



Jubat v Laton & 5 others; Obunga (Proposed Interested Party) (Civil Appeal (Application) E063 of 2023) [2024] KECA 68 (KLR) (2 February 2024) (Ruling)

Neutral citation: [2024] KECA 68 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPEAL (APPLICATION) E063 OF 2023
MSA MAKHANDIA, FA OCHIENG & WK KORIR, JJA
FEBRUARY 2, 2024**

BETWEEN

ABDIHAKIM MOHAMUD JUBAT APPELLANT

AND

ERICK SAITOTI LATON 1ST RESPONDENT

VALENTINE NAMOO LATON 2ND RESPONDENT

SAMPAYIAN LATON 3RD RESPONDENT

JAMES LATON KONCHELLAH 4TH RESPONDENT

JUMBA & CO ADVOCATES 5TH RESPONDENT

LAND REGISTRAR, TRANSMARA 6TH RESPONDENT

AND

ZEPHANIAH OBUNGA PROPOSED INTERESTED PARTY

(An application to be enjoined as the 1st Interested Party in Nakuru Court of Appeal, Civil Appeal No. E063 of 2023, an appeal arising from the judgment of Environment and Land Court (E&LC) at Kilgoris in E&LC No. 26 of 2021)

RULING

1. The application of the proposed interested party, Zephaniah Obunga, is dated 6th June 2023 and brought pursuant to rules 1(2), 42 and 47 of the [Court of Appeal Rules](#), 2022, section 3(2) of the [Appellate Jurisdiction Act](#), and article 159 of [Constitution](#). The main orders sought by the applicant are that he be enjoined in Nakuru Civil Appeal No. E063 of 2023 as an interested party and that upon joinder he be granted leave to file a response in the appeal.



2. The application is premised upon the grounds on its face and an affidavit sworn by the applicant. The applicant's case is that on 23rd March 2023 the Environment and Land Court (E&LC) at Kilgoris in E&LC Case No. 26 of 2021 nullified and cancelled the title to the property known as Transmara/Enaenyeny/672 of which he is the sole registered owner. That subsequent to the order, the 6th respondent who is the Land Registrar, Transmara, had demanded that he surrenders the title for the property. According to the applicant, he has great interest in the property and he should therefore be enjoined as an interested party in the appeal which seeks to reverse the E&LC judgment.
3. The applicant further deposed that the determination in Kilgoris E&LC Case No. 26 of 2021 was rendered without his knowledge of the proceedings or being made a party to the same. It is his deposition that the trial court condemned him unheard thereby infringing on his constitutional rights to fair hearing, property and fair administrative action. Further, that the cancellation of his title was not supported by the pleadings and proceedings before the trial court.
4. The 1st respondent (Erick Saitoti), 2nd respondent (Valentine Namoo Laton) and the 3rd respondent (Sampayian Laton) opposed the application through an affidavit sworn by the 1st respondent. Their case is that the parcel of land that was the subject of the E&LC trial was Transmara/Enaenyeny/200 (hereinafter the suit property). According to them, the 4th respondent (James Laton Konchellah) who was holding the suit property in trust for them subdivided and sold the parcel of land in violation of section 28(b) of the *Land Registration Act*. They further averred that the applicant acquired L.R. No. Transmara/Enaenyeny/672 from a third party on 5th October 2022 when judgment was being awaited in the E&LC matter. They depose that the person who sold the parcel of land to the applicant was not party to the suit before the Kilgoris E&LC. Further, that the applicant has no interest over the suit property as all the subdivisions yielding the applicant's parcel of land have been rendered illegal and invalidated. The 1st, 2nd and 3rd respondents additionally averred that the applicant should not be made a party to the appeal as the legality of the subdivisions were defended by the 6th respondent at the trial. Finally, the 1st, 2nd and 3rd respondents depose that there are proceedings before the E&LC seeking orders similar to those being sought in the instant application and we should therefore not allow the application.
5. When the application came for hearing through the virtual platform, Mr. Kerongo appeared for the applicant whereas Mr. Nyambati represented 1st to 3rd respondents. There was no appearance for the appellant (Abdihakim Mohamud Jubat), the 4th respondent (James Laton Konchellah), the 5th respondent (Benjamin Mbate Ndeto T/A Jumba & Co. Advocates) and the 6th respondent (Land Registrar, Transmara). Counsel for the parties sought to rely on the filed submissions and made brief oral highlights.
6. Relying on the submissions dated 26th June 2023, Mr. Kerongo cited, among others, the decisions in *Communications Commission of Kenya & 4 others v. Royal Media Services Ltd & 7 others* [2014] eKLR and *Elton Homes v. Davis & others* [2019] eKLR to highlight the principles that guide the admission of interested parties to proceedings. Counsel submitted that the applicant had established that he was the registered owner of L.R. No. Transmara/Enaenyeny/672 having purchased it for value. Counsel added that the applicant had also established that he had rights accruing from the title which stood to be violated should the decision of the trial court remain unchallenged. According to counsel, the applicant's presence in the proceedings is important in order to guarantee his rights against the 1st, 2nd and 3rd respondents' agenda of disenfranchising him of the land. Counsel consequently prayed that the application be allowed.



