



**Postal Corporation of Kenya v County Government of Kiambu & another;
Kuria tg/a Nationwide Distributors (Intended Interested Party) (Environment
& Land Case 307 of 2018) [2024] KEELC 1476 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1476 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 307 OF 2018
JG KEMEL, J
MARCH 13, 2024**

BETWEEN

POSTAL CORPORATION OF KENYA PLAINTIFF

AND

THE COUNTY GOVERNMENT OF KIAMBU 1ST DEFENDANT

THE GOVERNOR, KIAMBU COUNTY 2ND DEFENDANT

AND

**JULIUS MWANGI KURIA T/A NATIONWIDE DISTRIBUTORS INTENDED
INTERESTED PARTY**

RULING

1. The subject of this Ruling is the intended Interested Party /Applicant’s Application dated 28/12/2018 seeking orders for joinder in this suit as an Interested Party as well as the vacation of the interim orders issued on 21/12/2018.
2. The Application is based on the grounds annexed thereto and the Supporting Affidavit of Julius Mwangi Kuria deponed on the 28/12/2018. The deponent avers that he is the Director of Nationwide Distributors, the Interested Party / Applicant herein.
3. He avers that there is a pending matter in the Business Premises Rent Tribunal (BPRT No. 73 of 2016) between the Interested Party and the Plaintiff. The Application is opposed by the Plaintiff vide its Grounds of Opposition filed on 19/5/2023 on the following grounds:-
 - a. That the Intended Interested Party has totally misapprehended the Cause of Action by the Plaintiff as against the Defendants.



- b. That it is not contested by the Intended Interested Party that the Plaintiff is the registered proprietor of all that parcel of land known as Title Number Thika Municipality Block 2/840 within Madaraka – Makongeni Area, Thika Township (“The suit property”).
 - c. That it is not contested by the Intended Interested Party that on or about 15/12/2018, the Defendants through their agents or by themselves unlawfully trespassed onto the suit property and without any colour of right proceeded to construct a bus park thereon.
 - d. That it is not contested by the Intended Interested Party that the Plaintiff moved the Court seek protection and enforcement of its rights over the exclusive use and quiet possession and occupation of the suit property.
 - e. That the Intended Interested Party is neither the tortfeasor nor has he claimed to have sustained injury, loss or damage as a result of the tortious conduct of the Defendants.
 - f. That the Intended Interested Party instead claims that there is an existing Landlord/Tenant dispute between himself (as tenant) and the Plaintiff (as landlord) at the Business Premises Rent Tribunal known as BPRT No. 73 of 2016 over the alteration of terms of Tenancy between himself and the Plaintiff over a rented portion of the suit property.
 - g. That nowhere in the instant Application has the Intended Interested Party even remotely attempted to demonstrate his interest in the dispute pitting the Plaintiff and the Defendants over the latter’s unlawful acts of trespass over the suit property.
 - h. That consequently, the Intended Interested Party has failed to demonstrate how his joinder in this suit will serve any meaningful purpose as the Plaintiff seeks to assert its proprietorship rights over the suit property as against the Defendants.
 - i. That the conduct of the Intended Interested Party and his delay in prosecuting the instant Application for close to five (5) years remains unexplained and is inexcusable and has gravely prejudiced the Plaintiff from having this suit heard and determined with finality and reinstatement of its right to quiet possession and use of the suit property that is registered in its name.
4. On the 25/5/2023 parties took directions with respect to the hearing of this Application and elected to file written submissions. The Applicant’s written submission dated 22/5/2022 were filed by the firm of Dola Magani & Co. Advocates. Equally, the Plaintiff/Respondent’s written submissions dated 25/7/2023 were filed by the firm of Kipkenda & Co. Advocates. The Court has read and considered the submissions and would like to thank the Counsel for their highlights.
 5. The key issue for determination is whether the Applicant is entitled to the orders of joinder as an Interested Party.
 6. *Black’s Law Dictionary* defines an Interested Party as a party who has a recognizable stake (standing) in a matter. A necessary party is also defined as a party who will be closely connected to a law suit should he be included in the case if visible but whose absence will not require dismissal of proceedings.
 7. Order 1 Rule 10(2) of the *Civil Procedure Rules* provides as follows:-

“The Court may at any stage of the proceedings, either upon or without Application to 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 be joined whether as Plaintiff or Defendant, or whose



presence before Court may be necessary in order to enable Court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added”.

