



Jamhuri Commercial Centre, Welfare Association v Njuguna & 5 others; Mwangi (Interested Party) (Environment & Land Petition E008 of 2022) [2024] KEELC 6990 (KLR) (24 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6990 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION E008 OF 2022**

**JO MBOYA, J
OCTOBER 24, 2024**

BETWEEN

JAMHURI COMMERCIAL CENTRE, WELFARE ASSOCIATION PETITIONER

AND

**MORRIS MWIRIGI NJUGUNA 1ST RESPONDENT
THE HON.ATTORNEY GENERAL 2ND RESPONDENT
THE NATIONAL LAND COMMISSION 3RD RESPONDENT
THE CHIEF LAND REGISTRAR 4TH RESPONDENT
NAIROBI METROPOLITAN SERVICES 5TH RESPONDENT
DIRECTOR PLANNING AND DEVELOPMENT NAIROBI
COUNTY 6TH RESPONDENT**

AND

PETERSON GITHINJI MWANGI INTERESTED PARTY

RULING

Introduction and Background

1. The proposed Interested Party herein has approached the court vide Chamber Summons Application dated 30th May 2023, brought pursuant to Order 1 Rule 10 (2), Order 51 Rule 1, 3 And 15 of the Civil Procedure Rules,2010, Rules 2, 3 and 7 of *the Constitution* of Kenya (Protection and Fundamental Freedoms) Practice and Procedure Rules,2013 (Mutunga Rules), Section 1A And 1B, Section 3 of the *Civil Procedure Act* Cap 21 of the Laws of Kenya, and in respect of which same has sought for the following reliefs;



- i. That service of this application be dispensed with in the first instance and be heard ex-parte in the first instance by reason of its urgency.
 - ii. That pending the hearing and determination of this application inter-partes there be a stay of execution of the Judgement delivered herein on 11th May, 2023.
 - iii. That pending the hearing and final determination of this application. there be a stay of execution of the judgement delivered herein on 11th May 2023.
 - iv. That Applicant herein, Peterson Githinji Mwangi be joined in this petition as an interested party or respondent forthwith.
 - v. That this Honourable Court be pleased to vary, set aside and/or review the Judgement entered herein on 11th May 2023 and this matter be heard "denovo".
 - vi. The Interested party be at liberty to file his pleadings in the petition.
 - vii. That costs of this application be provided for.
2. The instant application is anchored on the various grounds which have been enumerated in the body thereof. In addition, the Application is supported by the affidavit of Peterson Githinji Mwangi [the proposed interested party] sworn on even date. Furthermore, the proposed interested party has also sworn a supplementary affidavit sworn on the 30th July 2024.
 3. Upon being served with the subject application, the Petitioner filed a replying affidavit sworn by one John Mwenda Rutere, who indicates that same [Deponent] is the chairperson of the Petitioner. Instructively, the replying affidavit is sworn on the 9th July 2024.
 4. Other than the Petitioner who has responded to the application vide the Replying affidavit under reference, the rest of the parties have not filed any response.
 5. The application beforehand came up for hearing on the 31st July 2024 whereupon the advocates for the parties covenanted to canvass and dispose of the application by way of written submissions. In this regard, the court ventured forward and circumscribed the timelines for the filing and exchange of the written submissions.
 6. Pursuant to the directions by the court, the proposed interested party duly filed and served written submissions dated the 30th of July 2024. On the other hand, the Petitioner/Respondent also filed written submissions dated the 17th September 2024. For coherence, the two [2] sets of written submissions are on record.

Parties' Submissions:

a. Applicant's Submissions:

7. The Applicant herein filed written submissions dated 30th July 2024 and wherein same [Applicant] adopted the grounds contained at the foot of the Chamber Summons Application as well as the averments in the body of the Supporting Affidavit sworn on the 30th May 2024. In addition, the Applicant has also highlighted the contents of the Supplementary Affidavit.
8. Furthermore, learned counsel for the Applicant has highlighted and canvassed three [3] salient issues for consideration by the court. Firstly, learned counsel for the Applicant has submitted that the Applicant herein is the bona fide and registered proprietor of L.R. No. Nairobi/Block 63/787 [suit property].



