



**Mae v Mahendani & 2 others; Anunda & 5 others (Interested Parties);
Mogeni (Intended Interested Party) (Environment & Land Case
50 of 2022) [2024] KEELC 4043 (KLR) (20 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4043 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 50 OF 2022
FM NJOROGE, J
MAY 20, 2024**

BETWEEN

MATHIAS MUSINDA MAE PLAINTIFF

AND

MALKIA OMAR MAHENDANI 1ST DEFENDANT

MARIAM OMAR MAHENDANI 2ND DEFENDANT

ANZUN OMAR MAHENDANI 3RD DEFENDANT

AND

SOPHIE KEMUNTO ANUNDA INTERESTED PARTY

JOBIC AMANI MWATATA INTERESTED PARTY

JACKLINE KALEKYE MATELI INTERESTED PARTY

DANIEL O'TIENO INTERESTED PARTY

EDWARD ABURI INTERESTED PARTY

ALEXANDER MWEU MUTISYA INTERESTED PARTY

AND

JEREMIAH NYARONDIA MOGENI INTENDED INTERESTED PARTY

RULING

1. The Notice of Motion dated 31st October 2023 seeks the following orders:
 - a. Spent



- b. That this honourable court be pleased to grant leave to join the interested parties herein as interested parties;
 - c. That the honourable court be pleased to direct in the interim defendants open a 12-meter access road serving the applicants' 16 properties;
 - d. That OCPD Malindi Divisional headquarters to assist in compliance as the OCS Malindi Divisional Headquarters is an interested party;
 - e. That the costs of this application be provided for.
2. The application is premised on the grounds set out on its face and the supporting affidavit of Edward Aburi who deponed that all the intended interested parties are purchasers from the plaintiff herein and are in occupation of their respective properties. He stated that the defendants have built a concrete perimeter wall across the access road cutting off 16 portions belonging to the applicants. It was also stated that no prejudice will be occasioned on the parties if the application is allowed.
 3. The 1st Defendant filed a replying affidavit on behalf of the 2nd and 3rd defendants and his behalf stating that the applicants have failed to meet the threshold that could and might have anchored their claim in these proceedings.

Disposition

4. The application was canvassed by way of written submissions. I have taken into account the submissions by the parties as well as the authorities relied upon. The issue that arises for determination is whether the applicants have met the threshold of being enjoined as interested parties.
5. The *Black's Law Dictionary*, 9th Edition at page 1232 defines an interested party as:

“A party who has a recognizable stake (and therefore standing) in the matter”
6. While the *Civil Procedure Act*, Cap 21 is silent on the concept of “interested party”, Order 41 Rule 5 of the *Civil Procedure Rules* 2010, make a reference to the term “interested party” and states:

“The court either on its own motion or on application by any interested party, remove a receiver appointed pursuant to this order on such terms as it thinks fit”
7. The ‘*Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, Legal Notice No. 117 of 2013, defines an interested party as:

“A person or an entity that has an identifiable stake or legal interest or duty in the proceedings and may not be directly involved in the litigation.”
8. The Rules further at Part II Clause 7 provides that, a person with leave of the Court may make an oral or written application to be joined as an interested party or the Court, on its own motion, may also join an interested party to the proceedings before it.
9. The *Black's Law Dictionary*, 9th Edition defines a “necessary Party” as being

“A party who being closely connected to a lawsuit should be included in the case if feasible but whose absence will not require dismissal of proceedings.”



10. In *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others* [2017] eKLR, Mativo. J. explained when an interested party ought to be enjoined in a proceeding. He stated: -

“A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights. In determining whether or not an applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party the true test lies not so much in an analysis of what are the constituents of the applicant's rights, but rather in what would be the result on the subject-matter of the action if those rights could be established. It is apparent that a party claiming to be enjoined in proceedings must have an interest in the pending litigation, but the interest must be legal, identifiable or demonstrate a duty”.

11. In the case of *Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 others* [2014] eKLR the Supreme Court of Kenya held that:

- (22) In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court's Ruling in the Mumo Matemo case where the Court (at paragraphs 14 and 18) held:

“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...”

- (23) Similarly, in the case of *Meme v. Republic* [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- “(i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
- (ii) joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) joinder to prevent a likely course of proliferated litigation.”

12. The applicants stated that they own 16 portions of land that they bought from the plaintiff and that the same are fully developed. They also stated that the defendants have built a perimeter wall across the access road to the 16 portions of land.
13. This court has noted that there are currently some developments in terms of complete houses and some partial developments on the photographic evidence that they have attached to their application. This court has also noted the alleged consent attached to the supplementary affidavit, which mentions the respondents who are opposed to the application in question.
14. What however the applicants have struggled to demonstrate is whether there is any nexus between the 16 portions of land to the suit property. Mere photographs can not suffice to enable the court deduce that the houses seen thereon are located on the suit land. In the absence of plot numbers for example the applicants have not been able to present sketches showing where their developments are located in the suit land if at all. It is not possible for example from the map to know which access road has been closed and how it affects them. The assessment of the merits of the instant application



is seriously hampered by the economy of facts on the part of the applicants. For the moment this court can not conclude that they have demonstrated that they have a recognizable stake (and therefore standing) in the matter.

15. The conclusion is that I find the applicant's application to be unsupported by sufficient evidence.
16. This is a mere application for joinder as only conclusive evidence to support joinder is lacking for now, this court finds that the applicants have not made out a case to be joined as parties to this suit and I therefore strike out the application dated 31st October 2023.
17. It was upon the applicants to articulate their claim with precision which they failed to do and hence they shall meet the costs of the application.

RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 20TH DAY OF MAY 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

