLAINTIFF

AND

BEATRICE NDUNDU MAINA (ADMINISTRATOR ESTATE OF JOSEPH MAINA MUNYUA) DEFENDANT

AND

ERNERST MBUGUA MUNYUA PROPOSED INTERESTED PARTY

MARY WANGUI NGAGE PROPOSED INTERESTED PARTY

RULING

1. This ruling is in respect to two applications dated 16th October 2023 and 24th November 2023 seeking joinder of Ernest Mbugua Munyua and Mary Wangui Ngage respectively. Ernest Mbugua Munyua in his affidavit sworn on 16th October 2023 deposed that he is the son of the late Francis Munyua Maina and is a direct beneficiary of the properties Dagoretti/Riruta 5747 and 5748 which were fraudulently transferred.
2. Mary Wangui Ngage in her affidavit dated 24th November 2023 deposed that she is the wife to the late John Ngage Munyua who has an interest in this case by virtue of being a son to Francis Munyua Maina. It was also deposed that the suit property belongs to her father in law Francis Munyua Maina and is registered in the names of Joseph Maina Munyua.
3. The Defendant filed grounds of opposition dated 27th November 2023 in opposition to the application. The grounds of opposition were premised on the following grounds including; that the



proposed interested parties have failed to demonstrate their interest in the suit and only seek to delay the conclusion of the case contrary to sections 1A and 1B of the *Civil Procedure Act* Cap 12 Laws of Kenya, Mary Wangui Ngage seeks to bring to the fore the allegations of fraud over the same suit property against the deceased defendant that the plaintiff already pleaded and attempted to prove hence her joinder will serve no purpose and is otherwise superfluous, Ernest Mbugua Munyua, on the other hand, seeks to be substituted as plaintiff allegedly because he is more kith and kin than the plaintiff but fails to demonstrate his interest: whether he has a claim to the suit property over and above the defendant's, or the plaintiff's claim to the same and that the plaintiff's application for leave to extend time to appeal the interlocutory orders of this Court was dismissed in the Court of Appeal in CA Nai 451 of 2023 and now concedes to the joinder of other parties in order to delay the hearing.

4. I have considered the applications and grounds of opposition filed and the sole issue for determination is whether the proposed parties should be joined as Interested Parties.
5. The *Black's Law Dictionary* defines "interested party" as:-

"A party who has a recognizable stake (and therefore standing) in a matter."
6. Order 1 Rule 10, (2) of the *Civil Procedure Rules*, outlines that:

"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 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." [Emphasis mine]
7. The principles for joinder are well outlined in in *Meme v Republic* (2004)1 124, eKLR which are:
 - a. Joinder of a person because his presence will result in the complete settlement of all questions involved in the proceedings;
 - b. Joinder to provide a protection of a party who would otherwise be adversely affected in law;
 - c. Joinder to prevent a likely course of proliferated litigation."
8. In essence, any natural person who may not be a party to proceedings and has an interest in the subject matter of such proceedings to the extent that they will undeniably be affected by court's decisions, is for all intents and purposes an interested party, and would therefore be enjoined to the proceedings to protect his or her interests.
9. In the instant case, I have first considered that Ernest Mbugua admitted to currently living abroad. Although physical absence would not disqualify him from being joined, he has not convinced this Court of the incapacity of his niece in acting as a representative. Moreover, no substantial evidence has been produced to support the claims of "deep information and attachment".
10. Secondly, in considering joinder of Mary Wangui, the Court has not been presented with sufficient evidence of her interest or stake to the suit and is therefore not clear as to the relation and claim of the proposed interested party to the instant suit.



11. In view of the foregoing, I am not satisfied that it is necessary to join either of the proposed Interested parties to the suit. Consequently, I find that the applications dated 16th October 2023 and 24th November 2023 are unmerited and the same are hereby dismissed with no order as to costs.
12. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 15TH FEBRUARY 2024

E.K. WABWOTO

JUDGE

