



Muhindu & another (Suing in their capacity as the administrators of the Estate of Elizabeth Mumbi) v Kimani (Sued in her capacity as the administrator of the Estate of Timothy Kimani Mungai) & another; Njihia & another (Interested Parties) (Environment & Land Case 562 of 2017) [2024] KEELC 1475 (KLR) (13 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1475 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 562 OF 2017
JG KEMEI, J
MARCH 13, 2024
(FORMERLY NAIROBI ELC NO. 562 OF 2009)**

BETWEEN

ANTHONY JUSTUS MUHINDU AND ALICE JOYLINE THUGURI (SUING IN THEIR CAPACITY AS THE ADMINISTRATORS OF THE ESTATE OF ELIZABETH MUMBI) PLAINTIFF

AND

VIRGINIA WANJIKU KIMANI (SUED IN HER CAPACITY AS THE ADMINISTRATOR OF THE ESTATE OF TIMOTHY KIMANI MUNGAI) 1ST DEFENDANT

AWENDO COMPANY LIMITED 2ND DEFENDANT

AND

DAVID MBUTHIA NJIHIA INTERESTED PARTY

MARY NYAKIO MUNIU INTERESTED PARTY

RULING

1. Before Court is the Proposed Interested Parties/Applicants Notice of Motion dated 18/10/2023 seeking in the main an order to be enjoined in this suit as Interested Parties. It is expressed under Order 1 rule 10, Order 51 Rules 1, 3 and 4 of the *Civil Procedure Rules* 2010, Rules 2 and 7 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, 2013 (Mutunga Rules), Section 1A and 1B of the *Civil Procedure Act*.



2. The Application is based on the grounds thereat that there is a nexus between the Applicants and the subject matter of this suit namely LR No. 61/37 having earlier purchased a portion of 5 acres thereon. That later the Applicants sold the 5 acres of the land to the 2nd Defendant herein. That they desire joinder in the suit for reasons that the relief sought by the Plaintiffs if granted would impact and affect the interests of the Applicants and secondly that if they are not enjoined, the suit would not be fully determined on its merits as important elements of fact in possession of the Applicants would be omitted from the proceedings. Further they aver that their presence and participation in the suit is necessary and that in addition they have an identifiable stake in the matter and have therefore filed their Application promptly.
3. The Motion is further supported by an Affidavit of even date jointly sworn by the Applicants, David Mbuthia Njihia and Mary Nyakio Muniu. They reiterated the grounds set out in the Application and added that they jointly purchased a portion of 5 acres out of the suit land from Timothy Kimani Muigai and Virginia Wanjiku Kimani vide a sale agreement dated 5/12/2007 at a consideration of Kshs. 2M. That before transferring the suit land into their names, through a subsequent sale agreement dated 16/6/2011, they sold the land to the 2nd Defendant herein at a price of Kshs. 2.5M. Copies of the agreements are annexed as DMN1 and DMN3 respectively. That it is for that reason that the Applicants have a proximate interest and stake in the subject matter and if they are not enjoined their rights and interest shall be prejudiced and further the suit shall not be fully and effectually adjudicated.
4. The Application is opposed by the Plaintiffs and 1st Defendant only.
5. On behalf of the Plaintiffs, Alice Joyline Thunguri swore her Replying Affidavit on 3/11/2023. She denied the alleged Applicants' interest in the case and termed the Application as incompetent and a blatant abuse of the Court process. That granting the Application will be highly prejudicial to her having filed the instant suit in 2009 and now pending Judgment. That the Applicants are strangers and her claim and reliefs sought in this suit is strictly against the Defendants. Furthermore, that the Applicants have not met the threshold needed for orders of joinder in the suit seeing that there are no cogent grounds for joinder or a draft defence on record to show what their claim or reliefs are in this case. That the alleged payment of Kshs 1.275 Million purchase price was paid to an entity called Janki Investments which is not a party to the case. The Applicants' admission that they sold the land to the 2nd Defendant is testament that they have no stake in this suit. She beseeched the Court to dismiss the Application with costs.
6. Similarly, the 1st Defendant Virginia Wanjiku Kimani filed her Replying Affidavit sworn on 2/11/2023. She averred that the Application is frivolous and full of falsehoods meant to mislead the Court and unnecessarily clog the Court record. That it is time barred as it refers to transaction that happened over 16 years ago and since the Applicants admit that they sold off their interest in the land way back in 2011, they have not demonstrated any interests that cannot be ventilated by the 2nd Defendant who bought the land. That the Application is the 2nd Defendant's attempt to relitigate and review this Court's Ruling dated 5/10/2023 to further derail the determination of this matter. They urged the Court to dismiss the Application and proceed to deliver Judgment accordingly.
7. On 6/11/2023 directions were taken and parties agreed to canvass the Application by way of written submissions. None of the parties filed. The sole issue for determination is whether the Application is merited.
8. The *Black's Law Dictionary*, 9th Edition at page 1232 defines an Interested Party as a party who has a recognizable stake (and therefore standing) in the matter.



