



**Mudembei & another v Malembi & another; Anthony Wanyonyi Mwasame  
& 25 others (Proposed Interested Parties) (Environment & Land Case  
3 of 2020) [2024] KEELC 6132 (KLR) (19 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6132 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 3 OF 2020  
EO OBAGA, J  
SEPTEMBER 19, 2024**

**BETWEEN**

**TRUFOSA CHEREDI MUDEMBEI ..... 1<sup>ST</sup> PLAINTIFF**

**NEVIN EGESA JEDEVERA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**JOHN K.MALEMBI ..... 1<sup>ST</sup> DEFENDANT**

**SETTLEMENT FUND TRUSTEE ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**ANTHONY WANYONYI MWASAME ..... PROPOSED INTERESTED PARTY**

**FREDRCIK BARASA ..... PROPOSED INTERESTED PARTY**

**BONIFACE MALINGU ..... PROPOSED INTERESTED PARTY**

**JOHN WEYA ..... PROPOSED INTERESTED PARTY**

**STEPHEN MUKOPI ..... PROPOSED INTERESTED PARTY**

**NEVILLE NGAO SITUMA ..... PROPOSED INTERESTED PARTY**

**WINFRIDA NASIMIYU ..... PROPOSED INTERESTED PARTY**

**JONAH WALUKAYA ..... PROPOSED INTERESTED PARTY**

**IMON OMEGA ..... PROPOSED INTERESTED PARTY**

**SAMSON OTERI ..... PROPOSED INTERESTED PARTY**

**KENNEDY KEYA ..... PROPOSED INTERESTED PARTY**

**DAVID MOYA ..... PROPOSED INTERESTED PARTY**

**FREDRCIK AMANI ..... PROPOSED INTERESTED PARTY**



**DAVID CHEMASIA ..... PROPOSED INTERESTED PARTY**  
**JOHN AMERI AMADI ..... PROPOSED INTERESTED PARTY**  
**SHEM EBOSO ESEBWE ..... PROPOSED INTERESTED PARTY**  
**ZABETH MAKOKHA ..... PROPOSED INTERESTED PARTY**  
**HEM WASHIKO ..... PROPOSED INTERESTED PARTY**  
**KENNEDY WAKHISI ..... PROPOSED INTERESTED PARTY**  
**EVANS OMERI ..... PROPOSED INTERESTED PARTY**  
**JOHN KEDODE ..... PROPOSED INTERESTED PARTY**  
**HADIJA WANGA ..... PROPOSED INTERESTED PARTY**  
**ISAYA WASIKE ..... PROPOSED INTERESTED PARTY**  
**HARUN KWEYA ..... PROPOSED INTERESTED PARTY**  
**EUNICE SIFUNA ..... PROPOSED INTERESTED PARTY**  
**DOUGLAS MAKOKHA ..... PROPOSED INTERESTED PARTY**

### RULING

1. This is a ruling in respect of a Notice of motion dated 1.2.2024 in which the Applicants are seeking the following orders:-
  1. Spent
  2. Pending the hearing interparties and thereafter pending the hearing and determination of this application there be a stay of execution of the judgment entered in favour of the Plaintiffs/ Respondents on 13/10/2023 and all consequential orders arising therefrom.
  3. The Interested parties/applicants be joined as either Interested parties or Defendants to the suit herein.
  4. Upon granting prayer 3 above, the Judgement made on 13/10/2023 and all consequential orders be set aside and the applicants be allowed to defend the suit filed by the plaintiffs/ Respondents.
  5. Any other order or directions the court shall give.
  6. Costs be provided for.
2. The Applicants contend that they purchased various portions of land from the 1<sup>st</sup> Defendant between 2013 and 2023. They have developed their respective portions and are residing on the same. They contend that they were not aware of proceedings in this case until the area chief informed them that an eviction order had been issued against them.
3. They therefore state that they should either be joined as interested parties or defendants and that judgment be set aside so that they can be heard.
4. The applicants' application was opposed by the Respondents based on grounds of opposition dated 7.6.2024 and filed in court on 10.6.2024. The Respondents contend that this application is res judicata



as this court has made a ruling on a similar application where six of the present applicants were parties to it. They therefore argue that this court is functus officio.