9. Additionally, learned counsel for the Applicant has submitted that despite being the lawful and registered proprietor of the suit property, the subject matter was heard and disposed of albeit without the participation and involvement of the Applicant. In this regard, it has been contended that as a result of the non-involvement of the Applicant, the court has since issued adverse orders that affect the rights and interests of the Applicant.
10. Secondly, learned counsel for the Applicant has submitted that the Applicant herein bought and/or purchased the suit property from the 1st Respondent herein culminating into the transfer and registration of the suit property in the name of the Applicant on the 1st November 2018. In this respect, it has been submitted that the Applicant is thus a bona fide purchaser for value of the suit property.
11. Based on the contention that the Applicant is a bona fide purchaser for value, learned counsel for the Applicant has therefore submitted that the Applicant is entitled to the requisite protection by the court. In any event, learned counsel has invoked and referenced the provisions of Article 40 of *the Constitution* 2010, which underpin the proprietary rights over properties.
12. Thirdly, learned counsel for the Applicant has submitted that based on the fact that the Applicant herein is the lawful and registered proprietor of the suit property, the Applicant is therefore an interested party and thus same ought to be joined in this matter. For coherence, it has been posited that unless the Applicant is joined as an interested party same [Applicant] shall be deprived of the right to vindicate his interest over the suit property.
13. To buttress the submissions that the Applicant is entitled to be joined into the proceedings as an Interested Party, learned counsel for the Applicant has cited and referenced inter-alia the case of Kenya Medical Laboratory Technician and Technologists Board & 6 others Vs the Attorney General & 4 others [2017] eKLR, Lucy Ngigi & another Vs National Bank of Kenya & 100 others [2002] eKLR, Kingóri Vs Chege & 3 others [2002] 2KLR and Republic Vs Non-Governmental Organisations and Co-ordination Board, Ex-parte Evans Kidero Foundation [2017] eKLR, respectively.
14. Arising from the foregoing, learned counsel for the Applicant has therefore implored the court to find and hold that the Applicant is indeed an interested party and thereafter to proceed and decree joinder of the Applicant.

b. Petitioner's Submissions:

15. The Petitioner herein filed written submissions dated the 17th September 2024 and wherein same [Petitioner] has adopted the contents of Replying Affidavit sworn on the 9th July 2024 and thereafter highlighted three [3] salient issues for consideration by the court.
16. First and foremost, learned counsel for the Petitioner/Respondent has submitted that the instant matter was heard and determined vide judgment rendered on the 11th May 2023. In this regard, it has been posited that upon the delivery of the judgment, the proceedings herein terminated and/or closed. Consequently, learned counsel for the Respondent has submitted that insofar as the suit/proceedings stand closed, the court cannot proceed to join a party whether as interested party or otherwise.
17. Additionally, it has been submitted that whereas a court of law is seized of the requisite jurisdiction to join a party by dint of the provisions of Order 1 Rule 10[2] of the Civil Procedure Rules, 2010, such joinder can only be taken at any stage of the proceedings. For good measure, it has been contended that upon the delivery of a judgment, the suit terminates and hence the provisions of Order 1 Rule 10 of the Civil Procedure Rules can no longer be invoked and/or deployed.



18. Secondly, learned counsel for the Respondent has submitted that though the Applicant contends that same is the registered proprietor of the suit property, the contention however smacks of mischief and ulterior motives. In this regard, it has been submitted that the Applicant cannot contend to be the registered owner of the suit property, yet the 1st Respondent has also defended the suit claiming ownership of the suit property.
19. Furthermore, learned counsel for the Respondent has also submitted that upon the delivery of the judgment in respect of the instant matter, the 1st Respondent herein [who is purported to have sold the suit property to the Applicant] filed an appeal before the court of appeal vide Court of Appeal Civil Appeal No. 500 of 2023 and wherein same [1st Respondent] was seeking orders of stay.
20. Arising from the foregoing, learned counsel for the Petitioner/Respondent has therefore submitted that it is inconceivable for the 1st Respondent to be fighting at the Court of Appeal on the basis of being the owner of the suit property, whilst on the other hand the Applicant is also before this court laying a claim to the suit property. To this end, it has been posited that the Applicant appears to be playing mischief with the due process of the court.
21. Thirdly, learned counsel for the Respondent has submitted that this court rendered a judgment and wherein the court found that the 1st Respondent did not acquire any lawful or legal title to the suit property. In this regard, it has been contended that to the extent that the 1st Respondent's title was null and void, same [1st Respondent] therefore could not have passed any lawful title to [sic] the Applicant.
22. In the premises, it has been submitted that the Applicants contention that same has lawful rights and interests to and in respect of the suit property is misconceived and legally untenable. In any event, it has been contended that the Applicant herein has neither established nor met the requisite ingredients to warrant his joinder as an interested party in the suit beforehand.
23. Flowing from the foregoing submissions, learned counsel for the Petitioner has therefore invited the court to find and hold that the application by the Applicant is not only misconceived but same is legally untenable. In this regard, the Petitioner/Respondent has implored the court to dismiss the application with costs.

