



**Pentecostal Evangelistic Fellowship of Africa (Suing through its Registered Trustees) v Muriri & 12 others; Wekesa & 45 others (Intended Interested Party) (Environment & Land Case 1454 of 2007) [2024] KEELC 4206 (KLR) (13 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4206 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 1454 OF 2007**

**JA MOGENI, J  
MAY 13, 2024**

**BETWEEN**

**PENTECOSTAL EVANGELISTIC FELLOWSHIP OF AFRICA (SUING THROUGH ITS REGISTERED TRUSTEES) ..... PLAINTIFF**

**AND**

**JOHN MURIRI & 12 OTHERS & 12 OTHERS & 12 OTHERS & 12 OTHERS ..... DEFENDANT**

**AND**

**PATRICK WEKESA & 45 OTHERS & 45 OTHERS & 45 OTHERS & 45 OTHERS ..... INTENDED INTERESTED PARTY**

**RULING**

1. Before me for determination is the Intended Interested Parties/Applicants' Chamber Summons Application dated 04/04/2024 filed pursuant to Order 1 Rule 10 (2) & (13) of *Civil Procedure Rules* 2010, Section 3 of the *Civil Procedure Act* and all other enabling provisions of the law. The Applicants are seeking for the following Orders:
  1. Spent.
  2. The Applicants herein, Stephen Mbugua Muthui & 45 Others be joined in this suit as interested parties forthwith before the inter partes hearing of the Plaintiff's Suit dated 16/06/2011.
  3. Spent.
  4. The Interested parties be at liberty to file its pleadings in the suit.



5. That costs of this application be provided for.
2. The Application is premised on the grounds cited at the foot of the Application and it is further grounded on the Supporting Affidavit of Stephen Mbugua Muthui, the Applicant herein, sworn on 4/04/2024.
3. The Application is opposed. The Plaintiff/Respondent filed a Notice of Preliminary Objection dated 16/04/2024 which seeks to dismiss the Application dated 4/04/2024 with costs on the following grounds:
  1. Application is fatally defective on account of being statute and time barred pursuant to Section 7 of the *Law of Limitations Act*, Cap 22 of the Laws of Kenya.
4. The Plaintiff/Respondent also filed a Replying Affidavit sworn by Bishop Dr. Joseph Mophat Kiloba, a Trustee of the Plaintiff Church on 18/04/2024.
5. The Court on 9/04/2024 gave directions that both the Notice of Preliminary Objection and the Application be canvassed by way of written submissions and a Ruling date was scheduled. By the time of writing this Ruling, none of the parties had duly submitted.

#### **Issues for determination**

6. Having considered the instant Application, Preliminary Objection together with the rival affidavits, the following arise as the issues for determination before this court.
  - a. Whether the preliminary objection raised is merited.
  - b. Whether the Application dated 4/04/2024 is merited.

#### **Analysis and Determination**

##### **Whether the Preliminary Objection raised is merited.**

7. I have considered the Plaintiff/Respondent's application on a point of preliminary objection to the effect that the Intended Interested Parties/Applicants' Application be dismissed with costs for reasons that the same was fatally defective for it was time barred.
8. The issues for determination is a preliminary objection are now settled as per the Mukisa Biscuits' case. A party raising preliminary objection must confine itself to points of law, it should be on the assumption that all the facts pleaded by the other side are correct and that it cannot be raised if any fact has to be ascertained.
9. In the same case, Sir Charles Newbold P. added:

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”
10. In the instant suit the Plaintiff/Respondent has based its Preliminary Objection on the ground that the Intended Interested Parties' Application is time and statute barred pursuant to Section 7 of the *Limitation of Actions Act*, Cap 22.
11. The Intended Interested Parties state that they have parallel titles to the Plaintiff's title and they will be prejudiced if the Plaintiff's suit proceeds without their participation. It is their case that on



29/05/2012, the City Council of Nairobi allotted Nairobi/Block 190/5 (Formerly Plot No. A-366) to the 40<sup>th</sup> intended interested party under the Matopeni Kayole Scheme – HDDCD001/6. That the 40<sup>th</sup> intended interested party obtained registration as a lease holder and acquired a certificate for the plot Nairobi/Block 190/5 (Formerly Plot No. A-366) from the District Land Registry at Nairobi. He added that the suit property is composed of the same plot of land given to the 40<sup>th</sup> intended interested party and the other beneficiaries of the Matopeni Kayole Scheme – HDDCD001/6 in diverse dates.

