



**Kamua v Kamau & another; Kihungi (Intended Interested Party) (Environment & Land Case E114 of 2024) [2024] KEELC 7215 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7215 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E114 OF 2024**

**JG KEMEI, J  
OCTOBER 31, 2024**

**BETWEEN**

**FAITH MUTHOMI KAMAU ..... PLAINTIFF**

**AND**

**PAUL KAHUNGU KAMAU ..... 1<sup>ST</sup> DEFENDANT**

**JOHN WANJOHI KAMAU ALIAS SAMUEL WANJOHI  
KAMAU ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**PETER KAMAU KIHUNGI ..... INTENDED INTERESTED PARTY**

**RULING**

1. Before Court is the Intended Interested Party's/Applicant's Notice of Motion dated 15/7/2024 seeking in the main an order to be enjoined in this suit as an Interested Party. It is expressed under Order 1 rule 1 of the Civil Procedure Rules.
2. The application is based on the grounds that the Interested Party is a necessary party to this suit being the biological father of the plaintiff and defendants herein. That he is the original owner of the suit property and therefore conversant with its history as enumerated in the Green card presented by the plaintiff. That unless he is enjoined to the suit, the plaintiff's orders sought herein are likely to have adverse effects on the allocations and gifts he has advanced to his children.
3. Rehashing the above grounds in his Supporting Affidavit of even date, he annexed copy of the suit property's green card marked as 'PKK1'. He deponed that the suit has been instigated by his step-children who are unhappy with the mode of distribution of his properties and since he is the one who carried out the transfers, it is imperative and in the interest of justice to enjoin him in the suit.
4. The application is opposed by the plaintiff only.



5. Faith Muthoni Kamau swore her Replying affidavit and deposed that the defendants have admitted to transferring the land illegally and without her consent. That the intended Interested Party has no capacity to be enjoined as the suit land was developed by Cecilia Wanjeri Kamau, her late mother. That therefore her father, the Interested Party was not the registered owner of the suit and thus has no claims over it in light of having transferred the suit land to his children.
6. Directions were taken for parties to canvas the motion by way of submissions. None of the parties complied. That said the Court will determine the Motion on its merits.
7. The sole issue for determination is whether the application is merited.
8. The Black's Law Dictionary, 9<sup>th</sup> Edition at page 1232 defines an interested party as a party who has a recognizable stake (and therefore standing) in the matter.
9. Whereas the *Civil Procedure Act*, Cap 21 is silent on the concept of "Interested Party", Order 1 Rule 10(2) of the Civil Procedure Rules (CPR) provides that;

"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."
10. Additionally Rule 7 of *the Constitution* of Kenya (Protection of Rights & Fundamental Freedoms) Practice & Procedure Rules 2013 provides that an interested party can apply to be enjoined or the Court can move suo moto and enjoin a party to proceedings before it. Rule 2 thereof defines an interested party as a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the Court but is not a party to the proceedings or may not be directly involved in the litigation.
11. The principles for joinder of an Interested Party in a suit are now well settled. The Supreme Court in the case of Francis Kariuki Muruatetu & Another Vs. Republic & 5 Others as consolidated with 16 of 2013; [2016] eKLR which set down the principles of joinder that;

“(37) 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. Enjoinder 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:

  - a. 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.
  - b. 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.



- c. 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.”

12. Earlier on the apex Court in the case of Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 Others [2014] eKLR affirmed that;

“(22) In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court’s Ruling 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...”

(23) 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 questions 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.”

13. The intended Interested Party’s case is that he is the father of the parties and well versed with the history of the suit land. He annexed a copy of the suit land green card and indeed entry No. 1 entered on 14/7/2014 shows his name and a title deed issued thereat. The subsequent entries on the green card show registrations effected in the names of the parties herein. Whereas the plaintiff objects to his joinder and maintains that the suit land was developed by her late mother, the only way to ascertain the veracity of her case is by way of hearing and analyzing evidence.

14. Applying the standard set out in the case of Muruatetu (supra), I am persuaded that the intended Interested Party has on the face of it, demonstrated identifiable stake in the proceedings before this Court.

15. In the end, I find that the Application is merited.

16. Considering the relationship of the parties, the commendable order is for each party to bear their own costs.

17. Orders accordingly.

**DATED, SIGNED & DELIVERED AT THIKA VIA MICROSOFT TEAMS THIS 31<sup>ST</sup> DAY OF OCTOBER, 2024.**

**J G KEMEI**



**JUDGE**

**DELIVERED ONLINE IN THE PRESENCE OF;**

Ms. Kamau HB Wandaka for the Plaintiff

Mbichie for 1<sup>st</sup> and 2<sup>nd</sup> Defendants

Interested Party - Absent

Court Assistant – Phyllis

