



**Khan & another v Registrar Lamu; Ferro (Proposed Interested Party) (Civil Appeal (Application) 55 of 2016) [2022] KECA 1342 (KLR) (2 December 2022) (Ruling)**

Neutral citation: [2022] KECA 1342 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MALINDI  
CIVIL APPEAL (APPLICATION) 55 OF 2016  
JW LESSIT, JA  
DECEMBER 2, 2022**

**BETWEEN**

**MOHAMED TARIQ KHAN ..... 1<sup>ST</sup> APPLICANT**

**FEDERICA FERRO ..... 2<sup>ND</sup> APPLICANT**

**AND**

**REGISTRAR LAMU ..... RESPONDENT**

**AND**

**GABRIELLA ZOURAS FERRO ..... PROPOSED INTERESTED PARTY**

*(Being an appeal from the judgment and decree of the High Court of Kenya at Malindi delivered by C.W. Meoli on 5th March 2012)*

**RULING**

1. Before me is a notice of motion dated March 23, 2017 brought under certificate of urgency pursuant to sections 3, 3A and 3B of the [Appellate Jurisdiction Act](#) and rules 44 and 47 of the [Court of Appeal Rules, 2010](#). The application seeks following orders:
  1. Moot.
  2. That the hon court be pleased to grant leave and order the amendment of the appeal documents and/or inclusion of the applicant GaBriella Zouras Ferro as an interested party in the instant appeal and prosecute the appeal as such.
  3. The hon court be pleased to grant any other order in the interest and for expediency of justice.
  4. Costs of this application.



2. The application is premised on grounds on the face of the application and in the supporting affidavit sworn by Gabriella Zouras Ferro, the applicant herein. In brief the applicant seeks to be enjoined in the appeal as an interested party in order to prosecute the appeal. She avers that she had given special power of attorney to the 1<sup>st</sup> appellant herein to act together with the 2<sup>nd</sup> appellant on her behalf and in her interest with regard to the estate of Antonio Ferro, deceased, who is her late husband. That the 1<sup>st</sup> appellant filed succession proceedings in the High Court Family Division and obtained letters of administration and was appointed administrator of the said estate.
3. That pursuant to the appointment as administrator of the deceased estate on the strength of the special power of attorney donated by the applicant, the 1<sup>st</sup> appellant filed a judicial review application seeking, *inter alia*, orders of *certiorari* to quash the decision of the Land Registrar Lamu, gazetted on May 21, 2010 purporting to revoke title comprised in the title No Lamu/Block IV/162, which was the property of the deceased. That the judicial review application was dismissed by the High Court, leading to the filing of the instant appeal.
4. The applicant avers that the circumstances changed and that she has revoked the special power of attorney given to the 1<sup>st</sup> appellant and that consequently he no longer has authority to continue acting for and on behalf of the applicant in any matter. The applicant disposes further that the judicial review appeal had a date for hearing, which unfortunately has since past.
5. The application was heard virtually on the November 9, 2022. Learned Counsel Mr Kevin Wakwaya for the applicant and learned Counsel Ms Lutta for the respondent were present. Ms Lutta urged that the respondent was not opposing the application and had not filed any documents.
6. Mr Wakwaya relied on the notice of motion and the supporting affidavit of the applicant, urging that since the application was unopposed he found no need to file any submissions. Counsel urged that the application sought to have the applicant enjoined in the proceedings as an interested party for purposes of taking over prosecuting the appeal.
7. The [Appellate Jurisdiction Act](#), section 3 gives the jurisdiction of the Court of Appeal. Under sub-section (2) it provides:

"(2) For all purposes of and incidental to the hearing and determination of any appeal in the exercise of the jurisdiction conferred by this Act, the Court of Appeal shall have, in addition to any other power, authority and jurisdiction conferred by this Act, the power, authority and jurisdiction vested in the High Court."
8. The power of the High Court to enjoin parties is provided under order 1 of the [Civil Procedure Rules](#) deals with parties to a suit. There is no doubt that the High Court has power to enjoin parties to a suit, whether suo moto or on application. There is a caution as to which party can or cannot be enjoined as Nambuye, J (as she then was) in [Kingori vs Chege & 3 others](#) [2002] 2 KLR 243 held that:

“...parties cannot be added so as to introduce quite a new cause of action or to alter the nature of the suit. Necessary parties who ought to have been joined are parties who are necessary to the constitution of the suit without whom no decree at all can be passed. Therefore in case of a defendant two conditions must be met: (1) There must be a right to some relief against him in respect of the matter involved in the suit. (2) His presence should be necessary in order to enable the court effectively and completely to adjudicate upon and settle all the questions involved in the suit being one without whom no decree can be made effectively and one whose presence is necessary for complete and final decision on the questions involved in



the proceedings. A proper party is one who has a designed subsisting direct and substantive interest in the issues arising in the litigation which interest will be recognisable in the court of law being an interest, which the court will enforce. A person who is only indicated or commercially interested in the proceedings is not entitled to be added as a party. But a person may be added as a defendant though no relief may be claimed against him provided his presence is proper for a complete and final decision of the question involved in the suit and such a person is called a proper party as distinguished from a necessary party..."

9. [Black's Law Dictionary](#), 9th edition, defines "interested party" (at p 1232) thus:

"A party who has a recognizable stake (and therefore standing) in a matter".

10. The Supreme Court in the case of [Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others](#) [2014] eKLR, stated thus in regards to who is an interested party:

"(18) 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 cause is to ensure that a legal and legitimate decision is achieved."

11. The facts of this case are somewhat different as the applicant wishes to be enjoined in a pending appeal as an interested party. The appeal itself was filed by the 1<sup>st</sup> appellant as administrator of the applicant's deceased husband's estate under a special power of attorney she had given to him. The applicant deposed that she has since revoked the special power of attorney and now wishes to be enjoined in the suit in order to prosecute the appeal. That is not a role she can effectively execute in the position of an interested party.

12. I have no doubt in my mind that the applicant is not just one who has a stake in the appeal, but is a proper party as she has a designed subsisting direct and substantive interest in the issues arising in the litigation which interest will be recognizable in the court of law being an interest, which the court will enforce. Becoming an interested party in the appeal will not help the applicant.

13. The court is not helpless. Section 3A of the [Appellate Jurisdiction Act](#) gives reprieve. It provides the duty of the Court of Appeal, inter alia as:

"Duty of court

- (1) For the purpose of furthering the overriding objective specified in section 3A, the court shall handle all matters presented before it for the purpose of attaining the following aims—
- a. the just determination of the proceedings;..."

14. The applicant sought to be enjoined as an interested party, and that the court grant any other order in the interest and for expediency of justice. It is my finding that the application being unopposed



by the respondent, and in the interest of justice determination of this application, that the order that commends itself to me is as follows:

1. The application dated March 23, 2017 be and is hereby allowed in the following terms:
  - a. The applicant be and is hereby enjoined in the appeal herein as the appellant in place of the 1<sup>st</sup> appellant
  - b. There will be no order as to costs

**DATED AND DELIVERED AT MOMBASA THIS 2<sup>ND</sup> DAY OF DECEMBER 2022**

**J. LESIIT**

.....

**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

