



Kenya United Steel Company (2006) Limited v Ahmed & another (Civil Appeal (Application) E141 of 2022) [2024] KECA 1778 (KLR) (6 December 2024) (Ruling)

Neutral citation: [2024] KECA 1778 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPEAL (APPLICATION) E141 OF 2022
SG KAIRU, JA
DECEMBER 6, 2024**

BETWEEN

KENYA UNITED STEEL COMPANY (2006) LIMITED APPLICANT

AND

AHMED MOHAMMED AHMED 1ST RESPONDENT

AHMED MOHIDDIN 2ND RESPONDENT

(Being an application to be enjoined in this appeal, being an Appeal from the Judgment of the Environment and Land Court of Kenya at Mombasa (Omollo, J.) dated 31st October, 2017 in ELC Cause No. 470 of 2011)

RULING

1. In their application dated 24th May 2024, the applicants/proposed interested parties, Harith Rashid Ahmed, Amran Mohamed Timamy and Abdul-Rehman Abdallah Said through the firm of Martin Tindi & Company Advocates, have moved the Court seeking to be joined as interested parties in this appeal.
2. The appeal, instituted by Kenya United Steel Company (2006) Limited as the appellant against Ahmed Mohamed Ahmed and Ahmed Mohideen as the respondents arises from a judgment delivered by the Environment and Land Court (ELC) (A.Omollo, J.) at Mombasa on 31st October 2017. In that judgment the ELC nullified a Wakf deed on the grounds that it did not comply with the requirements of Section 4(1) of *Wakf's Commissioners Act*.
3. The suit before the ELC leading up to that judgment was instituted by the 1st respondent "suing as representative of the heirs of the late Asila Binti Mwijabu". He averred that the property known as plot No. 884 (original No. 780) of Section VI Mainland North was owned by Asila Binti Mwijabu, deceased; that by an instrument of Wakf, the deceased consecrated the property as a Wakf declaring income thereof after deduction of rates, taxes and all expenses shall from time to time be divided



- in equal shares amongst (1) Mohidin (2) Mohamed (3) Rashid (4) Rukiya binti Ahmed (5) Fatuma binti Ahmed as well as other children that may thereafter be born to Ahmed bin Sheikh Makame and thereafter from generation to generation in equal shares.
4. The 1st respondent pleaded further that Ahmed Sheikh Makame who was the husband of the maker of the Wakf was appointed first trustee and subsequent trustees were provided to be the eldest male or female beneficiary for the time being entitled to share the income of the Wakf provided he or she is a suitable trustee under Shariah Law. Each of the surviving beneficiaries of each of the persons named in the Wakf were listed in the plaint. It was pleaded that the appellant was an assignee of a lease of the property. It was the contention of the 1st respondent, which the ELC upheld, that the Wakf created over the property is null and void in law for failing to provide for charity.
 5. I heard the application on 4th October 2024. The parties were represented by learned counsel. Mr. Tindi appeared for the proposed interested parties. Miss. Julu appeared for the appellant, while Mr. Khatib appeared for the 1st respondent. It was indicated that the 2nd respondent never participated in the proceedings before the ELC.
 6. Counsel for the applicants Mr. Tindi urged that the ELC in the impugned judgment ordered that the property reverts back to the estate of Asila Binti Mwijabu, deceased to enable the beneficiaries inherit it in accordance with Islamic law; that the applicants are beneficiaries, and represent many other beneficiaries of the estate of the deceased and need to be enjoined to protect their interests; and that all the beneficiaries of the estate of the deceased ought to have been served with the appeal.
 7. Cited in support of the application are decisions in *Apollo Kennedy Mwangi vs. Margaret Wanjiku Chege & 3 Others*, Civil Appeal (Application) No. 116 of 2015 and also *Central Kenya Limited vs Trust Bank Limited & 5 Others* [2000] eKLR for the proposition that joinder of parties should generally be allowed as long as there is no injustice or prejudice occasioned by the joinder.
 8. Miss. Julu and Mr. Khatib, in opposing the application submitted that the 1st respondent represents all the beneficiaries of the deceased; that the applicants have not demonstrated any interest or stake in the matter which is not adequately represented by the 1st respondent; that joinder will not add any value but will merely unduly cloud the issues in the appeal; and that there is also delay in making the application.
 9. In a rejoinder, Mr. Tindi submitted that there has been a delay on the part of the appellant in prosecuting the appeal; that the appellant is enjoying interim orders of stay of execution of the impugned judgment and the appeal has not been set down for hearing; and that the object of the applicants is to be enjoined so that they can apply to have the appeal struck out.
 10. I have considered the application, the affidavits and the submissions by learned counsel. In *Attorney General vs. David Ndi & Others* (Petition 12 (E016) of 2020) [2021] KESC 17 (KLR), the Supreme Court pronounced the principles that guide it under its rules in determining an application to be enjoined as an interested party. The Supreme Court stated that enjoinder is not a right but is at the discretion of the court; that sufficient grounds have to be laid before the court; that an applicant should set out in the application the personal interest or stake in the matter; that “the interest had to be clearly identifiable and had to be proximate enough, to stand apart from anything that was merely peripheral”; that the prejudice to be suffered by the intended interested party in the case of non-joinder has to be demonstrated to the satisfaction of the court and be clearly outlined and not something remote. See also the earlier Supreme Court decision in that regard in *Francis Karioko Muruatetu & Another vs. Republic & 5 Others* [2016] eKLR.



11. As already indicated above, the 1st respondent in instituting the suit before the ELC did so as “representative of the heirs” of the deceased Asila Binti Mwijabu and to that extent the suit was a representative action. The proposed interested parties have not demonstrated that the 1st respondent who represented them as heirs before the ELC will not do so in this appeal.
12. As the Supreme Court stated in *T rusted Society of Human Rights Alliance vs. Matemo & 5 Others* (Petition 12 of 2013) [2014] KESC 32 (KLR):

“...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.”
13. Furthermore, a critical question in this appeal is whether the learned Judge erred in nullifying the Wakf. It is not a succession cause relating to the distribution of the estate of the deceased, and the applicants have not demonstrated, beyond a peripheral interest, a clear, proximate, identifiable interest to warrant their enjoinderment.
14. Moreover, it was urged by counsel for the applicants that the main concern is for the applicants to be enjoined to have footing to apply to strike out the appeal, which, in my view, is a matter that can be pursued by their representative, the 1st respondent, if so minded.
15. In conclusion, the application dated 24th May 2024 fails and is hereby dismissed. Each party will bear its own costs.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF DECEMBER, 2024.

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR

