



Michieka v Gikandi & 6 others; Kenya Revenue Authority (Interested Party) (Environment and Land Case Civil Suit 446 of 2013) [2024] KEELC 7243 (KLR) (30 October 2024) (Ruling)

Neutral citation: [2024] KEELC 7243 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 446 OF 2013
LN MBUGUA, J
OCTOBER 30, 2024**

BETWEEN

STANLEY MICHIEKA PLAINTIFF

AND

JAMES DAVIDSON GIKANDI 1ST DEFENDANT

MRS HELENA GIKANDI 2ND DEFENDANT

THOME FARMERS NO 5 LIMITED 3RD DEFENDANT

VEMA AGENCIES LIMITED 4TH DEFENDANT

JORETH LIMITED 5TH DEFENDANT

**KIMANI KAHIRO T/A KIMANI KAHIRO & COMPANY
ADVOCATES 6TH DEFENDANT**

**CHEGE WAINAINA T/A CHEGE WAINAINA & COMPANY
ADVOCATES 7TH DEFENDANT**

AND

KENYA REVENUE AUTHORITY INTERESTED PARTY

RULING

1. Before me is a Notice of Motion Application dated 23.5.2024 filed by one JESKI (EA) Limited, an intended 2nd interested party. They seek orders to be joined in these proceedings as interested parties, that a temporary order of injunction restraining the plaintiff from interfering with parcel no. L.R.13330/234, the suit property be issued, that the Chief Land Registrar be restrained from implementing the judgment delivered on 13.5.2019, that the said judgment be reviewed and be set



- aside, and that the Kasarani Officer Commanding Police Station be directed to ensure that there is compliance.
2. The application is premised on grounds on the face of the application and the supporting affidavit of Jeremiah Kinyua Kamau, a director of the applicant. He contends that the applicant is the registered owner of the suit property, having purchased the same from him on 4.2.2008. It has come to his knowledge that the plaintiff mischievously filed this suit against 3rd parties who have no interest in the suit property.
 3. He avers that the suit land was a sub division of parcels L.R. 4920/3/2 and 3921/3/1 owned by the 5th defendant as decreed in the case HCCC No. 6206 OF 1992. Thus having gotten their title from the 5th defendant, they have an interest in the suit land, unlike the plaintiffs who apparently bought the land from an entity known as Vena Agencies. He contends that a perusal of the plot ownership register at the offices of the 5th defendant reveals that the 1st and 2nd defendants did not own the suit plot No 364, rather, they owned plot No.87. Adding that interestingly, the plaintiff was initially allocated the neighbouring plot no. 365 (now 13330/235) currently registered in the name of one George Muturi Thumbi.
 4. The deponent contends that if they had been sued, they would have been in a position to defend the suit. They stand to suffer adversely if the orders sought herein are not granted.
 5. The plaintiff has opposed the application vide his Replying Affidavit dated 4.7.2024 where he contends that the application is an attempt to perpetrate serious fraud and crime, averring that the title proffered by the applicant is fraudulent and does not bear the date of registration. Similarly, the alleged sale agreement is not dated. Adding that the suit property plot 364 (L.R. 13330/234) was not among the properties advertised for sale by the 5th defendant.
 6. The plaintiff avers that the applicant has been aware of this matter as he (plaintiff) had lodged a complaint with Director of Criminal Investigations Kasarani and he was even summoned. Thus the applicant is guilty of lying under oath that he was not aware of this matter. Further, the plaintiff contends that he has already taken steps towards registration of transfer having paid the requisite stamp duty.
 7. In response to the averments of the plaintiff, the applicant filed a Supplementary Affidavit dated 23.7.2024 where he contends that he holds all the original documents from the 5th defendant including the original title issued on 5.5.2011. He avers that the caveat dated 30.10.2013 availed by the plaintiff was not endorsed on the original title and is not captured in the online search platform. Adding that the validity of their agreement cannot be invalidated by lack of a date.
 8. The applicant denies that he was aware of the judgment delivered in year 2019 or that he was ever summoned by the DCI.
 9. In its submissions dated 21.8.2024, the applicant has reiterated its averments set out in its two affidavits. Citing the case of Communications Commission of Kenya and 4 Others vs. Royal Media Services Limited & 7 Others Petition no.15 [2014] eKLR amongst other cases, the applicant submits that its interest in the matter is clearly identifiable as it is the registered owner of the suit property.
 10. To this end, the applicant avers that the orders of review and injunction sought are merited so as to halt the implementation of the judgment as the applicant did not participate in the proceedings giving rise to the judgment herein.
 11. In his submissions dated 6.9.2024, the plaintiff has similarly reiterated his averments set out in his Replying Affidavit. It is argued that the interests of the applicant are not clearly identifiable as they



