



**Njogu & 2 others v Githinji & 2 others; Ngiricha & 4 others (Intended Interested Party)
(Environment & Land Case 151 of 2013) [2025] KEELC 936 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 936 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE 151 OF 2013
JM MUTUNGI, J
FEBRUARY 27, 2025**

BETWEEN

**MICHAEL MUNENE NJOGU 1ST PLAINTIFF
DAVID MURAGE NJOGU 2ND PLAINTIFF
JOHN KIRAGU NJOGU 3RD PLAINTIFF**

AND

**BERNARD GITHINJI 1ST DEFENDANT
MUNENE GATHENGE 2ND DEFENDANT
JOYCE KARIITHI NJERU 3RD DEFENDANT**

AND

**LAWRENCE WACHIRA NGIRICHA INTENDED INTERESTED PARTY
POLINE WANGARI GAKUYA INTENDED INTERESTED PARTY
JOHN NJOKA GITHINJI INTENDED INTERESTED PARTY
JULIA MUTHONI MUNENE INTENDED INTERESTED PARTY
PETER NJOGU ZAKAYO INTENDED INTERESTED PARTY**

RULING

1. The Plaintiffs/Applicants filed the Notice of Motion application dated 13th February 2024 seeking the following orders;
 - a. That this Honourable Court be pleased to enjoin the Intended Interested Parties as parties in this case.



- b. That the cost of this application be provided for.
2. The application is premised on an Affidavit sworn on 13th February 2024 by Michael Munene Njogu, with the authority of the 2nd and 3rd Plaintiff/Applicants. The Applicants seek to have the Intended Interested Parties joined in the case for several reasons: Firstly, that there are existing orders in Civil Case No. 21 of 2012 that restrained the Intended Interested Parties from interfering with Land Parcel Inoi/Kerugoya/250/16, which they have disregarded. Secondly, that the Intended Interested Parties have failed to pay land rates for the suit land, resulting in an accumulated debt of One Hundred Thousand Shillings (Kshs 100,000/-). Thirdly, that the 1st Defendant had divided the suit land into two plots, A and B, where the Applicants have been assigned only 1/5 of the land compared to the 4/5 allocated to the Defendants and Interested Parties. The Applicants aver the subdivision was done without the Applicants' consent and with the assistance of the County Government. Fourthly, that the 1st Intended Party changed the name on the electricity bill by forging his signature, and finally, that the intended interested parties closed the butchery, hotel, and kitchen, resulting in the Applicants incurring losses for which they were seeking compensation.
 3. In response, the 1st Intended Interested Party filed a Replying Affidavit dated 15th April 2024 where he averred the application was bad in law, frivolous, vexatious, and an abuse of the Court's process. He averred that a final Judgment in this matter was delivered on 30th September 2015 and additionally, the Intended Interested Parties were parties in Kerugoya ELC 86 of 2019 which was concluded. He asserted that he ought not to be joined in the suit as the issues that related to him had been resolved. He stated that he was not in possession of the property and denied the allegations that he was paying the bills for the suit property in his name.
 4. The 2nd to 5th Intended Interested Parties filed their Replying Affidavit on 5th April 2024. They stated that the suit land initially belonged to Bernard Githinji, Njogu Chomba, Njeru Kathenge, Munene Kathenge, and Zakayo Njogu, all of whom are now deceased. They pointed out that Judgment was entered in this matter on 30th September 2015, and since then, the Applicants have not taken any steps to comply with the Court's directions given in the Judgment. They averred that the Applicants had deliberately failed to disclose to the Court that they had registered the suit land in their names, sharing equal ownership and that they had taken over operations of the business situated on the suit land. The 2nd to 5th Intended Interested Parties further averred the Applicants had failed to disclose the existence of Kerugoya Chief Magistrate ELC Case Number 86 of 2019, where Judgment was delivered on 2nd December 2021. In that case, an order was made for the subdivision of plot number Inoi/Kerugoya/16, with the Intended Interested Parties receiving 4/5 of the portion (equivalent to 0.02976 hectares) and the Applicants receiving 1/5 (equivalent to 0.0075 hectares).
 5. Additionally, the 2nd to 5th Intended Interested Parties stated that the 1st and 2nd Defendants have passed away and have not been substituted. The 2nd to 5th Intended Interested Parties also asserted that the Applicants failed to provide evidence of unpaid bills and County Government dues. They contended that the Applicants had not demonstrated to the Court why the Intended Interested Parties should be joined after the Judgment had already been delivered in this matter and in CM ELC Case Number 86 of 2019. As a result, they contended that the application lacked merit and should be dismissed with costs.

