



**Opiyo v Registrar of Land & another; Oucho (Intended Interested Party) (Environment & Land Case 121 of 2022) [2024] KEELC 4681 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4681 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 121 OF 2022  
NA MATHEKA, J  
JUNE 13, 2024**

**BETWEEN**

**PATRICK OMONDI OPIYO ..... APPLICANT**

**AND**

**REGISTRAR OF LAND ..... 1<sup>ST</sup> RESPONDENT**

**LAND ADJUDICATION OFFICER WAITIKI SETTLEMENT  
SCHEME ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**JOHN ABURA OUCHO ..... INTENDED INTERESTED PARTY**

**RULING**

1. The application is dated 21<sup>st</sup> February 2024 and is brought under Rule 1 Rules of the [Civil Procedure Rules](#), Section 1A, 34, 6 and 7 of the [Civil Procedure Act](#) seeking the following orders;
  - a. That this application be certified as urgent and service thereof be dispensed within the first instance.
  - b. That John Abura Oucho be joined as interested party and be granted leave to file response and counterclaim if any.
  - c. That costs of this application be provided for.
2. It is supported by the affidavit of John Abura Oucho and premised on the grounds that the Respondent herein (Patrick Omondi Opiyo) filed an application for vesting orders for declaration as holding freehold interest in plot 1960 Mombasa Likoni settlement scheme on the 27<sup>th</sup> October 2022. That the said application was amended on the 7<sup>th</sup> February 2023. The said application was heard and consent order between the applicant and the Respondent was recorded on the 12<sup>th</sup> June 2023 and later



obtained eviction orders on the 13<sup>th</sup> September 2023. The applicant in the said application withheld and/or concealed material facts and failed to enjoin the intended interested party knowing very well he was the beneficial and legitimate owner of the suit property and the person in possession and enjoyment of the same. That the said non-disclosure and concealment was purposeful and calculated to wind-hook the court to issue order affecting the interested party without giving him a chance to be heard. That the applicant and Respondent connived so as to dispossess the interested party as the Respondent had all record showing that the suit parcel of Land belonged to the intended interested party. That it is only fair and just that the intended interested party is given a chance to be heard as he is the person to be affected by the come out of the suit. That unless the orders are granted the intended interested party stand to suffer immense irreparable loss and damage.

3. The plaintiff stated that the Applicant is not the owner of plot No. Likoni/Waitiki/1960. (Annexed "POOI" is a copy of title deed). That the Applicant did not purchase the said land and the alleged sale agreement annexed is a fraudulently agreement in 2009 the Applicant filed a suit ELC No. 2921/2009 alleging to have bought the suit property from myself and he obtained Court Order. (Annexed is a copy of Court Order and Undertaking as to damages marked "P002" and "P003"). That the said case proceeded and he lost the case then filed an Appeal No. ELC No. 24 of 2021 which also upheld the Lower Court Judgment that he did not purchase the land from him. During the pendency of the case the suit property which formed the Waitiki land was marked disputed land. No title was to be issued by Likoni adjudication until the case in court ELC No. 2921 of 2009 between *John Abura Oucho v Patrick Omondi Opiyo* was concluded. That the order issue on ELC No. 2921 of 2009 barred the Applicant from carrying out any construction or changing the character of the land, thus any development in the land is a contempt of Court and should pang the contempt of Court Order by demolishing all the structures he constructed in contravention to the Court Order. That the application for vesting order before Court was for implementation of Judgments and informing the land adjudication of the outcome of the dispute to enable them issue title to the rightful person. That the Respondent lost the suit and title deed for Likoni/Waitiki/1960 was issued to him. That the Applicant is a fraudster who prepares orders not issued by the Court and the Court should arrest him to explain where he got order issued on 14<sup>th</sup> September 2023. That there is no need for the Applicant to be enjoined in the vesting application. That the application dated 21<sup>st</sup> February 2024 is an abuse of Court process and the same be dismissed with costs.
4. This court has considered the application and the submissions therein. The applicant seeks to be enjoined as a defendant or an interested party. As to whether he ought to be enjoined in the suit as a defendant or an interested party, the Court is guided by Order 1 Rule 10(2) of the [Civil Procedure Rules](#) which states;

“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”.



5. The Supreme Court decision in *Communications Commission Of Kenya And 4 Others v Royal Media Services Limited & 7 Others* Petition No. 15 of [2014] eKLR where the Court pronounced itself on who an Interested Party is and held as follows:

“In determining whether the applicant should be admitted into these proceedings as an interested party, we are guided by this Court’s decision 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. 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.?”

6. It is therefore clear that the parties who should be made parties to a suit are persons who are necessary for a complete and effectual adjudication of disputes before the court. The applicant states that he was the beneficial and legitimate owner of the suit property and the person in possession and enjoyment of the same. That a consent order between the applicant and the Respondent was recorded on the 12<sup>th</sup> June 2023 and later obtained eviction orders on the 13<sup>th</sup> September 2023. That the said non-disclosure and concealment was purposeful and calculated to wind-hook the court to issue order affecting the interested party without giving him a chance to be heard. The plaintiff stated that the order issue on ELC No. 2921 of 2009 barred the Applicant from carrying out any construction or changing the character of the land, thus any development in the land is a contempt of Court and should pang the contempt of Court Order by demolishing all the structures he constructed in contravention to the Court Order. That the suit land does not belong to the interested party/applicant herein. Serious triable issues have been raised in this matter including fraud. I find that the applicant has an interest in this matter and ought to be enjoined. The plaintiff submitted that he has no claim against the applicant but the defendants. I find that joinder of the applicant as an interested party will result in the complete settlement of all the question involved in the proceedings. I find this application is merited and order that the applicant be enjoined in this matter and is granted to file the necessary pleadings within the next 14 days from today’s date. Costs to be in the cause.

It is so ordered.



**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 13<sup>TH</sup> DAY OF JUNE 2024.**

**N.A. MATHEKA**

**JUDGE**

