



Ndeffo Company Limited v Kinyanhui & 148 others; Menengai Slopes Owners Community Based Organization ‘through’ Partick Muigai Wagura , James Mwangi Kagwe & Marcella Kemunto Marube (Intended Interested Party) (On their own behalf and on behalf of more than 6000 others) (Environment & Land Case 111 of 2013) [2024] KEELC 1642 (KLR) (13 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1642 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 111 OF 2013**

**A OMBWAYO, J
MARCH 13, 2024**

BETWEEN

NDEFFO COMPANY LIMITED APPLICANT

AND

JAMES KAMAU KINYANHUI & 148 OTHERS RESPONDENT

AND

**MENENGAI SLOPES OWNERS COMMUNITY BASED ORGANIZATION
‘THROUGH’ PARTICK MUIGAI WAGURA, JAMES MWANGI KAGWE &
MARCELLA KEMUNTO MARUBE INTENDED INTERESTED PARTY
ON THEIR OWN BEHALF AND ON BEHALF OF MORE THAN 6000 OTHERS**

RULING

1. This ruling is in respect of the Applicants Chamber Summons application dated 16th January, 2024. The said application is expressed to be brought under Order 1 Rule 10 of the [Civil Procedure Rules, 2010](#) as amended in 2020, Order 40 Rule 1, Legal Notice No 117 of 2013 titled as the [Constitution of Kenya \(Protection of Rights and Fundamental Freedoms\) Practice and Procedure Rules, 2013](#), Rules 2 and 7.
2. The application is filed under Certificate of Urgency and seeks the following orders:
 1. Spent
 2. That this honourable Court be pleased to issue a temporary injunction against the Plaintiff/ Respondent by itself, agents, servants and or assigns from continuing with allocations to other third parties and further fragmentation all those parcels of land known as Bahati/Kabatini



Block 1/3798 and Bahati/Kabatini Block 1/3799 until hearing and determination of the suit herein.

3. That leave be granted to the Applicants to be admitted as interested parties in the above suit filed in this honourable court.
 4. That the intended interested parties be allowed to submit with leave of court any other information it may deem important and relevant to allow for the just disposition of this matter.
 5. That costs of this application be provided for.
2. The application is based on the grounds on its face and supported by the affidavit sworn by the one of the applicants, one Patrick Muigai Wagura. The supporting affidavit is sworn on 16th January, 2024

Applicants Contention

3. The Applicants depose that they are registered under the name Menengai Slopes Owners under registration number 04731. They depose that the dispute in question involves all those parcels of land known as Bahati/Kabatini Block 1/3798 and Bahati/Kabatini Block1/3799.
4. They depose that the gist of the matter is that the initial titles were irregularly and illegally subdivided to produce title deeds that are in the names of the listed defendants herein as well as other shadowy figures, triggering the cause of action.
5. They depose that the suit seeks the relief of cancellation of title deeds held by the Defendants and other persons not named for having been fraudulently acquired. They depose that the listed defendants are strangers to them and have never laid claim on the properties, nor been on the ground since they have been in occupation themselves and through their fore fathers (who are deceased) by virtue of being descendants for decades of years to date.
6. The Applicants depose that some of the purported/alleged grabbers forming part of the Defendants are also purported officials of the Plaintiff, essentially meaning that either way the interested parties ought to participate, as it appears that the dispute also involves some officials of the Plaintiff which thus leaves the interested parties vulnerable, if their interests are not articulated.
7. They further depose that the dispute has been spanning for decades within the corridors of justice largely between the Plaintiff and the Defendants leaving them in cross hairs as the people presently in occupation of the parcels in dispute.
8. The Applicants depose that they occupy portions measuring 60 feet by 40 feet having purchased the same either directly from the Plaintiff or sold to them as third party purchasers from a person who had previously purchased or inherited from a kin who had acquired from the Plaintiff.
9. They depose that they have extensively developed the suit parcels and settled their families despite the dispute between the Plaintiff and the Defendant. They depose that they are forced to participate in the instant proceedings in a bid to protect their homes and their livelihoods.
10. The Applicants depose that they are about 6,000 people residing on the dispute parcels of land where they have occupied legally, through due process with the participation of the Plaintiff and established communities. They depose that any decision that will be made by the court will directly affect them and expose them to risk of being dispossessed of their legally acquired entitlements and expose them to being rendered destitute of the only homes they know.
11. The Applicants further contend that they have all formed themselves into an association living in harmony and neighborliness and had entered into a formal agreement with the Plaintiff to resurvey and