Issues for Determination:

24. Having reviewed the Chamber Summons Application dated the 30th may 2024 and the response thereto and upon consideration of the written submissions filed by the Applicant on one hand and the Petitioner on the other hand, the following issues crystalize [emerge] and are thus worthy of determination;
 - i. Whether the Applicant herein has any lawful or legitimate interest[s] in respect of the suit property and by extension interests in the subject matter [Suit].
 - ii. Whether the Applicant herein can be joined into the subject matter taking into account that the matter stands determined and thus closed.

Analysis and Determination

Issue Number 1 Whether the Applicant herein has any lawful or legitimate interests in respect of the suit property and by extension interests in the subject matter[Suit].

25. The Applicant herein has approached the court vide the Chamber Summons Application dated the 30th may 2024 and wherein same contends that he [Applicant] bought/purchased the suit property from the 1st Respondent herein. Furthermore, the Applicant has posited that upon purchase of the



- suit property, same [suit property] was transferred and registered in his name on the 1st November 2018.
26. Based on the contention that the Applicant bought and/or purchased the suit property from the 1st Respondent, the Applicant has thus contended that same [Applicant] has lawful right to and in respect of the suit property. In this regard, the Applicant has thus implored the court to find and hold that same [Applicant] ought to be joined in the subject matter as an interested party.
 27. On the other hand, it is imperative to recall that the Petition herein was mounted against inter-alia the 1st Respondent who filed pleadings and affidavit and in respect of which the 1st Respondent posited that same is the lawful owner and proprietor of the suit property. Besides, it is worthy to recall that upon the delivery of the judgment in respect of the instant matter, the 1st Respondent herein proceeded to and filed an appeal before the court of appeal vide Court of Appeal Civil Appeal No. 500 of 2023.
 28. Other than the filing of the appeal [details in terms of the preceding paragraph] the 1st Respondent herein also filed an application seeking orders of stay of the judgment of this honourable court. Instructively, both the appeal and the application are premised on the basis that the suit property belongs to the 1st Respondent.
 29. Taking into account, the position taken and espoused by the 1st Respondent, it becomes apparent that there is a contradiction between the 1st Respondent's claim and that of the Applicant herein. Surely, if the 1st Respondent had [sic] sold the property to the Applicant [which is debatable], then the 1st Respondent would not be propagating the various proceedings including the appeal before the court of appeal.
 30. To my mind, the contradictory claims between the 1st Respondent and the Applicant herein, creates serious doubt as to the legitimacy of the Applicant's claim and by extension, Certificate of title. In this regard, the purported interest by the Applicant over and in respect of the suit property are in serious doubts and question. Based on the contradictory claims, it is not possible to confirm that the Applicant herein has met the requisite threshold in proving his claim[s].
 31. Other than the foregoing, there is the second perspective which merits discussion. The second perspective relates to the fact that the court found and held that the 1st Respondent's title to the suit property was illegal, unlawful and a nullity. In this respect, the court returned a verdict that the 1st Respondent accrued no lawful rights and/or title to the suit property.
 32. Suffice it to point out that the judgment of the court which was rendered on the 11th May 2023 and which invalidated the 1st Respondent's title has neither been set aside nor quashed. In this regard, the question that does arise is whether the Applicant herein can be heard to say that same [Applicant] has any valid title to underpin the claim of ownership.
 33. To my mind, if the 1st Respondent did not acquire any lawful rights to and in respect to the suit property, then there is no gainsaying that the 1st Respondent could not convey any legal rights to and in favour of the Applicant. Instructively, the doctrine of Nemo Dat Quod Non Habet suffices.
 34. Thirdly, it is also imperative to state and underscore that the claim by the Applicant seems to run contradictory to that of the 1st Respondent pertaining to ownership of the suit property. In this regard, it then behooves the Applicant herein to implead the 1st Respondent in a separate and distinct suit [if need be] to enable their conflicting claims to ownership of the suit property to be determined.
 35. In my humble view, until and unless the Applicant and the 1st Respondent sought out their conflicting claims to the suit property [if at all], in a separate suit, the Applicant herein appears to have no lawful or tenable interest to the suit property, capable of underpinning the application for joinder.