9. Order 1 Rule 10(2) of the *Civil Procedure Rules* provides 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 party improperly joined, whether as 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 in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

10. Additionally Rule 7 of the *Constitution of Kenya (Protection of Rights & Fundamental Freedoms) Practice & Procedure Rules* 2013 provides that an Interested Party can apply to be enjoined or the Court can move suo moto and enjoin a party to proceedings before it. Rule 2 thereof defines an Interested Party as a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the Court but is not a party to the proceedings or may not be directly involved in the litigation.

11. The principles for joinder of an Interested Party in a suit are now well settled. The Supreme Court in the case of *Francis Kariuki Muruatetu & Another Vs. Republic & 5 Others* as consolidated with 16 of 2013; [2016] eKLR set down the principles of joinder that;

“(37) From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an Interested Party:

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:

- a. 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.
- b. 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.
- c. 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.”

12. Earlier on the Apex Court in the case of *Communications Commission of Kenya & 4 Others Vs. Royal Media Services Limited & 7 Others* [2014] eKLR affirmed 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 ...”

(23) Similarly, in the case of *Meme v. Republic*, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- “ (i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
- (ii) joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) joinder to prevent a likely course of proliferated litigation.”

13. This Application calls upon the Court to examine the facts of the case, the reliefs sought, the nature and extent of the Applicants interest in the controversy raised in the suit before it reaches a conclusion whether or not the Applicants are an indispensable or a necessary party. In so doing I shall revert to the pleadings of the parties on record vis a vis adverted claim and the reliefs sought by the Applicants.
14. In this suit the Plaintiff one Elizabeth Mumbi deceased sued the Defendants in 2009 seeking inter alia orders of specific performance with respect to the transfer of a portion of 4 acres from the mother title (suit land) herein. The 1st and 2nd Defendants admit to have sold a portion of 4 acres to the Plaintiff to be excised from the mother title LR No. 61/37 Ruiru Mwioko for which the sum of Kshs 1.0 Million was paid and possession was given to the Plaintiff. It was their case that the mother title measuring 31.5 acres was transferred to the 3rd Defendant on condition that the Plaintiff would receive 4 acres, the 1st and 2nd Defendants 3.5 acres and the 3rd Defendant to retain 24 acres. The 3rd Defendant denied the Plaintiffs claims and averred that it is a stranger to the arrangements between the Plaintiff and the 1st and 2nd Defendants and upon purchase of the suit land it proceeded to sell to third parties who have already developed the parcels of the land.
15. Consequently, the Plaintiff sought the following reliefs;
 - a. That the 1st Defendants be compelled to sign all the necessary transfer documents to the Plaintiff to enable the Plaintiff to obtain her title deed for the three (3) acres that she is in possession on land parcel number LR /61/37 Ruiru Mwioko that in default this Honourable Court be pleased to sign the transfer documents on behalf of the Defendants.
 - b. That the 2nd Defendant be compelled to issue the title for the remaining one (1) Acre to the Plaintiff he unlawfully and illegally subdivided and transferred to three (3) other persons and in default be compelled to pay the Plaintiff the one (1) Acre at current market price / value.
 - c. That the 2nd Defendant be ordered to compensate the Plaintiff for breach of agreement.
 - d. That the 2nd Defendant be compelled to compensate the Plaintiff for the one Acre sold to the 3 parties at the current market value/price.
 - e. That the second Defendant be compelled to allocate the remaining one Acre piece to the Plaintiff.
 - f. That Defendants be ordered to pay cost of this suit and any other relief this Honourable Court may deem fit to grant.



