



**Saminico Limited v Mutiso (As the administrator of the Estate of Michael Mutiso Sila - Deceased) (Civil Application 235 of 2019) [2025] KECA 225 (KLR) (7 February 2025) (Ruling)**

Neutral citation: [2025] KECA 225 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION 235 OF 2019  
DK MUSINGA, F SICHALE & FA OCHIENG, JJA  
FEBRUARY 7, 2025**

**BETWEEN**

**SAMINICO LIMITED ..... APPELLANT**

**AND**

**BLANCHE NZISA MUTISO (AS THE ADMINISTRATOR OF THE ESTATE OF MICHAEL MUTISO SILA- DECEASED) ..... RESPONDENT**

*(Being an Application to join the Applicant as the Administrator of the Estate of Michael Mutiso Sila (deceased) as an Interested Party in this Appeal)*

**RULING**

(Being an Application to join the Applicant as the Administrator of the Estate of Michael Mutiso Sila (deceased) as an Interested Party in this Appeal)

1. Before us is the motion on notice dated 10<sup>th</sup> September 2024, brought pursuant to the provisions of Articles 40 and 50 (1) of *the Constitution* of Kenya, Sections 3, 3A & 3B of the *Appellate Jurisdiction Act*, Rules 44 & 45 of the Court of Appeal Rules (2022) and all other enabling provisions of the Law in which Blanche Nzisa Mutiso (“the applicant herein”), seeks to be admitted as an Interested Party in this appeal.
2. The motion is supported by the grounds on the face of the motion and an affidavit sworn by the applicant, who deposed, inter alia, that she was a wife to the late Michael Mutiso Sila, the owner of all that parcel of land known as L.R. Matungulu/Sengani/3470 and the legal representative of the said Estate, pursuant to Letters of Administration issued to her on 31<sup>st</sup> May 2023 by the High Court of Kenya in Machakos in Succession Cause No. E008 of 2023.
3. That, the said Michael Mutiso Sila was declared the rightful owner of the suit property by the Machakos Environment and Land Court (ELC), whose judgment was the subject matter of this



- appeal, and that she was making this application in order to pursue and protect the interests of the said Estate.
4. She further deposed that she was not a party to the suit in the ELC and neither was she a party to the sale agreement in the dispute, and that further she had not obtained Grant of Letters of Administration of the Estate of the deceased during the pendency of the suit in the ELC.
  5. She thus deposed that it was in the interests of justice and efficient resolution of this matter that she be allowed to participate in these proceedings to protect and pursue the interests of the said Estate.
  6. The motion was opposed vide a replying affidavit sworn on 9<sup>th</sup> December 2024 by Samuel Dominic Muathe, a director of the appellant, who deposed that the application was bad in law, frivolous, fatally and irredeemably incompetent and an abuse of the court process as a similar application dated 3<sup>rd</sup> December 2019 filed by the applicant's stepson, one Lancaster Mutune Mutiso had been dismissed on 28<sup>th</sup> February 2024.
  7. When the matter came up for plenary hearing on 18<sup>th</sup> December 2024, there was no appearance by the parties. The Court therefore relied on the parties' written submissions filed by the applicant/interested party and the appellant dated 10<sup>th</sup> December and 13<sup>th</sup> December 2024 respectively.
  8. It was submitted for the applicant that the applicant could not join the case at the trial court since she had not acquired the Grant of Letters of Administration in respect of the Estate of the deceased, having been issued with the same on 29<sup>th</sup> May 2023.
  9. It was further submitted that what was before this Court was not the merits or demerits of the appeal, but rather whether the application by the applicant for joinder as an interested party was merited.
  10. That, further in an application for joinder as an interested party, the proceedings must be alive and in the instant case, the appeal herein was live as judgment was yet to be delivered.
  11. It was thus submitted that the applicant had satisfied the grounds for admitting a party as an interested party in a suit, as set out by the Supreme Court of Kenya in the case of Harcharan Singh Sehm & Another -V- Tarabana Company Limited and 6 others, Supreme Court Petition (Application) No. E033 of 2023 as quoted in the famous Supreme Court decision of Francis Karioko Muruatetu & Another -vs- Republic [2017] eKLR.
  12. On the other hand, it was submitted for the appellant that the applicant did have a personal stake in the matter as it was on record that at the time of purchase of the suit property by the appellant, the title deed in respect of the suit property was in the name of the 1<sup>st</sup> plaintiff namely, Peter Mutuku Sila, who was by law the absolute registered owner of the land, and that Michael Mutiso Sila (deceased and the applicant's husband), was never the registered proprietor of the suit property.
  13. It was thus submitted that the only proper party to the suit was the 1<sup>st</sup> plaintiff (Peter Mutuku Sila) who wholly withdrew his claim and that therefore, the applicant could not have a personal stake in the suit property and/or claim to be representing the Estate of the deceased, who was never the registered owner of the suit property.
  14. It was further submitted that the instant application had been filed too late in the day, as the joinder orders ought to have been sought in the trial court during the pendency of the substantive suit, and specifically before the said Peter Mutiso Sila withdrew his suit.
  15. Consequently, we were urged to dismiss the instant application with costs as it was devoid of merit, frivolous, vexatious and an abuse of the court process.



