



**Mutua v Musyimi ((Being sued as the administrator of the Estate of the Late Isaac Musyimi Kamau)); Muli & another (Intended Interested Party) (Environment and Land Appeal E017 of 2023) [2024] KEELC 6404 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6404 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ENVIRONMENT AND LAND APPEAL E017 OF 2023**  
**CA OCHIENG, J**  
**SEPTEMBER 30, 2024**

**BETWEEN**

**JOHN MULI MUTUA ..... APPELLANT**

**AND**

**FRANCIS MWANZA MUSYIMI ..... DEFENDANT**

**(BEING SUED AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE ISAAC MUSYIMI KAMAU)**

**AND**

**STEPHEN KYANGA MULI ..... INTENDED INTERESTED PARTY**

**BERNARD MUIA MULI ..... INTENDED INTERESTED PARTY**

**RULING**

1. What is before Court for determination is the Intended Interested Parties' Notice of Motion Application dated the 20<sup>th</sup> April, 2024 brought pursuant to Section 1A, 1B, 3A and 63(c) and (e) of the *Civil Procedure Act* and Order 1 Rule 10, Order 40 Rule 1 including Order 51 Rule 1 of the *Civil Procedure Rules*. The Applicants seek the following Orders:-
  1. Spent.
  2. That the Applicants/Proposed Interested Parties Stephen Kyanga Muli and Bernard Muia Muli, be enjoined in ELC Appeal No. 13 of 2023 as Interested Parties.
  3. That the costs of this Application be borne in the cause.
  4. Any other order that the Court deems to be just in the circumstances.



2. The Application is premised on the grounds on the face of it and the Supporting Affidavits of Stephen Kyanga Muli and Bernard Muia Muli where they depose that they have been in occupation of the suit property for more than 15 years. They contend that their grandfather purchased the suit property in 1981 through payment of instalments by paying school fees for the son of the late Isaac Musyimi Kamau. They claim they have since known that the suit property belongs to them and have farmed it as long as they can remember. They insist that they have always understood the suit property is ancestral. They reiterate that being ancestral land, bearing in mind their right to inherit, they will be greatly affected by the outcome of the Appeal. They reaffirm that no party will suffer prejudice if the instant application is allowed.
3. The Respondent opposed the instant Notice of Motion Application by filing a Replying Affidavit sworn by Francis Mwanza Musyimi where he deposes that the said application is a non-starter and unsustainable in law. He contends that the 1<sup>st</sup> and 2<sup>nd</sup> Intended Interested Parties are children of the Appellant and their interests are well catered for, by their father. He avers that the 1<sup>st</sup> and 2<sup>nd</sup> Intended Interested Parties were well aware of the case in the lower court and now seek to introduce new and contradictory evidence at the Appellate stage, yet the Court is only supposed to deal with issues that had been raised in the lower court, at this juncture. He reiterates that the application has been brought in bad faith and is an abuse of the court process.
4. The Application was canvassed way of written submissions.

#### **Analysis and Determination**

5. Upon consideration of the instant Notice of Motion Application including the respective affidavits and rivalling submissions, the only issue for determination is whether the Applicants' should be enjoined in this Appeal as Interested Parties.
6. On joinder of parties, Order 1 Rule 10 (2) of the [Civil Procedure Rules](#) stipulates 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. [Black's Law Dictionary](#), 9<sup>th</sup> Edition, defines an 'Interested Party' as “A party who has a recognizable stake (and therefore standing) in a matter”.
8. Further, in the case of [Trusted Society of Human Rights Alliance V Mumo Matemu & 5 Others](#) (2015) eKLR the Court defined an Interested party as follows:-
  - “(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.”



9. While in the case of *Francis Karioko Muruatetu & another v Republic & 5 others* [2016] eKLR (Petition No. 15 of 2015), the Supreme Court vide its Ruling dated the 28<sup>th</sup> January, 2016 provided parameters to be considered for joinder of an Interested Party where it stated thus:-

“From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party:

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.”
10. On perusal of the Record of Appeal which contains proceedings and Judgment of the lower court, I note the Intended Interested Parties never sought joinder in the said suit. Further, the Intended Interested Parties have not denied being the children of the Appellant. From the averments in the Supporting Affidavit, they have not indicated whether they are administrators of their late grandfather’s Estate. It is trite that at the Appellate level, the Court rarely admits fresh evidence but deals with what was tendered in the lower court to make a determination of the Appeal. Further, I note the issue of ancestral land was never raised by the Applicants’ father in the lower court. From a cursory glance at the Intended Interested Parties’ affidavits, I opine that they have failed to provide plausible reason for joinder and demonstrate what prejudice they stand to suffer if they are not included in these proceedings.
11. Based on the facts as presented and relying on the legal provisions I have quoted while associating myself with the cited decisions, it is my considered view that the Intended Interested Parties’ have no stake in these proceedings and their involvement in these proceedings is not necessary to enable the court effectually and completely adjudicate upon as well as settle all questions involved in the Appeal. Further, they have not demonstrated what prejudice they stand to suffer if the Appeal proceeds as it is.
12. It is against the foregoing that I find the Notice of Motion Application dated the 20<sup>th</sup> April, 2024 unmerited and will disallow it.
13. Costs will be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:



Ongamo for Applicant

Kyalo for Respondent

Thuo for Appellant

Court Assistant – Simon/Ashley

