



Aamuru Gituto Farmers Co-operative Society Limited v Chief Land Registrar & 12 others; Mereka (Interested Party) (Environment & Land Case 52B of 2023) [2024] KEELC 5802 (KLR) (2 August 2024) (Ruling)

Neutral citation: [2024] KEELC 5802 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 52B OF 2023
BM EBOSO, J
AUGUST 2, 2024**

BETWEEN

AAMURU GITUTO FARMERS CO-OPERATIVE SOCIETY LIMITED PLAINTIFF

AND

**CHIEF LAND REGISTRAR 1ST DEFENDANT
DIRECTOR OF SURVEYS 2ND DEFENDANT
COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT 3RD DEFENDANT
ATTORNEY GENERAL 4TH DEFENDANT
FRANCIS NDUNGU MWAURA 5TH DEFENDANT
PETER NDUATI MBAU 6TH DEFENDANT
SIMON NGURE KUNG’U 7TH DEFENDANT
NIMKEN ENTERPRISES LIMITED 8TH DEFENDANT
GATANGA KWAO LIMITED 9TH DEFENDANT
DAVID NG’ANG’A KAMAU 10TH DEFENDANT
ABRAHAM KARUTU 11TH DEFENDANT
SUNSTAR HOTEL LIMITED 12TH DEFENDANT
HEZEKIAH NJUGUNA THIGA 13TH DEFENDANT**

AND

DAVID M MEREKA INTERESTED PARTY



RULING

1. Falling for determination in this ruling is the notice of motion dated 18/1/2024, brought by David Mukii Mereka. The applicant is an advocate of this court. Through the motion, the applicant seeks an order joining him as an interested party in this suit. He also seeks an order allowing him to attend hearings, out of court negotiations and, generally, to support the plaintiff's case.
2. The application is premised on the grounds set out in the motion and in the applicant's affidavit sworn on 18/1/2024. The applicant filed brief written submissions dated 5/2/2024. Parties were granted the opportunity to make brief oral submissions.
3. The case of the applicant is that he is a shareholder of the plaintiff Society and a resident of Kandara, Muranga County, where most of the Society's 4,000 or more members hail from. He contends that he has "local knowledge" of matters pertaining to this suit from a historical perspective. It is his case that he will make useful and substantial contribution in the proceedings and in any out of court negotiations owing to his over 40 years of legal practice, coupled with his experience as a member of the Chartered Institute of Arbitrators. He contends that he is not interested in monetary gain, adding that he is keen to make a pro bono contribution towards the resolution of the dispute because the subject matter of the dispute is close to his heart. He seeks to make a pro bono contribution for the sake of the members of the Society.
4. The plaintiff opposed the application through a replying affidavit sworn by George Kuria Njuguna on 13/2/2024. On his part, the 8th defendant uploaded an unsigned affidavit. It is not clear if he paid the requisite court fees relating to the affidavit. The 9th defendant opposed the application through an affidavit dated 11/3/2024. As observed, oral submissions were tendered in the virtual court on 18/3/2024.
5. The court has considered the application; the responses to the application; and the submissions that were tendered on the application. The single question to be determined in this ruling is whether the application satisfies the criteria for joinder to a civil suit as an interested party.
6. The legal framework on joinder in relation to an ordinary civil suit is contained in Order 1 rule 10(2) of the [Civil Procedure Rules](#) 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."
7. Over the years, our superior courts have developed clear principles that guide the adjudication of applications relating to joinder. In [Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others \(Interested Parties\); Death Penalty Project \(Intended Amicus Curiae\)](#)



(Petition 15 & 16 of 2015 (Consolidated)) [2016] the Supreme Court of Kenya stated the following on joinder:

“One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the court; hence, sufficient grounds must be laid before the court, on the basis of the following elements:

- i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
- ii. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
- iii. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the court”.

8. Has the applicant satisfied the above criteria? I do not think so. First, the applicant stated that he is a member of the plaintiff Society and seeks joinder to “generally support the plaintiff’s case or as this Honourable Court may direct.” Clearly, the applicant is a partisan player who can effectively support the plaintiff’s case by offering himself to the plaintiff as a witness. Should the plaintiff find his evidence useful, they will be at liberty to lead evidence from him. Secondly, the applicant does not require to be joined as a party to this suit in order to offer the useful “local knowledge” that he is seized of. He can perfectly tender it as part of the plaintiff’s evidence. This view is informed by the fact that the applicant has unequivocally stated that he wants to be admitted as an interested party so that he can generally support the plaintiff’s case. The decision to call him as a witness is that of the plaintiff.

9. For the above two reasons, the finding of the Court is that the application dated 18/1/2024 does not satisfy the criteria for joinder of a party to a civil suit. Consequently, the application is rejected. There is no basis to warrant a departure from the general principle in Section 27 of the Civil Procedure Act. It therefore follows, that the applicant will bear costs of the application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 2ND DAY OF AUGUST 2024

B M EBOSO

JUDGE

In the presence of:

Ms Wachira and Gitonga Muriuki for the Plaintiff

Mr Kaberia Arimba for the 9th Respondent/Defendant

Mr Gahinga for the 10th Respondent/Defendant

Mr Muhigi for the 12th Respondent/Defendant

Ms Njoroge for the Applicant

Court Assistant: Elvis Hinga