- beacon the different plots, which exercise is almost being concluded. They contend that that this shows the Plaintiff is aware of their occupation but has failed to let this fact be well articulated in the matter.
12. The Applicants contend that the Plaintiff ought to be stopped from further stratification of the parcels which are already quite small in their size, and stop the rampant double allocations as this is further aggravating the situation on the ground.
 13. The Applicants contend that at the moment, the parcels of land in dispute are fully occupied by those in their ranks having agreed with the Plaintiff on a proper *mondus operandi* to identify and formalize ownership, but the Plaintiff has gone ahead to render all this moot and continued to further fragment the plots, cancelling out certificates and effecting deletions and insertions by hand, in a completely untidy and covert manner completely not in line with an incorporated company.
 14. They contend that the named Defendants constitute only half of the persons illegally holding title deeds stemming from the same cause of action and hence the need to place all matters and all material before the court to avoid multiplicity of causes of action.
 15. The Applicants contend that the situation is dire and has caused several breaches of peace and security since the occupants are in large numbers and the constant wrangles within the Plaintiff has not done much to arrest the volatile situation. They contend that no prejudice stands to be suffered by the Plaintiff and by the Defendants if the application is allowed and if anything, their participation will assist in ensuring that all issues are brought before the court for determination.

Plaintiff's/Respondents Response

16. The Plaintiff filed a Replying Affidavit on 31st January, 2024. Peter Mwangi Maina deposed that he is a director of the Plaintiff/Respondent duly authorized to swear the affidavit in response to the application dated 16th January, 2024. He contends that the Applicants are not registered owners of the suit land and joining them into this suit will not add value to the litigation. He deposes that the Applicants are not a necessary party in this suit and no useful purpose shall be served by adding 6000 parties to the present suit whose details are not disclosed by the Applicant.
17. He contends that the Applicants have no suit before the court to warrant an order for injunction in their favour. He submits that the Applicants have no known interest in Bahati/Kabatini Block 1/3798 and Bahati/ Kabatini Block 1/3799. He deposes that the disputed land belongs to the Plaintiff who has moved this court against the Defendants seeking cancellation of title deeds illegally issued to them.
18. He contends that none of the alleged interested parties have been sued by the Plaintiff or are intended to be affected by any order the court may issue in favour of the Plaintiff in this suit. He submits that the Plaintiff has no complaint against the alleged interested parties and has not sought to join them in this suit.
19. It is the Plaintiff's deposition that the suit before the court was filed by the Plaintiff which is a legal person and it properly identified the Defendants as the persons who hold titles to their land or facilitated the unlawful allocation and issuance of title deed for its property to third parties.
20. He deposes that the Plaintiff changes directors from time to time depending on the resolution of shareholders passed on annual general meetings. He deposes that the suit land is currently occupied by their shareholders who mandated them to file this suit and the Applicants who may be their children do not have mandate to file the present application or interfere with the affairs of the Plaintiff.
21. He deposes that it is not true that the suit land has been sold as claimed by the Applicants and it is obvious that the Applicants have issues with the Plaintiff which are not before this court for



determination. He deposes that the Applicants disagreements with the Plaintiff cannot be litigated in this suit but by a different suit altogether. He contends that the application for joinder and injunction lacks merit and has no legal basis and the same should be dismissed with costs.

Applicants Further Contention

22. The Applicants filed a further affidavit on 7th February 2024 where they contend that that at no point have they asserted to be the registered owners of the suit properties and they have amply established that they are bringing this suit as the occupants thereof, entitling them to participate in the proceedings whose core subject matter is the very land that they have occupied with their families for decades.
23. They contend that the Plaintiff cannot turn around and name them as strangers whereas the very deponent in the replying affidavit featured as an official in the mutual agreement that was executed between the Company and themselves, acknowledging their occupation.
24. The Applicants depose that on the basis of the history of their acquisition of the respective plots, the Constitution thereof, the actual situation as it is on the suit parcel, submissions which are not similar to any that will be made by either of the parties since they all along ignored their existence and state in the subject matter.
25. The Applicants contend that the alleged titles are more than 350 in number and the Plaintiff elected to sue just a section, constituting the Defendants herein, leaving out the other titles because they are fraudulently held by those in their ranks which in any event is deemed inconsequential since the entire parcel is occupied by the 6000 of them on the suit parcel.

