



**Kenya United Sports Limited v Kimemiah & 6 others; Hotel Destination Limited & 2 others (Applicant) (Civil Appeal (Application) E301 of 2023) [2024] KECA 448 (KLR) (12 April 2024) (Ruling)**

Neutral citation: [2024] KECA 448 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) E301 OF 2023  
SG KAIRU, JW LESSIT & GWN MACHARIA, JJA  
APRIL 12, 2024**

**BETWEEN**

**KENYA UNITED SPORTS LIMITED ..... APPELLANT**

**AND**

**AURIEL MARIE JOY KIMEMIAH ..... 1<sup>ST</sup> RESPONDENT**

**JACOB JUMA ..... 2<sup>ND</sup> RESPONDENT**

**MARY WANJIRU CHEGE ..... 3<sup>RD</sup> RESPONDENT**

**CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> RESPONDENT**

**WILLIAM TUMATE SIALLA SANO ..... 5<sup>TH</sup> RESPONDENT**

**SUANKEI OLE PARKIRE ..... 6<sup>TH</sup> RESPONDENT**

**LATOO ENE PRIAKANGA NCHEPAI ..... 7<sup>TH</sup> RESPONDENT**

**AND**

**HOTEL DESTINATION LIMITED ..... APPLICANT**

**BATULA HASSAN ABDI ..... APPLICANT**

**MAGIC INDUSTRIES LIMITED ..... APPLICANT**

*(Being Applications for the applicants herein to be joined in the appeal against the judgment/decree of the Environment and Land Court at Nairobi (Okong’o, J.) delivered on 4<sup>th</sup> August 2022 in ELC Suit No. 351 of 2008 as intended interested parties)*



## RULING

1. In a judgment, the subject of this appeal, delivered on 4<sup>th</sup> August 2022, the Environment and Land Court (ELC) (S. Okong'o, J.) decreed, among other things, that the property known as L. R. No. 13873 situated at Karen Plains, Nairobi is wholly owned by the 1<sup>st</sup> respondent who holds the genuine title in respect thereof; that the titles in respect of the said property held by the 2<sup>nd</sup> respondent (Miriam Wairimu Wambugu (as representative of the estate of Jacob Juma, deceased), 3<sup>rd</sup> respondent Mary Wanjiru Chege, 5<sup>th</sup> respondent William Tumate Sialala Sano, 6<sup>th</sup> respondent, Suakei Ole Parkire) and 7<sup>th</sup> respondent (Latoo Ene Priakanga Nchepai ) and the appellant Kenya United Sports Limited are fraudulent, null and void and the same are cancelled; that the purported subdivision of the property by the appellant is null and void. Aggrieved, the appellant, Kenya United Sports Limited, filed this appeal.
2. In its application before us dated 2<sup>nd</sup> October 2023, the applicant, Hotel Destination Limited, seeks orders that it be joined as an interested party in the appeal; that it be allowed to file an affidavit or other evidence in the appeal and that the matter be remitted back to the ELC for retrial. It is urged in the affidavit in support and in the submissions by learned counsel Mr. Arusei that the applicant is directly affected by the appeal being a purchaser from the appellant of L.R. No. 13873/2, a sub-division of the suit property; that the applicant did not have notice of the proceedings before the ELC that culminated in the impugned judgment that has adversely affected it.
3. Also before us is an application dated 2<sup>nd</sup> November 2023 by Batula Hassan Abdi who also seeks to be joined in the appeal. His case, as set out in his supporting affidavit and as urged in submissions by learned counsel Mr. Mohamed is that he bought L.R. No. 13873/7, a subdivision of the suit property from the appellant and charged it to Gulf African Bank to secure bank facilities and only learnt of the proceedings before the ELC after the impugned judgment was delivered. He also seeks an order of injunction “halting all the parties from making and/or effecting any changes to LR No. 13873/7”.
4. There is a third application dated 26<sup>th</sup> January 2014 by Magic Industries Limited which was urged before us by learned counsel Mr. Lakicha. It asserts that it entered into purchase agreements and paid Kshs. 44,000,000.00 for LR No. 13873/4 and LR No. 13873/5 having undertaken due diligence and is therefore directly affected by the decision of ELC. In addition to its prayer to be joined in the appeal as an interested party, it seeks an order of injunction to restrain the 1<sup>st</sup> respondent from interfering or dealing with LR No. 13873/4 and LR No. 13873/5 as well as an order of stay of execution of the judgment of the ELC.
5. We were informed that an earlier application dated 10<sup>th</sup> July 2023 for joinder of Bamoja Construction Co. Ltd in the appeal through the firm of Theuri Wesonga & Company Advocates, had been withdrawn.
6. We heard the three applications together on 31<sup>st</sup> January 2024 when counsel submitted that the three mentioned applicants are directly affected by the appeal and should therefore be joined as interested parties; and that the applicants were unaware of the proceedings before the ELC otherwise they would have applied to participate there. Among the decisions cited in support is the case of Francis Kariuki Muruatetu [2016] eKLR for definition of “interested party”. In relation to the prayers for injunction, it was submitted that the appeal is arguable and that the same will be rendered nugatory if the orders sought are not granted.
7. Learned counsel Ms. Wangui Shaw, referring to the replying affidavits and submissions in opposition to the applications strenuously opposed the same. Counsel submitted that during the pendency