12. Section 7 of the *Limitation of Actions Act* provides:

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person”

13. In the case of *Edward Moonge Lengusuranga v James Lanaiyara & Another* [2019] eKLR, where it was held that;

“Section 7 of the *Limitation of Actions Act*, provides that an action to recover land may not be brought after the end of twelve years from the date on which the right accrued. This means that the first Defendant having bought the suit land in the year 1999 (as per Paragraph 6 of the Plaintiff) and taken possession of the same, the Plaintiff herein could only seek to recover it from the 1<sup>st</sup> Defendants, but only if he did so within twelve years after the Sale Agreement.”

14. The Intended Interested Parties, particularly the 40<sup>th</sup> Intended Interested Party has asserted that he was allocated his suit property on 29/05/2012 (as per paragraph 3 of the Supporting Affidavit sworn by Stephen Mbugua Muthui, the 40<sup>th</sup> Intended Interested Party dated 4/04/2024) and has also provided evidence which supported his allegation. In view of this, the 40<sup>th</sup> Intended Interested Party’s right accrued on 29/05/2012. I find that the cause of action in respect to the 40<sup>th</sup> Intended Interested Party arose on 29/05/2012.

15. The purpose of the Law of Limitation was stated in the case of *Mehta v Shah* [1965] E.A 321, as follows;

“The object of any limitation enactment is to prevent a Plaintiff from prosecuting stale claims on the one hand, and on the other hand protect a Defendant after he has lost evidence for his defence from being disturbed after a long lapse of time. The effect of a limitation enactment is to remove remedies irrespective of the merits of the particular case.”

16. I am guided by Potter, JA’s statement on the rationale of the Law of Limitation in the case of *Gathoni -vs- Kenya co-operative Cremires Ltd* (1982) KLR 104 which was as follows: -

“The law of limitation of actions is intended to protect defendants against unreasonable delay in bringing of suits against them. The statute expects the intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.”



17. A suit barred by limitation is a claim barred by law, hence by operation of law, the Court cannot grant the relief sought. In the case of *Iga v Makerere University* [1972] EA, the Court had this to say on the Law of Limitation;

“The Limitations Act does not extinguish a suit or action itself, but operates to bar the claim or remedy sought for and when a suit is time barred the Court cannot grant the remedy or relief sought.”

18. The Intended Interested Parties needed to commence their claim within the time prescribed under Section 7 of the *Limitation of Actions Act*. Section 7 of the *Limitation of Actions Act* provides that an action for recovery of land may not be brought after the lapse of 12 years from the date the right of action accrued to the Intended Interested Parties. Therefore, in regard to the allotment of 29/05/2012, the limitation period lapses on or about 29/05/2024. Essentially, therefore, the Intended Interested Parties/Applicants’ Application having been filed on 8/04/2024, was filed within time.

19. Based on the above, it is my finding that the grounds in the Preliminary Objection are not sufficient enough to dismiss the Intended Interested Parties/Applicants’ Application. The Preliminary Objection is hereby dismissed.

#### **Whether the Application dated 4/04/2024 is merited.**

20. The Intended Interested Parties/Applicants seek to be joined as interested parties in the suit. It is their contention that they have parallel titles to the Plaintiff’s title herein and will be prejudiced if the Plaintiff’s suit proceeds without their participation. They averred that their presence is necessary at the hearing of this case as they may be affected by the orders of this Court.

21. To begin with, the 40<sup>th</sup> Intended Interested Party contended that he is duly authorized by the other Intended Interested Parties to swear the Supporting Affidavit on their behalf. The capacity of a party to bring a matter before a court of law is not a matter of fact but of law and it needs to be determined first before I delve into other issues of the application. Now, the 40<sup>th</sup> Intended Interested Party alleges that he has been duly authorized by the other Intended Interested Parties to swear the Supporting Affidavit on their behalf.

22. I perused the present Application and noted that 40<sup>th</sup> Intended Interested Party purported to have annexed the Authority and that it was marked at SMM-1. A perusal of the Application filed in Court shows that the only document marked as SMM-1 is the Plot formalization card issued to the 40<sup>th</sup> Intended Interested Party and not an authority to act on behalf of the other co-Intended Interested Parties. The Intended Interested Parties/Applicants only filed one supporting affidavit sworn by the 40<sup>th</sup> Intended Interested Party.