5. The Respondent also contend that the applicants are out to waste the court's time and that they are out to prevent them from enjoying the fruits of their judgment.
6. I have considered the Applicant's application as well as the opposition to the same by the Respondents. I have also considered the oral submissions during the hearing of this application.
7. The issues which emerge for determination are firstly whether the applicants should be joined in these proceedings. Secondly, whether this judgment should be set aside.
8. On the first issue, it is important to state that this case was filed on 23.10.2000 before the High Court at Eldoret. The case was fully heard and a judgement delivered on 17.5.2015. The 1<sup>st</sup> Defendant/Judgment Debtor appealed to the Court of Appeal. The Court of Appeal delivered its judgement on 28.11.2019 whereby it was held that the High Court had no jurisdiction to entertain the case when there was the Environment and Land Court which had the jurisdiction to hear it.
9. The case was remitted to the Environment and Land Court where it was heard afresh and judgment delivered on 13.10.2023. When the Respondents commenced the execution process, the present application was filed. The Applicants are seeking to join the Proceedings Post Judgment.
10. The jurisdiction to join a party to a case Post Judgment is exercised only in exceptional and justifiable circumstances. One such exception is where a case has been determined and adverse orders have been issued against a party who was neither given notice of the case nor heard on the issue in dispute.
11. In the case of *Mary Beach Limited –Vs- Attorney General & 18 others* (2018) eKLR the Court of Appeal outlined the relevant principle as follows:-

“ However there are exceptional circumstances that could justify a court to enjoin a party even after judgment has been passed. One such exception is where a matter has been determined and adverse orders have been issued against a party who was neither given notice of the suit nor heard on the issue in dispute. Enjoining such a party a court would also have to set aside the judgement entered to give him/her an opportunity to be heard.”
12. The 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 10<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup> and 21<sup>st</sup> Applicants did not Annex any documents to show that they purchased land from the 1<sup>st</sup> Defendant /Judgement Debtor. The court cannot therefore determine whether they are persons who should have been notified of the pending proceedings or heard on the issue in contention.
13. The 4<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup> and 18<sup>th</sup> Applicants were all parties in a similar application which was dated 23.11.2023 and which application was heard fully and a ruling delivered on 7.3.2024 dismissing the same. This application is therefore res judicata.
14. The 1<sup>st</sup> Defendant/Judgement debtor had been permanently enjoined from interfering with the suit property vide judgment of 17.11.2015. There were however stay orders which were given which stay orders lapsed on 28.7.2016. This therefore meant that the 1<sup>st</sup> Defendant/Judgement Debtor and his servants were restrained from dealing in any manner with the suit property.
15. There was no stay granted by the Court of Appeal. As the 23<sup>rd</sup> and 24<sup>th</sup> applicants purchased their portions on 22.7.2019 and 18.6.2019 respectively after judgement of 17.5.2015 which was valid and had not been set aside, there is no way the High Court would have made any adverse orders against them as they were not entitled to be notified or heard.



16. Despite injunctive orders being in force and proceedings being active, the 1<sup>st</sup> Defendant/Judgement Debtor proceeded to sell portions of the suit property to the Applicants.
17. The 1<sup>st</sup> Defendant/Judgement debtor was aware that the title held by him had been declared to be null and void. He was aware that there were active proceedings in court. Even the Court of Appeal held in their judgement that the title held by the 1<sup>st</sup> Defendant/Judgement Debtor was a nullity. They only remitted back the case for fresh hearing as the High Court had no jurisdiction to hear the case.
18. This being the case, the 1<sup>st</sup> Defendant/Judgement Debtor had no good title to pass to the applicants. The circumstances of this case do not call for joinder of the Applicants in this case. The case has taken 23 years to conclude. Joining the applicants in this case will inevitably mean that the judgement has to be set aside. If this were to happen, it will be tantamount to rewarding the 1<sup>st</sup> Defendant/Judgement Debtor who has gone ahead to sell the suit property well aware that he had no good title. The applicants should pursue the 1<sup>st</sup> Defendant/Judgment Debtor for any damages which they will incur. Litigation has to come to an end.
19. Based on the above analysis, I find that the Applicants' application is devoid of merit. The same is dismissed with costs to the Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 19<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**E. O. OBAGA**

**JUDGE**

In the virtual presence of;

M/s Muresia for Plaintiffs/Respondents.

Court Assistant –Laban

