



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: KOOME, KIAGE & MURGOR J.J.A)**

**CIVIL APPEAL (APPLICATION) NO. 20 OF 2020**

**BETWEEN**

NMN.....APPLICANT

**AND**

MKN (Suing as next friend of PKN (being a person of unsound mind).....RESPONDENT

**AND**

1. ESTHER WACU KIHARU.....1<sup>ST</sup> INTERESTED PARTY
2. PETER KIMANI NDUNGU.....2<sup>ND</sup> INTERESTED PARTY
3. DAVID NDWIGA NJUGUNA.....3<sup>RD</sup> INTERESTED PARTY
4. MARTHA WANGUI GITAHI.....4<sup>TH</sup> INTERESTED PARTY
5. BENARD BUNDI MWAL.....5<sup>TH</sup> INTERESTED PARTY
6. SAMUEL WAGURA GITHINJI.....6<sup>TH</sup> INTERESTED PARTY
7. JEREMIAH KARIUKI IRERI.....7<sup>TH</sup> INTERESTED PARTY
8. PATRICK MUCHOKI.....8<sup>TH</sup> INTERESTED PARTY
9. GEORGE MARI NGUGI.....9<sup>TH</sup> INTERESTED PARTY
10. ROSEMARY NJERI MUCHERU.....10<sup>TH</sup> INTERESTED PARTY
11. WILSON LAIBUNI GITUMA.....11<sup>TH</sup> INTERESTED PARTY
12. PETER WAMAI NYAGA.....12<sup>TH</sup> INTERESTED PARTY

*(An application for joinder as Interested Parties and Injunction pending the hearing and*

*determination of this appeal, against the judgment orders of the High Court*

*at Thika (Mbugua, J.) delivered on 2<sup>nd</sup> May, 2019*

*in*

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**RULING OF THE COURT**

The Notice of motion dated 21<sup>st</sup> February 2020 is brought by **the Interested Parties** seeking to be joined in the appeal and also seeking an injunction restraining **the respondent, M KN (Suing As Next Friend of PKN (being a person of unsound mind)** whether by themselves as agents, servants, employees from demolishing, transferring, trespassing, excising, fencing or in any way interfering with the parcel of land known as **Ruiru East/Block x/xxx (the subject land)** pending the hearing and determination of an appeal.

The application was brought on grounds that the Interested Parties are, and have been in active possession of the subject land, where they have been enjoying quiet possession since 2005. They also claim to have acquired share certificates for the respective parcels of the subject land that they occupy. They however claim that they did not participate in the proceedings in the Environment and Land Court despite the court having been notified of their presence on the subject land. They blame the disputing parties **ELC No 373 of 2017** for failure to notify them of the proceedings, that they are adversely affected by the trial court’s determination and they stand to suffer substantial irreparable loss should this Court decline to allow them to join in the appeal.

They further seek an injunction against the trial court’s orders for the reason that they have established a prima facie case with a chance of success as set out in **Giella vs Cassman Brown Co. Ltd [1973] EA 358**.

Learned counsel for the Interested Parties, **Mr Musyoki** stated that they would rely on their written submissions in their entirety. Counsel also informed us that the Interested Parties would abandon the other prayers in the application including the prayer for an order of injunction.

On his part **Mr Thuo**, learned counsel for **the applicant, NMN** informed us that the applicant would not be opposing the application for joinder. Though the respondent was served, there was no appearance, and neither did they file any written submissions.

Upon considering the application, the affidavit in support and the submissions, it is apparent that the Interested Parties are persons directly affected by the appeal in terms of **rule 77** of the Court’s rules, and having regard to the rules of natural justice, we consider that the interest of justice necessitates that they be joined in the appeal.

Accordingly, we allow the application to the extent that the 12 individuals named in the title be and are hereby joined in the appeal as Interested Parties. We direct that they be served with a copy of the appeal and other related documents. Costs in the appeal.

**It is so ordered.**

**Dated and delivered at Nairobi this 7<sup>th</sup> day of May, 2021.**

**M. K. KOOME**

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**JUDGE OF APPEAL**

**P.O. KIAGE**

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**JUDGE OF APPEAL**

**A.K. MURGOR**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**