



**Kimani v Embakasi Ranching Company Limited & 2 others; Ndanga (Intended Interested Party)
(Environment & Land Petition E051 of 2022) [2024] KEELC 4033 (KLR) (21 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4033 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION E051 OF 2022**

JA MOGENI, J

MAY 21, 2024

BETWEEN

MARY STELLA WANJIRU KIMANI PETITIONER

AND

EMBAKASI RANCHING COMPANY LIMITED 1ST RESPONDENT

KEVIN KIIRU CHOMBA 2ND RESPONDENT

THE CHIEF LANDS REGISTRAR 3RD RESPONDENT

AND

THOMAS MWEU NDANGA INTENDED INTERESTED PARTY

RULING

1. The application before me is dated 09/02/2024 filed by one Thomas Mweu Ndanga who seeks orders that he be enjoined to these proceedings as an interested party to the suit.
2. This suit was commenced by way of a petition filed on 21/11/2022. The petitioner stated in the petition that she purchased property known as Plot No. V 13296 of Share Certificate No. 022468 issued by the first respondent. That she paid a valuable consideration of Kshs. 900,000 and she was registered as the proprietor of the suit property with the First Respondent and issued with a Share Certificate No. 037584 in confirmation of her membership of the First Respondent and Ownership of the suit property.
3. That the suit property was subsequently surveyed and given plot number 136/807 and the certificate of title issued to the first respondent. That she has been in notorious and open occupation of the suit property since the time of purchase.



4. That on or about 2/10/2020 she discovered that the first respondent has irregularly, unlawfully and in breach of her rights allocated the property to the second respondent thus violating her right to property and right to administrative action under Article 40 and 47 respectively.
5. In the petition she seeks conservatory orders to protect her interest in the suit property.
6. Only the 2nd respondent filed an answer to the petition and a cross-petition dated 21/06/2023 where he has averred that he is unaware of the Petitioner and that in any event he is the rightful owner of the suit property having had his mother and father transfer their shares to him after a consideration of Kshs. 54,000 on 1/12/2006 and a new certificate number was issued to him.
7. That on 9/04/2011 upon issuance of new numbers to the 2nd respondent by the first respondent, G630 B and G631B he was issued with a certificate of Lease on 28/03/19 for plot Nairobi Block 136/807 by the 1st respondent. He filed a cross-petition seeking a declaration that the 2nd respondent is the lawful owner of the suit property, an eviction order against the petitioner and her agents, servants and workers and mesne profits plus general damages.
8. In this application, the applicant claims that he is the agent of the Petitioner and that he resides on the suit property and his goods were proclaimed by the 2nd respondent's auctioneers who visited the suit property. Thus he has an interest in the suit property and should be enjoined as an interested party since the decision shall affect him.
9. The 2nd respondent has opposed the application *inter alia* by stating that since the applicant is an agent of the petitioner who is the principal the petition is brought by the principal and the agent need not be enjoined to the suit. Further that since the status quo orders were not granted by the court then the applicant could not have been on the suit property.
10. The respondent avers in his replying affidavit sworn on 29/02/2024 that the claim by the intended interested party is for distress of rent and should be filed in the rent tribunal and that if there is a complaint against the auctioneers this should be filed at the Auctioneers Board. That adding the interested the intended interested party to the suit would introduce a new cause of action since the dispute is about ownership of the suit property and his claim is for distress of rent.
11. The court issued directions on disposal of the application on 18/04/2024 after the counsels moved to dispose it by way of written submissions. Both counsels filed written submissions and I have taken this into consideration before arriving at my decision.
12. It will be noted that the applicant seeks to be enjoined in this dispute as interested party. The application has been brought *inter alia* pursuant to the provisions of Order 1 Rule 10 (2) which provides as follows: -
 - (2) The court may at any stage of the proceedings, either upon or without the application of 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 have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.
13. It will be observed that the court has wide discretion to allow the joinder of a party to proceedings. However, the presence of that person must be necessary in order to enable the court adjudicate all questions involved in the suit.



14. The dispute between the petitioner and the respondents revolves around ownership of the disputed suit property. The issues that need to be determined between the petitioner and the 2nd respondent is who is the owner of the suit property. In all honesty from my understanding of the law I do not see how the presence of the applicant is going to assist the court resolve that dispute. In my view, what the applicant wants is to agitate a separate claim for proclamation of his goods which has nothing to do with the manner in which it was proclaimed by the auctioneer who is the agent of the 2nd respondent.
15. If that is the case, then what the applicant needs to do is to file his own separate suit and seek a determination of his issues. His cause of action is indeed distinct from the dispute between the petitioner and the 2nd respondent and his presence in this suit is thus not necessary.
16. Given the foregoing I am not persuaded to allow the application for the above reasons, and this application is hereby dismissed with costs.
17. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF MAY, 2024

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MOGENI J

JUDGE

In the Virtual presence of:

Ms. Mbiriwe holding brief for AGN Kamau for 2nd Respondent

Mr. Kasaya for Intended Interested Party

No appearance for Petitioner, 1st and 3rd Respondent

Ms. C. Sagina: Court Assistant

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MOGENI J

JUDGE