7. On behalf of the 1st, 2nd and 3rd respondents, Mr. Nyambati filed submissions dated 3rd July 2023. Counsel commenced by pointing out that the case before the trial court concerned the illegal subdivision of the suit property and which action was declared a nullity. Counsel submitted that the 6th respondent having been a party to the trial represented the interests of the applicant by supporting and defending the subdivision of the suit property and the subsequent issuance of titles arising therefrom. Counsel blamed the 6th respondent for sanctioning the transfer and dealings in title deeds emanating from the suit property during the pendency of the E&LC matter. Mr. Nyambati further submitted that the applicant's acquisition of title violated the lis pendens doctrine. Counsel also faulted the applicant for failing to inform this Court about the existence of an application similar to the instant one lodged before the E&LC. Additionally, counsel argued that there was no means of ascertaining the applicant's interest in L. R. No. Transmara/Enaenyeny/672 as neither the applicant nor the person who sold the property to him was in possession. It was therefore Mr. Nyambati's submission that in the circumstances of this case, the applicant did not demonstrate that he was an important party considering that his interests were already taken care of by the 6th respondent. According to counsel, the applicant's participation in the appeal would therefore add no value. He therefore urged us to dismiss the application with costs.
8. We have duly considered the notice of motion, the affidavits of the parties as well as their submissions. We have also read the judgment that is being appealed. In our view, the issue is whether the applicant is directly affected by that judgment hence should be heard in the appeal. In other words, has the applicant made a proper case for admission as an interested party to the appeal?
9. Before proceeding to determine the identified issue, we observe that counsel for the 1st, 2nd and 3rd respondent asked us to dismiss the application on the preliminary point that the applicant had failed to disclose the existence of an application for joinder filed before the E&LC. When this application came up before us on 3rd October 2023 counsel for the 1st, 2nd and 3rd respondents informed us that the person who seeks joinder as an interested party before the E&LC is not the applicant before us. The applicant therefore needed not to have disclosed an application that was not filed by him. In any case, the trial court has no authority to join a party to an appeal pending before this Court. We are therefore not persuaded that this application should be struck out owing to the existence of an application by a different party for joinder in the E&LC proceedings.
10. Turning to the substance of the instant application, we are of the view that the starting point is Rule 79 of the *Court of Appeal Rules*, 2022 which provides that:
 - “79. Service of notice of appeal on persons affected
 1. An intended appellant shall, before or within seven days after lodging notice of appeal under rule 77, serve copies of the notice on all persons directly affected by the appeal:

Provided that the Court may, on application which may be made ex parte, within seven days after the lodging of the notice of appeal, direct that service need not be effected on any person who did not take part in the proceedings in the superior court.”
11. The cited provision does not explicitly define who is an affected party to an appeal. However, this Court and the Supreme Court have provided guidance on who qualifies as an affected party. The Supreme



Court in *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others* [2014] eKLR defined and identified an interested party as follows:

“Consequently, 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.”