23. Order 1, rule 8 of the *Civil Procedure Rules* 2010 provides as follows: -

“One person may sue or defend on behalf of all in same interest

8 (1) Where numerous persons have the same interest in any proceedings, the proceedings may be commenced, and unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them. (2) The parties shall in such case give notice of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct. (3) Any person



on whose behalf or for whose benefit a suit is instituted or defended under sub rule (1) may apply to the court to be made a party to such suit.”

24. The law provides that one person may sue or defend on behalf of all in same interest. My understanding of Order 1 Rule 8 (1) (2) and (3) the Civil Procedure Rules is that in the event a person does not have written authority from the co-plaintiffs or co-defendants, then he cannot purport to represent them. Lack of such an authority does not necessarily void the proceedings, but rather it incapacitates the plaintiff or defendant from purporting to represent the co-plaintiffs or co-defendants. The suit is treated as that of the one plaintiff or defendant. See the case of Hezekia Kipkorir Maritim & 10 others v Philip Kipkoech Tenai & 2 others [2016] eKLR.
25. Accordingly, the 40<sup>th</sup> Intended Interested Party has locus to make this application in his own right as the only Intended Interested Party.
26. The 40<sup>th</sup> Intended Interested Party/Applicant claimed that he was allotted Nairobi/Block 190/5 (Formerly Plot No. A-366) by the City Council of Nairobi on 29/05/2012 under the Matopeni Kayole Scheme -HDDCD001/6. He obtained registration as the lease holder and acquired a certificate of Lease for the plot. The suit property comprises the same land allocated to them and other beneficiaries of the Matopeni Kayole Scheme -HDDCD001/6 on various dates. He, along with the other beneficiaries, assert a stake in the suit, anticipating potential impact from its outcome. He argued their inclusion as necessary parties would enable the court to fully adjudicate and resolve all issues in the suit. He advocated for the intended interested parties’ involvement in the interest of justice ahead of the inter partes hearing of the Plaintiff’s Suit. He produced a Plot Formalization Card No. SN. 3790 issued on 29/05/2012. There is a receipt no. 309050 dated 4/11/2013 attached thereon indicating that Stephen Mbugua Muthui paid Kshs. 5,000.00 for stand premium and for the plot card for Plot A 366. Stephen Mbugua Muthui also produced a Certificate of Lease issued on 3/05/2018 for Nairobi/Block 190/5 and a lease document registered on 3/05/2018.
27. On the other hand, the Plaintiff argues that the applicants must demonstrate their interest in the disputed property to be considered in the case. Only 4 out of 46 Intended Interested Parties provided titles to support their claims. The Plaintiff contends that the application is time-barred under Section 7 of the Limitation of Actions Act, having been made outside the 12-year period. Despite attempts by the Plaintiff to address the issue previously, the court directed third parties claiming interest in the property to be enjoined in the suit. The Plaintiff complied with this order by advertising in a newspaper. It’s evident that the Intended Interested Parties were aware of the suit, as shown by their appointment of legal representation. The Plaintiff argues against granting the orders sought by the applicants and requests the dismissal of the application with costs.
28. 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.”
29. The issue that crystalizes for determination in an application for joinder is whether the intended interested party has met the criteria for joinder.
30. The 40<sup>th</sup> Intended Interested Party seeks joinder because he has a parallel title to the Plaintiff’s title herein and will be prejudiced if the Plaintiff’s suit proceeds without his participation. The criteria upon



which the Courts exercise jurisdiction to grant orders of joinder is spelt out in Order 1 Rule 10(2) of the Civil Procedure Rules, 2010. The 40<sup>th</sup> Intended Interested Party was therefore required to demonstrate that his presence as a party in this matter is necessary for the effectual and complete adjudication and settlement of the present suit.