- are based on a fraudulent title. Adding that the law envisages joinder of an interested party to live proceedings, and only in exceptional cases can an interested party be joined in a matter post judgment.
12. To buttress his arguments, the plaintiff has relied on the case of *Trusted society of Human Rights v Mumo Matemo & 5 Others* [2014] eKLR amongst other cases.
 13. The 5th defendant has filed submissions dated 5.9.2024 supporting the claim of the applicant. However, the court has disregarded the same in view of the fact that this entity did not file any replying affidavit as per the directions given by the court on 24.7.2024. To this end, I make reference to the Supreme Court of Kenya case of *Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 Others* [2018] eKLR where the court stated that:

“ A Replying Affidavit is the principal document wherein a respondent’s reply is set and the basis of any submissions and/or List of Authorities that may be subsequently filed. Absence this foundational pleading, the Replying Affidavit, it follows that even the Written Submissions purportedly filed by the 1st Respondent on 17th August, 2018 are of no effect”.
 14. Having regard to the arguments raised herein, I find that the issues falling for determination are whether the applicant should be joined in these proceedings as an interested party, whether the judgment delivered on 13.5.2019 should be set aside and whether the injunctive orders sought should be granted.
 15. The provisions of Order 1 Rule 10 (2) of the Civil Procedure Rules 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” .
 16. It is pertinent to note that in the matter at hand, the court has already rendered a decision, contained in the judgment of 13.5.2019. The question I therefore pose is; The applicant seeks to be joined in these proceedings in order to do what?.
 17. In the case of *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 Others* [2014] eKLR, the court had this to say on the issue of joinder:

“ 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”.
 18. And further in *Francis Kariuki Muruatetu & Another v Republic & 5 Others* [2016] eKLR, it was held that:

“ The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral....”
 19. If this court was to set aside the judgment of 13.5.2019, it would mean that parties would have to articulate their rival cases all over again, this time round with a new party on board. However, the proposed interested party despite giving a detailed background to the case has not indicated how it



intends to champion its case once the judgment is set aside. It is worthy to note that the applicant has availed 8 annexures to buttress their claim, but none of those documents is a draft defence or a draft statement of claim. The interest of the applicant can only be channeled through a known pleading, which is missing. The court is therefore at a loss as to how the applicant would challenge and also adduce evidence in the event that judgment was to be set aside.

20. It is also worthy to note that the applicant intends to come in as an interested party. And as rightly submitted by the plaintiff, in every case where some parties are joined as interested parties, the issues to be determined by the court will always remain the issues as presented by the principle parties and an interested party may not frame its own fresh issues or introduce new issues for determination by the court, See Francis Kariuki Muruatetu & Another v Republic & 5 Others [2016] eKLR. The applicant herein is certainly framing new issues for determination by the court relating to its claim of ownership to the suit property.
21. Another point for consideration is that the applicants claim to the suit property is based on their title. The registration of the applicant as the holder of the title to the suit property was anchored under the now repealed Registration of Titles Act and is reflected in entry no 2 which reads “ Transfer to JESKI LIMITED”, but this registration bears no date. In the case of Registered Trustees of Sheik Bayed Bin Sultan Al Nahyan v Pelican Engineering & Construction Company Limited & 4 Others (Environment & Land Case 639 of 2015) [2024] KEELC 6534 (KLR) (3 October 2024) (Judgment), I stated that;

“ Ordinarily under this regime, any registrable transaction would be endorsed as an entry in a chronological order in the title document....”
22. How can the applicant claim ownership on the basis of a registration when it cannot be discerned as to when the event of registration occurred.
23. Finally, I find that the applicant was rather evasive as to when it made the discovery about the judgment. In the affidavit in support of the application, the applicant was silent as to when they made this discovery, it was only in the supplementary affidavit that it makes a rather general statement that they made the discovery in year 2024. The judgment herein, having been delivered more than 5 years ago, then it was incumbent upon the applicant to give cogent particulars of how they made the discovery instead of bombarding the court with evidence which is only needed in a trial.
24. I must point out that at paragraph 5 in the judgment of 13.5.2019, the court analyzed the defence of the 7th defendant who claimed to have been appointed by the 5th defendant to prepare transfers for the purchasers. The said 5th defendant did not enter appearance despite the fact that they have been having litigation touching on the mother titles for decades, going by the case availed by the rival parties HCCC NO. 6206 of 1992. But now the 5th defendant is wading into the matter in support of the applicant which is a tell tale sign that the two are acting in cahoots to defeat the judgment delivered in year 2019.
25. All in all, I find that neither the prayer for joinder, nor that of setting aside the judgment of 13.5.2019 is merited, hence the other prayers must fall by the way side. The application dated 23.5.2024 is therefore dismissed with costs to the plaintiff.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30th DAY OF OCTOBER 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:



Kalii holding brief for S.C Mutua for Respondent
Mbichire for 2nd Intended Interested Party Applicant
Gachuhi for 5th Defendant
Court Assistant: Vena

