



**Mkali & 253 others v Suleiman & 28 others; Kurgat (Through the Attorney General) (Interested Party) (Environment & Land Case 231 of 2017) [2024] KEELC 3826 (KLR) (15 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3826 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 231 OF 2017**

**FM NJOROGE, J**

**MAY 15, 2024**

**BETWEEN**

**NICHOLAS MKOMA MKALI & 253 OTHERS ..... PLAINTIFF**

**AND**

**YAHYA MOHAMED SULEIMAN & 28 OTHERS ..... DEFENDANT**

**AND**

**LEONARD KURGAT (DCIO MTWAPA) THROUGH THE ATTORNEY GENERAL ..... INTERESTED PARTY**

**RULING**

1. Through an application dated 22<sup>nd</sup> November 2023 brought under Sections 1A, 1B, 3A and 63 (e) of the [Civil Procedure Act](#) and Order 1 rule 10, Order 40, and Order 51 Rules 1 and 4 of the [Civil Procedure Rules](#), 2010, the Plaintiffs seek orders that this Honourable Court be pleased to join Leonard Kurgat (DCIO Mtwapa) through the Attorney General as an interested party to this suit and costs of the application.
2. The application, which is supported by the affidavit sworn by Nicholas Mkoma Mkali, is premised on the following grounds: -
  - i. That the interested party together with Mr. Kassim Abdalla Mohamed, the 29<sup>th</sup> Defendant herein, embarked on an exercise of arresting, harassing, interfering and disturbing the quiet peaceful enjoyment of the suit property contrary to the existing order which was issued by Hon. Justice J Olola on 21<sup>st</sup> February 2019;
  - ii. That the interested party is aware that the titles held by the 29<sup>th</sup> Defendant are divisions borne out of the subject matter land known as parcel no. 151/IV/MN CR 13079;



- iii. That the proposed interested party in an unbridled contempt of court supervised illegal demolition of the Plaintiffs' structures in the suit land hence ought to be joined to demonstrate his interest on the land;
  - iv. That it is in the interest of justice that the proposed interested party be joined in the suit to enable the court make a proper finding on the issues raised notwithstanding the pendency of this suit in court;
  - v. That this honourable court be pleased to join the proposed interested party Leonard Kurgat (DCIO Mtwapa) through the Attorney General as interested party into this suit;
  - vi. That the application is made in the interest of justice.
3. The application is opposed. The 1<sup>st</sup> Defendant filed a replying affidavit on 5<sup>th</sup> December 2023, stating that the application is a waste of court's time and that the Plaintiffs ought to have included the Intended Interested Party as a party to the suit when they were granted leave to amend their originating summons. He added that the Plaintiffs' advocate has filed another suit in Kilifi CMCC E494 of 2023 against the Intended Interested Party regarding the same issues raised in the present application.
4. Similarly, the Intended Interested Party filed grounds of opposition, through the office of the Attorney General, dated 12<sup>th</sup> February 2024. The grounds raised were framed as follows: -
- i. That the plaintiffs have not demonstrated the necessity of enjoining Mr. Leonard Kurgat who is the current DCIO Mtwapa.
  - ii. That due to above failure they now want Mr. Leonard Kurgat to demonstrate why he should be enjoined in this matter which burden solely rests on them. Reference is made to ground c in the notice of motion...
  - iii. The intended interested party has no identifiable stake in the subject matter of this suit hence does not wish to be enjoined in these proceedings.
  - iv. That the intended interested party is tasked with maintaining law and order and performance of his duties cannot be a basis for enjoinder in civil proceedings.
  - v. That the intended interested party is not even a custodian of land records to be enjoined in this suit whose subject matter is land and his participation in this suit if enjoined will be very minimal and at the least just confirming they are carrying out lawful arrests on those who commit offences on the suit land and later be left hanging throughout the remainder of the proceedings.
  - vi. That the Plaintiffs seek to enjoin the intended interested party in his personal capacity while there exists an office which should have been ideal for enjoinder as Mr. Leonard Kurgat might be transferred anytime during the course of these proceedings which might lead to filing of another application of enjoinder of his successor.
5. On 6<sup>th</sup> February 2024, the court directed that the application be canvassed by way of written submissions.

