



Galot v Galot & 2 others; Galot (Proposed Interested Party) (Environment & Land Case 1005 of 2015) [2024] KEELC 3914 (KLR) (24 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3914 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1005 OF 2015**

**AA OMOLLO, J
APRIL 24, 2024**

BETWEEN

MOHAN GALOT PLAINTIFF

AND

TARA GALOT 1ST DEFENDANT

KEVIN GALOT 2ND DEFENDANT

PAVAN GALOT 3RD DEFENDANT

AND

NARENDRA GALOT PROPOSED INTERESTED PARTY

RULING

1. This is a Notice of motion dated 5th January 2024 supported by an affidavit and supplementary affidavit sworn by Narendra Galot on the same date and 2nd February 2024 respectively seeking for the following
 - i. That the Proposed Interested Party herein, Narendra Galot, be enjoined in the proceedings as an Interested Party.
 - ii. That this Honourable Court be pleased to give such further orders as it shall deem fit and just in the circumstances of this case.
 - iii. That the costs of this application shall be provided for.
2. The motion was based on the grounds that the Proposed Interested Party is a Co - Administrator of the Estate of the late Lalchand Pusharam Galot which has an interest in the property known as LR. No. 209/7197 which is the subject matter in the instant suit.



3. That the title of LR. No. 209/7197 at entry 5 shows that, the property was transferred to Lalchand Pusharam Galot, Ganeshlal Pusharam Galot, Mohanlal Pusharam Galot and Sohanlal Pusharam Galot in equal shares thus Lalchand Galot being deceased, as an Administrator of his Estate have an interest in the suit property herein.
4. That from the prayers sought in the Plaint, it becomes necessary for the Estate of the deceased to be enjoined in this case to take care of its interests in the suit property. He added that the Plaintiff/ Respondent vide letter 13th July 2015 invited him to a meeting on the suit property to see how to go about the issues and when the meeting did not go as planned, he decided to file the instant suit.
5. The Applicant contended that the Plaintiff's actions do in fact affect the Estate of the deceased, for example his letter dated 2nd July 2015 to his lawyer with instructions to evict Simron Engineering Limited, an act that would affect what is due to the Estate.
6. The Plaintiff/Respondent opposed the motion vide replying affidavit sworn by Mohan Galot on 24th January 2024.
7. The Plaintiff stated that it is not disputed that the proposed interested party has an interest in the suit property, however the issues before the court have no relationship with any person's interest in the suit property, the issues are strictly in relation to his share of proceeds from the rental income of the suit property which share the proposed Interested Party has no interest.
8. He added that the instant suit is not an ownership dispute of the suit property but strictly with his share of proceeds in the rental income emanating from the suit property and looking at the prayers in the Plaint purely demonstrates that the prayers are all directed to the Defendants and all relate to accounts and his share in the suit property. Therefore, the proposed Interested Party not being in management and control of the proceeds of the property has absolutely no interest in the suit herein.
9. The Plaintiff contended that the proposed Interested Party has neither complained nor demonstrated his own issues with his shares or the shares of the estate he purports to represent and neither can an interested Party be allowed to bring in new issues into the suit.
10. He further contended that the proposed Interested Party has no business in discussing his share of proceeds from the rental income in the suit property and he will not suffer a prejudice if the Plaintiff is paid his share of the proceeds of the rental income and is provided with accounts by the Defendants.
11. The Plaintiff stated that the application is purely vexatious, an abuse of court process and should be dismissed with costs.

Submissions

12. The application was heard on 26/2/2024 and the applicant relied on the supporting affidavit and supplementary affidavit filed. The Applicant stated that they had annexed to letter dated 13th July 2016 by the Plaintiff inviting him for a meeting on the suit property to discuss its issues showing that this suit affects the interest of the estate of the deceased.
13. Further, that a look at the highlighted prayer (a) and (e) of the Plaint on the supplementary affidavit shows that the Plaintiff is asking for rent to be deposited in court and for accounts of rents received, yet the estate has an interest in the matter and in support cited the decision in Muruatetu case at Par.33.
14. Mr.George, counsel for the Plaintiff contended that the Applicant had misquoted the Muruatetu case and referred the court to paragraph 37 where there are 3 tests for finding out who is an interested party i.e demonstrate the personal interest that is close.