Submissions, Analysis and Determination

6. The Applicants filed their written submissions dated 8th July 2024. The Counsel for the Applicants argued that it was necessary to join the Intended Interested Parties because they were in possession of a portion of the suit property. The Applicants submitted the Court had directed taking of accounts



which was yet to be done and since all the original Defendants had passed away, the Applicants sought to join the Intended Interested Parties as they are beneficiaries of the deceased Defendants. The Applicants submitted the application should be granted to facilitate the implementation of the Judgment delivered by the Court.

7. The Intended Interested Parties filed their submissions on 16th October 2024, addressing two key issues: whether they should be joined in the suit and who should bear the costs associated with it.

Regarding the first issue, Counsel for the Intended Interested Parties argued that Judgment in this matter was delivered on 30th September 2015 and that the Applicants had failed to comply with the Court's directions. Counsel further emphasized that the Applicants did not inform the Court that they had transferred the suit land into their names. Counsel submitted that a Judgment in Kerugoya Chief Magistrate ELC No. 86 of 2019 had led to the severance of the land, resulting in the Intended Interested Parties receiving 4/5 of the suit land while the Applicants were allocated only 1/5, a fact which the Applicants failed to disclose to the Court. Counsel relied on the case of Absolom Opini Mekenye -V- James Obegi (2018) eKLR, where the Learned Judge stated as follows:

“Order 1 Rule 10 (2) in my view envisages a situation where the suit has not been heard and determined and that is why it provides for joinder of a party either as Plaintiff or Defendant or a party 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. where a Judgment has been entered it is my considered opinion that a party cannot be enjoined to the proceedings unless the Judgment is either reviewed and/or set aside in a manner to accommodate the participation of the enjoined party.”

8. The Counsel for the 2nd to 5th Intended Interested Parties further pointed out that the applicants had not provided sufficient reasons for joining the Intended Interested parties as involved parties after Judgments had already been rendered in both this case and in Kerugoya ELC No. 86 of 2019, where all issues in dispute had been effectively resolved. Counsel relied on the case of JMK V MWM & ANOTHER (2015) eKLR where the Learned Judge stated as follows:

“We would, however, agree with the Respondent that Order 1 Rule (10) (2) contemplates an application for amendment or joinder of parties where the proceedings are still pending before the Court. Sarkar's code (supra) quoting as authority, decisions of Indian Courts on the provision, expresses the view that an application for joinder of parties can be filed only in pending proceedings.”

9. Counsel further addressed the issue of costs, citing Section 27(1) of the Civil Procedure Act, Cap 21, Laws of Kenya. This Section states that the costs of a suit, along with any incidental expenses, are left to the discretion of the Court or Judge. It further specifies that these costs generally follow the event unless the court provides good reasons to order otherwise. Counsel prayed that the Court dismiss the Applicants' application and award costs to the Intended Interested Parties. To support this position, Counsel relied on the case of Cecilia Karuru Ngayu v. Barclays Bank of Kenya & Another (2016) eKLR.
10. I have reviewed the application dated 13th February 2024, the responding Affidavits, and the parties' Submissions. The key issue for determination is whether the application for the joinder of the intended interested parties is merited and whether the Court should exercise its discretion to allow the application.
11. The Applicants/Plaintiffs seek to have the Intended Interested Parties joined as Interested Parties in this matter to facilitate the implementation of the Judgment delivered by this Court on 30th October 2015.



12. The Civil Procedure Rules do not specifically mention the concept of an "interested party." However, the law allows for applications for the joinder of Interested Parties in cases. Order 1 Rule 10(2) of the Civil Procedure Rules, 2010, as amended in 2020, addresses the addition of a "necessary" party. This rule states:

"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 a 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 for enabling the Court to effectively and completely adjudicate upon and settle all questions involved in the suit, be added."

13. The position in regard to Constitutional Petitions is clear as in 2013 rules were enacted to provide a distinct legal framework for joinder of parties as Interested Parties in Constitution matters. That is not the case in regard to Civil matters regulated under the *Civil Procedure Act* and the Rules. *Legal Notice No. 117 of 2013*, titled *The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* (commonly referred to as the Mutunga Rules), was gazetted on 28th June 2013 and provides for the procedure to join parties as Interested Parties. Rule 2 of the Mutunga Rules defines who an "interested party" is and Rule 7 outlines the process for joining such a party. Specifically, Sub-rule 1 of Rule 7 states that "A person, with leave of the Court, may make an oral or written application to be joined as an interested party."