16. The Applicants' case is that they purchased a portion of the suit land from the Defendant and her late husband, Timothy Kimani Muigai. That later the Applicants sold their portion of land to the 2nd Defendant herein vide a sale agreement dated 16/6/2011 and therefore they have an identifiable claim in the dispute before Court. That they have an identifiable stake given that the facts in their possession will enable the Court to effectually and completely determine the suit.
17. The 1st Defendant and the Plaintiffs contend that the Applicants having sold their portion of the land to the 2nd Defendant, they are completely divested of any interest in the land and the instant dispute. That the instant Application is an attempt to relitigate and review this Court's Ruling delivered on 5/10/2023.
18. Are the Applicants a necessary party to the suit in whose presence the matter cannot be effectually and completely be determined? Order 1 rule 10 provides two ways in which a party is to be enjoined into a suit. The first is where the Plaintiff seeks for joinder on discovery that he cannot get the full relief without joining some other person and the second way is a party is enjoined by the Court on its own motion or on Application by a party.
19. Have the Applicants demonstrated any stake in the suit. It is their case that they have a nexus to the suit land having in the past purchased the same and later disposed to the 3rd Defendant.
20. Having analyzed the Application, the affidavit evidence, case law and the written submissions the Court makes the following findings; the Applicants have not demonstrated or disclosed any stake or interest in the suit; their admission that they sold the 5 acre portion to the 2nd Defendant is testament of lack of interest or stake in the suit; the Plaintiff is seeking specific performance of a portion of 4 acres out of the mother title while the Applicants averred that their portion was 5 acres, therefore the variance in acreage has not been explained; a perusal of the suit before Court does not disclose any reliefs flowing from the Applicants to the Plaintiffs or vice versa and therefore no evidence has been led in support that the Applicants rights shall be affected in any way; the onus to disclose the important facts in the Applicants possession (if any) was on the Applicants, a duty that they failed to discharge; in addition there is no draft statement of defence to show what their interest or defence would be in the suit; the pleadings and the hearing in this case are long closed and what is pending are directions on the delivery of the Judgement.
21. In the end the Court has not been given any special or exceptional circumstances to warrant the joinder of the Applicants in this suit. I say so because the suit belongs to the Plaintiffs who are the dominus litis of their case and cannot be compelled to fight against a person against whom they do not claim any relief. This is evidenced by the Plaintiffs opposition to the Application for joinder.
22. Guided by the jurisprudence set out by the Supreme Court in the case of Muruatetu (supra), the Court has arrived at the conclusion on reasons given above that the Application is for dismissal.
23. Final orders for disposal;
 - a. The Application dated the 18/10/2023 is devoid of merit. It is dismissed.
 - b. Costs shall be in favour of the Plaintiff and the 1st Defendant.

DATED, SIGNED & DELIVERED AT THIKA VIA MICROSOFT TEAMS THIS 13TH DAY OF MARCH, 2024.

J G KEMEI

JUDGE



Delivered online in the presence of;

Wanjiru HB Kimani for 1st and 2nd Plaintiffs

Mungai HB Tumu for 1st Defendant

Githinji for 2nd Defendant

Wangare Mwaura for 1st and 2nd Proposed Interested Parties

Court Assistants – Phyllis/Oliver