Submissions

26. The Applicants filed a list of authorities on 7th February, 2024. Reliance was placed on the following cases; Civicon Limited vs Kivuwatt Limited and 2 others [2015] eKLR, Apondi vs Canuald Metal Packaging [2005] 1 EA 12, Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others [2017] eKLR and Francis Karioki Muruatetu and another v Republic & 5 others [2016] eKLR.
27. The Plaintiff filed submissions on 12th February, 2024. Reliance was placed on Order 1 Rule 10 (1) and (2) of the Civil Procedure Rules. It submits that the court has power to admit and or join any person whose presence may be necessary in court in order to enable the court to effectively and completely adjudicate upon all issues in dispute before the court.
28. It submits that the suit before this court is filed by the Plaintiff against the Defendants and the Plaintiff claims that the Defendants obtained registration of its property by fraud and prays that all the title deeds held by the Defendants be revoked and cancelled. It submits that the suit is yet to be heard and it is fixed for hearing on the 7th, 8th and 9th of October, 2024.
29. The Plaintiff submits that the Applicants are not mentioned in the suit and the Plaintiff does not seek any orders and remedies against them. The Plaintiff submits that the Defendants have not raised any issues on the Applicants and they have no counter-claim against the Plaintiff that can be construed to mean that an order against the Plaintiff would affect the Applicants herein.
30. The Plaintiff submits that the Applicants claim to be in occupation of the suit land. The Plaintiff submits that the parcels of land are many in number and the Applicants are not clear on which parcels of land they occupy and how and when they occupied the same. They submit that the suit was filed in 2010 which is close to 14 years ago.



31. The Plaintiff submit that Patrick Muigai Wagura has not exhibited any written authority to show that he has authority to file the application on behalf of the Menengai Slopes Owners Community Based Organization comprising 6000 members and there was a need to have a written authority given the huge number of people involved.
32. The Plaintiff relies on Order 1 Rule 13 of the [Civil Procedure Rules](#). The Plaintiff submits that the application seems to reveal that the Applicants have issues with the Plaintiff that are not before this court for determination. It submits that the Applicants want the court to issue an injunction against the Plaintiff with respect to title no Bahati/Kabatini Block 1/3798 and Bahati/ Kabatini Block 1/3799 pending the hearing and determination of the suit when there are clear orders that were issued by this Honourable court over the said parcels of land. It submits that there is no evidence of any interference by the Plaintiff over the suit properties and the claim by the Applicants herein is unsubstantiated.
33. The Plaintiff submits that it is not clear how orders of injunction would be issued before the Applicants are made parties to the suit. They submit that it is not clear whether the Applicants want to join the suit as Plaintiffs or Defendants to warrant an order for an injunction.
34. The Plaintiff submits that the Applicants have not exhibited any document of ownership of the two properties that they pray for an order of injunction for. It submits that the mere presence of the Applicants on the suit land is not enough to warrant their participation in this suit. The Plaintiff submits that it has explained that part of the land is occupied by their shareholders through their children and there is a possibility that they are the Applicants in court.
35. The Plaintiff submits that their interest is duly taken care of by the Plaintiff in this suit and any other issues the Applicants may have with the Plaintiff can be resolved in a different suit. The Plaintiff urged the court to dismiss the application with costs.

Analysis and Determination

36. After considering the application, supporting affidavit, replying affidavit, submissions filed by the parties, the following issues arise for determination:
 - a. Whether the Applicants should be joined to this suit as interested parties?
 - b. Whether injunctive orders should be issued by the court as prayed by the Applicants?
 - c. Who should bear the costs of this application?
 - d. Whether the Applicants should be joined to this suit as interested parties?
37. The Applicants seeks to be joined to this suit as interested parties. In determining this application, I shall consider the definition of an interested party and whether the Applicants have met the criteria for joinder as an interested party.
38. The law on joinder of parties is found in Order 1 Rule 10(2) of the [Civil Procedure Rules](#) states as follows: -

“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 or settle all questions involved in the suit, be added.”



39. Rule 2 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, 2013 defines an interested party thus;

“Interested party” means 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;

Black’s Law Dictionary defines an Interested Party as; “a party who has a recognizable stake (and therefore standing) in the matter.”