14. In the case of Francis Kariuki Muruatetu & another v Republic & 5 others Petition No. 15 as consolidated with No 16 of 2013 [2016] eKLR, the Supreme Court set out guidance on the requirements for successful application for joinder as an Interested Party. In it the Court gave three principles to be followed. At paragraph 37 the Court stated that the Applicant(s) must show:(

- i. 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.
- ii. 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.
- iii. 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.

15. It is instructive to note that before a party is joined in a matter, the court ought to satisfy itself that the proceedings are alive. That means that the suit must still be pending before the Court. Therefore, the Applicant must move the Court during the pendency of the proceedings in that matter. In the case of Florence Nafula Ayodi & 5 others v John Tabalya Mukite & another and Benson Girenge Kidiavai & 67 others (applicants/intended interested parties) [2021] eKLR, the Court stated thus while considering an application for joinder:-

"12. The above notwithstanding, it is common sense to expect that for one to be enjoined in certain proceedings, those proceedings have to be pending before the court. In Leonard Kimeu Mwanthi v Rukaria M'twerandu M'iringu;



Nathaniel Kithinji Ikiugu & 4 others (Intended Interested Parties) [2021] eKLR, Justice L. Mbugua stated that “A party claiming to be enjoined in proceedings must have an interest in the pending litigation...” In other words, the proceedings should still be alive in the court: they could be at the nascent or other stages but must be alive. In *Central Kenya Ltd. V. Trust Bank & 4 Others*, CA NO. 222 OF 1998 the Court, in discussing the issue of joinder of parties, held that “We would however agree with the respondent that Order 1 Rule (10)(2) contemplates an application for amendment or joinder of parties where proceedings are still pending before the Court.”

16. In the case of *JMK v. MWM & Another* (2015) eKLR, which was cited by the Intended Interested Parties, the Court of Appeal addressed the application of Order 1 Rule 10(2) as follows.

“We would, however, agree with the respondents that Order 1 Rule 10 (2) contemplates an application for amendment or joinder of parties where proceedings are still pending before the Court. Sarkar’s code (Supra) quoting authority, decisions of Indian Courts on the provision, expresses the view that an application for joinder of parties can be filed only in pending proceedings. In the same vein, the Court of Appeal of Tanzania, while considering the equivalent of Order 1 Rule 10 (2) of the Civil Procedure Rules in *Tanga Gas Distributors Ltd Vs Said & Others* (2014) E. A. 448, stated that the power of the Court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before, or during trial; that it can be done even after judgment where damages are yet to be assessed; that it is only when a suit or proceedings has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable...”

17. In the Judgment of the Court delivered on 30th September, 2015 Order No. 3(e) stated:-, “Further orders of the Court shall await the filing of the report.” This indicated that there were still some actions that needed to be done regarding the taking of accounts and filing of the same, before the Court could issue further orders as envisaged under Order 3(e) of the Judgment. Consequently the Judgment contemplated there would still be some consequential orders to be made and hence the matter had not been fully resolved.
18. The Applicants have approached the Court seeking to have the Intended Parties joined as Interested Parties and the Applicants reason is that the Defendants in the suit had passed away, and they wished to include the Intended Interested Parties because they were the beneficiaries of the Defendants. This is rather puzzling. The procedure of substituting a party who is deceased is clearly outlined under Order 24 Rule (3) and (4) of the Civil Procedure Rules. The Applicants, if they considered that there was still something that required to be done in the suit pursuant to the Judgment of 30th September 2015 ought to have applied to substitute the deceased Defendants with their Personal Legal Representatives but not to apply to have other parties joined as Interested Parties. Under Section 82 of the [Law of Succession Act](#), Cap 160 Laws of Kenya only a duly appointed personal Legal Representative has capacity to act on behalf of a deceased estate. The Applicants did not demonstrate that the Intended Interested Parties were appointed Personal Legal Representatives of the deceased Defendant.
19. The application dated 13th February 2024 is devoid of merit is ordered dismissed with costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 27TH DAY OF FEBRUARY 2025.

J. M. MUTUNGI



ELC JUDGE