16. We have carefully considered the motion, the grounds thereof, the supporting affidavit, the replying affidavit, the rival written submissions by the parties, the cited authorities and the law.
17. Before we make our determination, we note that the appellant has contended that the application does not satisfy the principles for grant of joinder orders as the applicant has not cited any relevant rule of this Court under which joinder of an interested party is allowed.
18. The contention by the appellant that the applicant has not cited any relevant rule of this Court is clearly erroneous. Whereas we note that the applicant has not cited the exact provision of the Rules of this Court pursuant to which a party can make an application to be joined as an interested party, we are inclined to overlook this omission as in our considered view it does not go to the root of the matter pursuant to the provisions of Article 159 (2) (d) of our Constitution which requires the Courts to administer justice without undue regard to procedural technicalities.
19. Back to the merits or otherwise of the application and as we have already stated, the applicant herein seeks to be joined in these proceedings as an interested party.
20. The Black's Law Dictionary defines an Interested Party as "a party who has a recognizable stake (and therefore standing) in the matter."
21. Further, in the case of Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 others [2014] eKLR, the Supreme Court of Kenya held that:

“(22) In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court’s Ruling 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...”

(Emphasis ours.)

22. Again, in Attorney General v David Ndi & 73 others (Petition No.12 (EO16) of 2020), the Supreme Court of Kenya stated as follows as regards applications for joinder of a person/parties as an interested party:

“This court has laid down the guiding principles applicable in determining an application to be enjoined as an interested party in Trusted Society of Human Rights Alliance v Mumo Matemo & 5 Others SC Petition (Application) No 12 of 2013. The principles were affirmed in the case of Francis Kariuki Muruatetu & another v Republic & 5 others (supra) where the court stated: “... One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the court; hence, sufficient grounds must be laid before the court, on the basis of the following elements:

- 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.””
23. In the instant case, and applying the principles enumerated herein above as well as the decisions of the Supreme Court which we have cited, does the applicant meet the threshold for admission as an interested party in these proceedings?
  24. Our answer to the above is in the affirmative for the following reasons: first of all, it is common ground that the applicant herein, Blanche Nzisa Mutiso, is a wife (widow)? to Michael Mutiso Sila- now deceased.
  25. It is also not in dispute that the said Michael Mutiso Sila was declared the rightful owner of all that parcel of land known as Matungulu/Sengani/3470 by the ELC in Machakos in Machakos ELC Case No. 164 of 2019 vide a judgment delivered on 13<sup>th</sup> April, 2018 which is now at the heart of this appeal.
  26. It is also common ground that the applicant herein was not a party in the proceedings before the ELC.
  27. It is also not in dispute that the applicant herein was granted Letters of Administration intestate in respect of the Estate of the deceased on 31<sup>st</sup> May 2023 by the High Court of Kenya sitting in Machakos, in Machakos Succession Cause No. E008 of 2023.
  28. In our considered opinion, it would only be fair, just and in the interests of justice that the applicant herein is joined in this appeal in order to protect the interests of the Estate of the deceased as the outcome of this appeal either way will affect the Estate of the deceased, and we are satisfied that the applicant herein has a personal interest/stake in the instant proceedings and that this is a proper case to join the applicant herein as an interested party.
  29. The contention by the appellant that it would stand to suffer prejudice if the application for joinder is allowed is not supported by any evidence and the assertion by the appellant that it would stand to suffer prejudice simply because “they have lost title to the suit property based on the impugned decision of the trial court” is speculative as no one knows the outcome of the intended appeal.
  30. Additionally, we note that most of the averments in the appellant’s replying affidavit sworn on 9<sup>th</sup> December 2024, opposing the application for joinder largely border on the merits or otherwise of the appeal, which issues are currently not before us for determination as that is a preserve of the Bench that will eventually determine the substantive appeal.
  31. We think we have said enough to demonstrate why we think the instant application is for allowing.
  32. Accordingly, the applicant’s motion dated 10<sup>th</sup> September 2024, is hereby allowed as prayed and the applicant herein is hereby granted leave to be enjoined in these proceedings as an interested party.
  33. Given the nature of this application, the order that commends to us as to costs is that each party will bear its own costs.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF FEBRUARY, 2025.**



**D. K MUSINGA (PRESIDENT)**

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**JUDGE OF APPEAL**

**F. SICHALE**

.....

**JUDGE OF APPEAL**

**F. OCHIENG**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR.**