40. *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others* [2014] eKLR, the Supreme Court in defining an interested party stated thus:

“...while an interested party has a ‘stake/interest’ directly in the case, an amicus’s interest is its ‘fidelity’ to the law: that an informed decision is reached by the Court, having taken into account all relevant laws, and entertained legal arguments and principles brought to light in the Courtroom. ‘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. On the other hand, an amicus is only interested in the Court making a decision of professional integrity. An amicus has no interest in the decision being made either way, but seeks that it be legal, well informed, and in the interest of justice and the public expectation. As a ‘friend’ of the Court, his [or her] cause is to ensure that a legal and legitimate decision is achieved.”

41. Having defined an interested party, the next question is whether the Applicants have satisfied the criteria for joinder as an interested party. The Supreme court of Kenya in *Francis K. Muruatetu and another v. Republic & 5 others* (2016) eKLR after on an analysis of legal provisions and case law set out factors for consideration in an application for joinder as an Interested Party. The Learned Judges held as follows;

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 submission 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.”



42. In *Skov Estate Limited & 5 others v Agricultural Development Corporation & another* [2015] eKLR the Learned Judge in dealing with the question of an Interested Party seeking to be joined in a suit stated as follows;

“In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party.... The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.”

43. This court in its orders issued on 14th July, 2023 granted the Plaintiff leave to amend the Plaintiff dated 23rd September, 2010. The Plaintiff in its amended plaintiff sought the following orders:

- a. A declaration that the suit land is the property of the Plaintiff and subsequent dealing as set out in paragraph 4 hereinabove are illegal and or null and void and the Defendants’ title deeds for the suit land have no legal effect and are completely determined in law.
- b. Nullification and or cancellation of title deeds set out in paragraph 4 of the plaintiff and rectification of the register by the Land Registrar, Nakuru.
- c. Cost of this suit.

44. In paragraph 4 of the amended Plaintiff, the Plaintiff states that it is the owner of Bahati/Kabatini Block 1/3798 and 3799 and the Defendants jointly and severally unlawfully, illegally and through a corrupt scheme caused subdivision of the said properties giving rise to 205 parcels of land and allocated the same to themselves.

45. The Applicants have approached this court stating that they are the legal owners of the parcels of land known as Bahati Kabatini Block 1/3798 and Bahati Kabatini Block 1/3799 measuring approximately 700 acres. The Applicants state that they currently in occupation of the suit properties. In order to buttress their claim, the Applicants have attached sample agreements showing that they purchased portions measuring 60 feet by 40 feet either directly from the Plaintiff or from third party purchasers.

46. The Plaintiff in its submissions states that the Applicants have not exhibited any document of ownership of the two properties that they pray for an order of injunction for. It submits that the mere presence of the Applicants on the suit land is not enough to warrant their participation in this suit.

47. This court takes note that the Plaintiff’s claim arises from the alleged subdivision of the two suit properties by the Defendants giving rise to 205 parcels of land. The Applicants have approached the court stating that they are purchased property from the Plaintiff and they do not know if their interests will be taken into account. This court finds that in order to determine all the issues in the case, it is necessary for the applicants to be admitted as interested parties in the suit.



2. Whether injunctive orders should be issued by the court as prayed by the Applicants?

48. The Applicants/Interested parties prayed for a temporary injunction against the Plaintiff from continuing with allocations to other third parties and further fragmentation in respect of the suit parcels until the hearing and determination of the suit.
49. The Interested parties sought an order for a temporary injunction while they were not parties in this suit. They therefore lacked the locus standi to seek such orders.

3. Who should bear the costs of this application?

50. Section 27 (1) of the *Civil Procedure Act*, Cap. 21 provides that costs shall follow event.

Disposition

51. I find that the Applicants have demonstrated that they have a clear and identifiable interest and stake in the present suit.
52. I find that the presence of the Applicants before this court is necessary and will enable the court to effectually and completely determine the issues.
53. Consequently, the Application dated 16th January, 2024 is allowed in terms of prayers number 3 and 4 with costs to the Applicants.

It is so ordered.

DATED AND DELIVERED VIRTUALLY AT NAKURU THIS 13TH DAY OF MARCH 2024.

A.O. OMBWAYO

JUDGE