8. It is trite that anyone seeking joinder into a suit must demonstrate how the suit would affect his interests to warrant protection of the Court. In the case of *Direct Line Assurance Co. Ltd v Attorney General* [2011]eKLR the Court pronounced itself as follows:-

“The law is that only those who are entitled to a claim or be affected by the outcome can legitimately seek protection from the Court. The applicant has not demonstrated how the legal notice would affect its interests and that of the public it purports to represent. It is not every person who can approach the Court for redress of his grievances but persons with legitimate interests and stake in the outcome and the effects of the decision complained against.”

9. Similarly, the Supreme Court of Kenya in the case of *Communications Commission of Kenya & 4 Others v Royal Media Services Limited & 7 Others* [2014]eKLR held as follows:-

“An Interested Party is one who has a stake in the proceedings, though he or she was not a 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 herself appears in the proceedings, and champions his or her cause ...”

10. Further the Supreme Court in a subsequent case of *Francis K. Muruateru & Ano v Republic & 5 Others* [2016]eKLR set out the key elements for consideration in an Application for joinder as an Interested Party as follows:-

- a. Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;
- b. Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- c. Hinder to prevent a likely course of proliferated litigation.

11. It is the Applicant’s case that there is an existing landlord tenant dispute between himself as a tenant and the Plaintiff as a landlord at the Business Premises Rent Tribunal over an alleged alteration of terms of tenancy between the parties over a portion of the suit property.

12. I have perused the annexures presented by the Applicants including a Ruling issued by the Tribunal on 12/6/2020 where the Tribunal inter alia that the Interested Party (Daylight General Canteen) is a subtenant of the Applicant and the landlord (Plaintiff) is restrained from collecting rent from him and all payments made by the said Interested Party to the landlord shall be credited into the rent account of the Applicant in this matter.

13. In the case before this Court the Plaintiff has sued the County Government of Kiambu and another seeking declaratory orders that the Defendant has encroached/trespassed on the suit land. Inter alia the Plaintiff sought eviction orders, general damages for trespass and destruction of his property.

14. Applying the test set out in the case of *Muruatetu* (*supra*) it is manifestly clear that the case of the Applicant in the Tribunal is remotely connected to the cause of action of the Plaintiff in this suit. In the Tribunal the Applicants case revolves around tenancy issues between the Plaintiff and a subtenant.



In this case the Plaintiff's dispute against the Defendants squarely falls under unlawful acts of trespass of the suit property.

15. From the foregoing, the Court concludes that the Applicant has not demonstrated an identifiable proximate interest in this suit to warrant joinder. The Court has found no justifiable reason to supplant his claim to that of the Plaintiff.
16. From the record, this Application was filed five (5) years ago and it has not been explained why the Applicant took too long to prosecute the same. The hearing of this suit on 20/4/2023 was halted by the Applicant's instant Application, it has unnecessarily delayed the resolution of this suit.
17. In conclusion, the Court finds that the presence of the Applicant will not assist the Court in determining the matters in issue in this suit. Secondly, the Applicant has not demonstrated an identifiable stake to warrant joinder. Thirdly, the Applicant's indolence in prosecuting the Application has prejudiced the timeous resolution of this suit and for that matter the Applicant is condemned to pay the cost of the Application in favour of the Plaintiff/Respondent.
18. Final orders for disposal:-
 - a. The Application dated 28/12/2018 be and is hereby dismissed.
 - b. The costs shall be in favour of the Respondent/Plaintiff.
19. Orders accordingly.

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

J G KEMEI

JUDGE

Delivered online in the presence of;

Wachira for the Plaintiff

1st and 2nd Defendants – Absent but served

Interested Party – Absent but served

Court Assistants – Phyllis/Oliver