31. In the case of Skov Estate Limited & 5 others v. Agricultural Development Corporation and another [2015] eKLR, my brother Judge Munyao emphasized the point that the applicant in an application of this nature must demonstrate that it is necessary that he/she be enjoined in the suit. That becomes important if he has to show that the issues before the Court cannot be effectively adjudicated upon in his absence. Being affected by the order of the Court is not enough. The Applicant must show that in addition to being affected the reliefs which will be granted will not be fully decided upon because an important element of fact, which he has, shall miss if he is not added to the proceedings.
32. The 40<sup>th</sup> Intended Interested Party's plea for joinder is entirely predicated on his Certificate of Lease for property known as Nairobi/Block 190/5 that was issued to him on 3/05/2018. He states that his title is parallel to the Plaintiff's title. It is the Plaintiff's contention that while time was still running, the Plaintiff did attempt to address the issue of joinder, vide Application dated 6/11/2015, when the Plaintiff had sought leave of the Court to enjoin all third parties who alleged to have an interest in the suit property be enjoined in the suit as Defendants. It has been demonstrated that vide Order dated 30/11/2015, the Court directed that that other third parties who claim to have a purchaser's interest and any other person who has an interest in parcel of land L.R. No. 18615 (I.R.66643/1) be and are hereby enjoined in the suit as Defendants. The Court also directed that this Order and or notice of the suit and service of the same be undertaken through substituted service by advertisement in either the Nation Newspaper or East African Standard on a week day. The said order has been annexed and marked MK-1. The Plaintiff contended that they complied with the order and posted an advertisement on the East African Standard Newspaper for Monday, 7/12/2015. The said newspaper advert extract has been adduced as evidence before this Court.
33. A perusal of the record demonstrates that the Plaintiff was aware that there may be a need for the joinder of third parties. The Court subsequently allowed their application and ordered that other third parties who claim to have a purchaser's interest and any other person who has an interest in parcel of land L.R. No. 18615 (I.R.66643/1) be and were enjoined in the suit as Defendants. The said Court order given on 30/11/2015 has not been vacated or set aside.
34. The Court already held that the 40<sup>th</sup> Intended Interested Party has locus to make this application in his own right as the only Intended Interested Party. Out of the 46 Intended Interested Parties/Applicants, the only documents of ownership that have been adduced before me are those belonging to Stephen Mbugua Muthui, Caleb Odhiambo, Anastacia Awino Odhiambo and Francis Matheka Kambo. These four (4) parties have produced Certificates of Lease issued to them in respect of property known as Nairobi/Block 190. Stephen Mbugua Muthui was issued with a Certificate of Lease on 3/05/2018 for Nairobi/Block 190/5. Caleb Odhiambo was issued with a Certificate of Lease on 19/02/2019 for Nairobi/Block 190/66, Anastacia Awino Odhiambo was issued with a Certificate of Lease on 19/02/2019 for Nairobi/Block 190/67 and Francis Matheka Kambo was issued with a Certificate of Lease on 1/11/2020 for Nairobi/Block 190/22. Out of these four (4), I find that the 40<sup>th</sup> Intended Interested Party, Stephen Mbugua Muthui is the only party that has attempted to sufficiently prove that he has an interest in the land known as L.R. No. 18615 (I.R.66643/1) as he has attempted to demonstrate the root of his title. The other three (3), Caleb Odhiambo, Anastacia Awino Odhiambo and Francis Matheka Kambo failed to produce evidence before this Court to demonstrate when they were allocated their portions in the suit property.



35. On 30/11/2015, the Court directed that any other person who has an interest in parcel of land L.R. No. 18615 (I.R.66643/1) be and are hereby enjoined in the suit as Defendants. The 40<sup>th</sup> Intended Interested Party claims to have interest in land L.R. No. 18615 (I.R.66643/1). To this end, I find that the Intended Interested Party has satisfied the criteria for joinder. There is sufficient evidence before me to warrant the joinder of the 40<sup>th</sup> Intended Interested Party alone to the suit.
36. The upshot of the foregoing is that the application herein has merit and is hereby allowed in terms of prayers 2, 4 and 5.

### **Disposal orders**

37. To this end, I order as follows:
- a. The Preliminary Objection dated 16/04/2024 is dismissed.
  - b. The Chamber Summons Application dated 4/04/2024 is allowed in terms of enjoining Stephen Mbugua Muthui of ID No. 7791470 as an interested party forthwith before the inter partes hearing of the Plaintiff's Suit dated 16/06/2011.
  - c. The Interested Party, Stephen Mbugua Muthui of ID No. 7791470 is directed to file his pleadings within 14 days and serve the plaintiff from the date of this ruling failure to which order (b) above shall lapse at the end to the 14 days from the date hereof.
  - d. In the interest of justice, the plaintiff is directed to file any supplementary affidavit in response to the Interested Party's response within 7 days of service If need be. The hearing of 17/06/2024 shall be heard as scheduled.
  - e. Costs shall be in the cause.
38. It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13<sup>TH</sup> DAY OF MAY, 2024.**

.....  
**MOGENI J**

**JUDGE**

**In the Virtual presence of: -**

Ms. Kemuto for Interested Party

Mr. Githinji for 11<sup>th</sup> and 12<sup>th</sup> Defendant

No appearance for Plaintiffs

No appearance for 1<sup>st</sup>-10<sup>th</sup> defendant

C. Sagina - Court Assistant