of the appeal before the ELC, the appellant herein purported to transfer the property to Bamoja Construction Co. Ltd from which Batula Hassan purportedly purchased and there is therefore no privity of contract with the 1<sup>st</sup> respondent and no purpose will be served by joinder; and that the proceedings before the ELC were not done in secret and the claims that the applicants were unaware is far-fetched.

8. Miss. Shaw urged that in 2017, the ELC ordered the arrest of any person on the property and no one was therefore allowed on the property thereafter, yet the proposed interested parties did nothing since that time; that the remedy for the applicants lies in pursuing those who purported to sell to them; that to allow the applications will unduly confound and muddle issues in the appeal; and that an applicant who seeks to be joined in proceedings ought not to be joined if the cause of action is separate and distinct. Reference was made to the Supreme Court decision in Communications

Commission of Kenya & others vs. Royal Media Limited & others, SC Petition No. 15 of 2014 and Trusted Society of Human Rights vs. Mumo Matemo & others [2014] eKLR.

9. In relation to the prayers for injunction or stay of execution of the judgment of the ELC, Ms. Shaw submitted that the applicants have no appeal at all leave alone an arguable appeal; that the issues by the applicants are completely different; and neither have the applicants demonstrated that the appeal will be rendered nugatory if the orders sought are declined.
10. Although, as learned counsel Ms. Shaw correctly submitted, there is no demonstration of privity of contract between the applicants and the 1<sup>st</sup> respondent, there is, it would appear, privity of estate to the extent that the subdivisions the applicants claim are off shoots of the suit property. To that extent, we take the view that the impugned judgment of the ELC the subject of the appeal affects them. In *Commercial Bank of Africa Limited vs. Isaac Kamau Ndirangu*, Civil Appeal No. 157 of 1991, [1992] eKLR, this Court proceeded on the basis that a person whose property rights are affected by a judgment is ‘a person affected by the appeal’ within rule 79 of the Court of Appeal Rules.
11. We are satisfied that the applicants have demonstrated an interest in the subject matter of the appeal and are entitled to be heard during the appeal. They will be entitled to file submissions and to be heard in the appeal. As this Court will not be conducting a trial, there is no basis for granting the orders for filing of affidavits or other evidence.
12. In the result, the applications dated 2<sup>nd</sup> October 2023, 2<sup>nd</sup> November 2023 and 26<sup>th</sup> January 2024 succeed to the extent only that Hotel Destination Limited; Batula Hassan Abdi and Magic Industries Limited are joined in this appeal as interested parties and will be at liberty to address the Court during the hearing of the appeal.
13. The prayers for injunction or stay of execution of the judgment of the ELC coming so late after delivery of the impugned judgment are devoid of merit and are declined.
14. Costs of the applications shall be in the appeal.

**Dated and delivered at Nairobi this 12th day of April 2024.**

**S. GATEMBU KAIRU, FCIArb**

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**JUDGE OF APPEAL**

**J. LESIIT**

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**JUDGE OF APPEAL**

**G.W. NGENYE-MACHARIA**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

