



REPUBLIC OF KENYA



Mwende v Katana & 10 others; Nasser (Proposed Interested Party) (Environment & Land Case 33 of 2010) [2024] KEELC 7116 (KLR) (31 October 2024) (Ruling)

Neutral citation: [2024] KEELC 7116 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 33 OF 2010
FM NJOROGE, J
OCTOBER 31, 2024

BETWEEN

CHRISTINE MWENDE PLAINTIFF

AND

NICHOLAS KOPO KATANA 1ST DEFENDANT

BARAKA MOHAMED 2ND DEFENDANT

HAMIS ORE 3RD DEFENDANT

MAMA RITA 4TH DEFENDANT

KAZUNGU WANJE 5TH DEFENDANT

PETER CHARO 6TH DEFENDANT

KATANA MASHAKA 7TH DEFENDANT

MWAMULANDA MAKIRANDA 8TH DEFENDANT

SANDEI ZIRO 9TH DEFENDANT

KITI J JEWAWA 10TH DEFENDANT

KAZUNGU MASHI 11TH DEFENDANT

AND

ABDULHAKIM MOHAMED NASSER PROPOSED INTERESTED PARTY

RULING

1. The Applicant moved this court vide an application dated 10/9/2024 seeking to be joined to this suit as an interested party. His application which was brought under the provisions of Section 1, 1A, 3, 3A



and 63 (e) of the Civil Procedure Act and Order 1 rule 10 (2) of the Rules thereto, was premised on the grounds set out on the face of the motion, and the supporting affidavit which he swore on the even date.

2. The Applicant deposed that he is the registered owner of Plot No. Kilifi/Mtwapa/3605 which was excised from Plot No. Kilifi/Mtwapa/206 upon subdivision thereof. He explained that the latter property was initially owned by one Hanif Iqbal Shebraz who had purchased the same from the 1st Defendant. He stated that the Plaintiff's suit against the Defendants is over Plot No. 206 which no longer exists but sub-divisions thereof, amongst them his plot no. Kilifi/ Mtwapa/3605 do. He added that his property also surrounds the Plaintiff's property which is the subject of this suit and that his participation in this suit is imperative to safeguard his interests.
3. The Plaintiff opposed the application. She swore a replying affidavit on 26/9/2024 wherein she stated that the Applicant has not produced any document to show that Kilifi/Mtwapa/206 was sub-divided into portions amongst them Kilifi/Mtwapa/3605 thus no identifiable stake has been demonstrated.
4. The application was to be canvassed by way of written submissions, however, none had been filed as at the time of writing this opinion.

Determination

5. The sole issue for determination is whether the Applicant should be joined as an Interested Party in the proceedings herein. Order 1 Rule 10(2) of the Civil Procedure Rules states as follows: -

“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 or settle all questions involved in the suit, be added.”

6. The Applicant herein has sought to be joined as an Interested Party to the suit for the reason that his plot surrounds the Plaintiff's plot which is the subject of this suit. In determining the Applicant's prayer, we must first define who an interested party is. Rule 2 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 defines an interested party as follows: -

“interested party” means 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”

The Black's Law Dictionary defines an Interested Party as

“a party who has a recognizable stake (and therefore standing) in the matter.”

7. The Supreme Court of Kenya in *Communications Commission of Kenya and 4 Others v Royal Media Services Limited & 7 Others* Petition No. 15 of [2014] eKLR in defining who an Interested Party is, and held 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.



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?"

8. The question that follows therefore, is whether the Applicant satisfies the criteria for joinder as an Interested Party in the present proceedings. These criteria have been elaborated by courts in numerous occasions. In *Skov Estate Limited & 5 others v Agricultural Development Corporation & another* [2015] eKLR Hon Justice Munyao Sila dealing with a similar application stated as follows:

“In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party.

In other words, there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.”

9. I have keenly perused the pleadings (further amended Plaintiff and amended statement of defence) in this matter. It is evident that the dispute is one regarding alleged trespass. According to the Plaintiff, the Defendants have trespassed on her properties Kilifi/Mtwapa/1528 and Kilifi/Mtwapa/2239. To her, the two properties are separate and distinct from the Defendants' property Kilifi/Mtwapa/206. According to the Defendants however, the said three properties are not distinct from each other, and



they are one and the same, and the plot no. Kilifi/Mtwapa/206 no longer exists by virtue of sub-division.

10. The Applicant averred that he owns Kilifi/Mtwapa/3605 which is a product of the said sub-division hence his interest in this matter. I do however note that the Applicant has not clearly demonstrated by way of evidence that his alleged property is indeed a product of the said sub-division. Without such evidence, and while fully adopting the reasoning in the above-mentioned cases, I do find that the Applicant has not demonstrated that he has a clear and identifiable interest and stake in the present suit.
11. The upshot is that the application dated 10/9/2024 is unmerited. It is hereby dismissed with costs.

RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 31ST DAY OF OCTOBER, 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