### **The Plaintiffs' Submissions**

6. Relying on the definition of an interested party in the Black's Law Dictionary, 9<sup>th</sup> edition and that established by the Supreme Court in the case of *Francis Kariuki Muruatetu & another v Republic & 5 others* [2016] eKLR, counsel argued that despite knowledge of the court orders on status quo,



the intended interested party working with the 29<sup>th</sup> Defendant has continued to allegedly harass the Plaintiffs and interfering with their quiet enjoyment of the suit property. To counsel, this meant that the intended interested party has an undisclosed interest on the suit property and should thus be joined to these proceedings to demonstrate his interest.

### **The Intended Interested Party's Submissions**

7. Counsel for the intended interested party quoted the definition of an interested party given in the case of *Bernard Sitati v Director of Public Prosecution & another* [2019] eKLR; and *Kingori v Chege & 3 others* [2002] 2KLR. He highlighted to this court the elements to be considered where a party seeks to be joined as an interested party, as were stated in the decision of *Francis Muruatetu & another v Republic* Petition 15 of 2016 as was cited in *Republic v Retirement Benefits Appeals Tribunal & 952 others; ex-parte Board of Trustees Teleposta Pension Scheme* [2018] eKLR.
8. To counsel the Plaintiffs have failed to discharge the burden of proof as to why the intended interested party should be joined to these proceedings. Counsel argued that the intended interested party has no identifiable stake in this suit and does not wish to be joined herein and that his only involvement was in the course of performing his official duties on enforcement of law and order.
9. He further submitted that joinder of the intended interested party to this suit means that he will be left hanging throughout the proceedings since he is not the custodian of official records involving land. Counsel relied on the case of *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others* [2015] eKLR. Counsel urged the court to dismiss the application for lack of merits.
10. Having carefully considered the application, affidavits and annexures thereto, submissions and authorities presented by the parties herein, I find that the sole issue for determination is whether the Intended Interested Party should be joined to these proceedings as an interested party.

### **Analysis and Determination**

11. Order 1 Rule 10(2) of the *Civil Procedure Rules* states as follows: -

“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 or settle all questions involved in the suit, be added.”
12. The Plaintiffs have sought that the said Leonard Kurgat, DCIO Mtwapa, be joined to these proceedings as an interested party on grounds that he allegedly disobeyed this court's orders to maintain status quo of the suit land identified as Parcel No. 151/IV/MN CR 13079. The alleged disobedience was said to consist of the Intended Interested Party's actions of arresting and harassing the plaintiff and supervising illegal demolitions of the Plaintiffs' developments within the suit property.



13. The questions that follow therefore is who is an interested party? And does the Intended Interested Party herein fall within that category? Rule 2 of the [Constitution of Kenya \(Protection of Rights and Fundamental Freedoms\) Practice and Procedure Rules](#), 2013 provides as follows:

“interested party” means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation.”

14. The Supreme Court of Kenya in [Communications Commission of Kenya and 4 Others V Royal Media Services Limited & 7 Others](#) Petition No. 15 of [2014] eKLR defined an Interested Party as below: -

“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. 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 question 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.

We ask ourselves the following questions:

- a. what is the intended party’s state and relevance in the proceedings, and
- b. will the intended interested party suffer any prejudice if denied joinder?”

15. Further, in [Skov Estate Limited & 5 others v Agricultural Development Corporation & another](#) [2015] eKLR my brother the Hon Justice Munyao Sila in dealing with the issue of an Interested Party seeking to be enjoined in a suit stated as follows:-

“In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party.

In other words, there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended



interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.”

16. Fully adopting the reasoning in the above cases, I am not convinced that the Intended Interested Party has any identifiable stake in this suit. The Plaintiffs’ allegation that the Intended Interested Party has a hidden stake in the suit property simply because he was involved in the alleged arrests or supervision of demolitions within the suit property, is in my view unfounded. In any case, the intended joinder is not even for contempt proceedings but the entire suit. The Intended Interested Party denied having any interests on the suit property and contested that his only involvement in the suit property was in the course of performing his official duties as a law enforcement agent. My view aligns with this. He is not claiming any interest in the suit property. In the circumstances, I do not find that his presence before the court is necessary to enable the court to effectually and completely answer questions on ownership of the suit property among others issues involved in the suit.
17. The outcome is that the notice of motion dated 22<sup>nd</sup> November 2023 lacks merit and it is hereby dismissed with no orders as to costs.

**RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 15<sup>TH</sup> DAY OF MAY 2024.**

**MWANGI NJOROGI**

**JUDGE, ELC, MALINDI**