12. In *Center for Rights Education and Awareness & another v. John Harun Mwau & 6 others* [2012] eKLR, Okwengu JA outlined the factors to be considered in the admission of an interested party to an appeal by stating that:

“A person who was not a party in the original suit has the obligation to establish that it is affected by the judgment or order, subject of the appeal; secondly, that there are good reasons for not having pursued its interest in the High Court; and thirdly, that where a matter is of public interest and relates to the protection and promotion of the *Constitution*, it may be in the interest of justice to admit such a party.”

13. On his part, Maraga JA (as he then was) stated that:

“It is clear that in those two cases property rights of the persons allowed to join the proceedings at the Court of Appeal stage were affected. Even in such situation, a party who knows or ought to have known of court proceedings involving his property but does not seek to be enjoined at the trial of the case cannot be granted any relief. In the *Commercial Bank of Africa Case*, the Court of Appeal refused to grant any relief to Mr. Maina who had purchased the suit property and had known of court proceedings relating to it but watched at a distance.”

14. From the cited decisions, in order for a party who did not participate in the trial to be allowed into an appeal in respect of a judgment or decree arising from those proceedings, the stake and relevance of that party in the proceedings must be clear. It must also be demonstrated that the proposed interested party will suffer prejudice if denied joinder.
15. The applicant has prima facie demonstrated that he is the proprietor of LR No. Transmara/Enaenyieny/672. There is no doubt even from the judgment which is the subject of the already filed appeal that the applicant’s parcel of land originated from the suit property. At pages 74 and 75 of the Record of Appeal, the learned Judge traced the subdivisions leading to property LR No. Transmara/Enaenyieny/672. Further, it is not disputed that the applicant was not among the parties before the trial court. The applicant deposed and submitted that he was not aware of the proceedings before the trial court and only came to know of the judgment when he was asked by the 6th respondent to surrender the title in his possession for cancellation. On the other hand, the 1st, 2nd and 3rd respondents averred that the parcel of land was not occupied hence they were not able to trace its owners. They also submitted that the applicant’s interests were taken care of at the trial as the 6th respondent litigated on his behalf.
16. In our view, the pleadings and submissions clearly show that the applicant has sufficiently established his stake, interest and relevance in the pending appeal. There would be no better person to litigate a party’s interests in a dispute over land ownership other than the person whose title is at the risk of being revoked.



Respectfully, we do not agree with the argument by the 1st, 2nd and 3rd respondents that the 6th respondent's presence in the proceedings before the trial court sufficiently took care of the interests of the applicant. A government officer's appearance in court is normally limited to affirming that due procedure or process was followed in respect of the act or acts in question. It does not transcend into litigating any other party's cause.

17. We are also satisfied that the applicant being the registered owner of land parcel number Transmara/Enaenyeny/672, would definitely be prejudiced if he is denied joinder. His title, if the appeal was to fail, would remain revoked. The end result is that he would be condemned unheard. That, of course, will violate his constitutional right to fair hearing and also violate the rules of natural justice. We therefore find that admitting the applicant as an interested party in this appeal is in consonance with the objectives of joinder of parties, including, ensuring complete settlement of all the questions involved in the dispute, protecting the rights of a party who would otherwise be adversely affected in law, and avoiding the likelihood of protracted litigation.
18. In the end, we find the notice of motion dated 6th June 2023 has merit and is hereby allowed. The applicant is joined in this appeal (Nakuru Civil Appeal No. E063 of 2023) as an interested party. Directions on the filing of a response by the applicant shall be as will be issued in the appeal. The costs of the application to abide the outcome of the appeal.

DATED AND DELIVERED AT NAKURU THIS 2ND DAY OF FEBRUARY, 2024

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

F. OCHIENG

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JUDGE OF APPEAL

W. KORIR

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