15. That the Plaintiff's interest is his own share emanating from the suit property and the Applicant has not shown what interest he has in the Plaintiff's share. Further that the Plaintiff has not demonstrated any prejudice they will suffer if the statements of accounts are produced noting also that the applicant must set out the intended submissions and their relevance to the case which he has failed to do so.
16. The Plaintiff stated that the Applicant in supplementary affidavit at paragraph 5-7 referred to a meeting between himself and the Plaintiff and also mentioned an agreement between the four brothers thus introducing new issues. He added that as per Paragraph 42 of the Muruatetu case which quoted the case of Trusted Society and Mumo Matem, the Applicant cannot be an interested party as he will be introducing new issues to the suit.
17. The Plaintiff argued that if the Applicant is introduced, the law has no solution in civil suits on what pleadings they are they going to file as they cannot file a further affidavit to build a case. That there will be no opportunity to reply to the facts thus the application should be dismissed with costs.
18. In response, Mr.Kaka, counsel for the Applicant stated that the Estate of the deceased interest is identifiable and proximate enough being one of the owners of the suit property and the Plaintiff itself is quoted to show the said proximity. Further, that the Applicant has not introduced new documents as NG1 was introduced by the Plaintiff's affidavit dated 12th October 2015.

Analysis

19. This is an application by the Proposed Interested Party to be enjoined in the suit on the ground that he is the co-administrator of the estate of the late Lalchand Pusharam Galot which partially owns the suit property. The Plaintiff has vehemently opposed the application stating that the dispute is not on ownership of the suit property but on his share of proceeds emanating from the suit property thus there is no identifiable Applicant's interest that is proximate and the motion should be dismissed.
20. In *Leonard Kimeu Mwanthi v Rukaria M'twerandu M'iringu; Nathaniel Kithinji Ikiugu & 4 others (Intended Interested Parties)* [2021] eKLR, Lady Justice Mbugua J stated,

“A party claiming to be enjoined in proceedings must have an interest in the pending litigation...”
21. From the facts pleaded, it is not easy to ascertain that while determining the interest of the Plaintiff those of the Applicant in the suit property will be affected. The case is proceeding with applications at the interlocutory stage, thus no prejudice will be occasioned to the Plaintiff if the orders sought are granted.
22. This court in ELC Civil Case No. 93 of 2011 *Naftali Waigwa Kimaru & 2 Others (suing in their capacity as joint Administration & Legal Representation of the Estate of the late Mary Wangui Kimaru vs Agnes Kajuju Phanes & 3 Others)* (unreported) held that it takes cognizance of precedence that allows a party the right to be heard however clumsy the proposed defence may be and that to deny the subject a hearing should be the last resort of the court.
23. With regard to what pleadings the Applicant will introduce as an Interested party, this Court has powers under the overriding objectives of the *Civil Procedure Act* and order 1 rule 5 to make appropriate orders including joining him as a defendant. Order 1(5) of *CPR*, provides that “it shall not be necessary that every defendant shall be interested as to all the reliefs claimed in any suit.” Consequently, the Applicant who are having parallel interests with the Plaintiff shall be added as a defendant under prayer (ii) of the application.



24. This court is also guided by the decision in the case of *Gerita Nasipondi Bukunya & 2 others v Attorney General* [2019] eKLR, which cited the Supreme Court of India in Sangram Singh vs. Election Tribunal, Kotah, AIR 1955 SC 664, at 711 and stated that:

“[T]here must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them.”

25. In conclusion to the foregoing, the Proposed Interested party’s application is allowed with a variation that he is joined as a 4th Defendant.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH APRIL 2024

A. OMOLLO

JUDGE