36. Finally, it is evident that the basis of the Applicant's intention to be joined in the instant matter is to propagate his Claim to the ownership of the Property. However, there is no gainsaying that an Interested Party cannot enter into a subject matter and thereafter seek to generate his/ her own claim, which is different from that of the primary parties.
37. To my mind, the issues and claims being raised and propagated by the Proposed Interested Party to underpin his desire to be joined into the subject matter cannot be adjudicated in the instant. To the contrary, the claims can only be addressed in a separate and distinct suit and not otherwise. [See the Decision of the Supreme Court of Kenya in Communications Commission of Kenya versus Royal Media Service Limited and 6 Others [2014]ekle].
38. Notwithstanding the foregoing, it suffices to underscore that the person seeking to be joined into a suit, the Applicant herein not excepted must establish and demonstrate that same has lawful or equitable interests to the suit property and by extension the suit. For good measure, the legal or equitable interests must not be remote, inchoate, speculative or fanciful.
39. To buttress the foregoing exposition of the law, it suffices to cite and reference the holding in the case of Francis Kariuki Muruatetu & another v Republic & 5 others [2016] eKLR, where the court distilled the requisite ingredients to be satisfied before one [a Party] can be joined as an Interested Party.
40. For coherence, the Court stated thus:
- (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. 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.
41. Arising from the foregoing analysis, my answer to issue Number one [1] is threefold. Firstly, the Applicant's claim to ownership of the suit property can only be determined in a separate and distinct suit between the Applicant and the 1st Respondent. However, such a suit shall be subject to the doctrine of Ex-Nihilo-Nihil-Fit [out of nothing comes nothing].
42. Secondly, the title which was held by the 1st Respondent having been nullified and cancelled, the consequence of such an order renders any contention on behalf of the Applicant cosmetic. In any event, the Applicant cannot seek to propagate interests on the basis of a non-existent title.
43. Thirdly, even assuming for the sake of arguments [academics] that the Applicant herein had some scintilla of interests, such interests have not been established in the eyes of the law to warrant joinder of the Applicant into the instant matter. Instructively, prior to and before joinder of any party, the



Applicant not excepted, as an interested party same must demonstrate nexus and/or proximate affinity to the suit property and by extension, the suit.

Issue Number 2 Whether the Applicant herein can be joined into the subject matter taking into account that the matter stands determined and thus closed.

44. Other than the question that touches on and concerns proof of interests in the suit property and by extension the suit, which has been discussed in the preceding paragraphs, there is the critical question as to whether the Applicant herein can be joined into a matter wherein judgment has since been delivered. Notably, the judgment in respect of the instant matter was delivered on the 11th May 2023.
45. Notwithstanding the fact that judgment has since been delivered, the Applicant herein has approached the court and same is seeking for liberty to be joined as an interested party. In this regard, the question that the court must grapple with is whether an interested party can be joined in a matter which has been determined and is therefore closed.
46. To start with, the joinder of any party, whether as a co-Defendant, Interested Party or necessary party can only be undertaken at any stage of the proceedings. However, it suffices to underscore that any stage of proceedings denotes that the proceedings are still live and have not terminated vide judgment or otherwise.
47. Furthermore, it is not lost on this court that the purpose for joinder of a party whether interested party or otherwise is calculated to assist the court to effectively and effectually determine all the issues in dispute in a particular matter. To this end, there is no gainsaying that the joinder of a party is actually meant to enable the joined party, in this case the Applicant, to assist the court to effectually determine the issues in controversy.
48. To the extent that joinder is intended to assist the court to arrive at an effective determination, the question that follows therefore relates to whether one can be joined long after all the issues in a particular matter have been adjudicated upon and determined. To my mind, the law did not fathom a joinder for aesthetic or cosmetic purposes. Neither was joinder of parties meant for the sake of it. Simply put, the joinder of parties is not for academic purposes.
49. To vindicate the exposition of the law that a party can only be joined at any stage during the subsistence of the suit, I beg to adopt and reiterate the holding in the case of *J.M.K versus MWK & Another* 2015 eKLR where the court held and stated thus:

We would however agree with the respondent that Order 1 Rule (10)(2) contemplates an application for amendment or joinder of parties where proceedings are still pending before the Court. Sarkar's Code, (supra) quoting as authority, decisions of Indian Courts on the provision, expresses the view that an application for joinder of parties can be filed only in pending proceedings. In the same vein, the Court of Appeal of Tanzania, while considering the equivalent of Order 1 Rule 10(2) of our Civil Procedure Rules, in *Tang Gas Distributors Ltd V. Said & Others* [2014] EA 448, stated that the power of the court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before, or during the trial; that it can be done even after judgment where damages are yet to be assessed; that it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable; and that a party can even be added at the appellate stage.

50. In view of the foregoing decision, what comes to the fore is to the effect that joinder of a party can only be undertaken during the pendency of a suit. Consequently, the moment a suit is heard and determined



[like in the instant case], then no one, the Applicant not excepted can approach the court for purposes of joinder.

51. In any event, such joinder would be futile and an exercise in vanity.

Final Disposition:

52. Flowing from the analysis [details enumerated in the body of the ruling], it must have become crystal clear that the Applicant herein has neither established nor demonstrated the requisite interests in the suit property and by extension the suit, to warrant the proposed joinder.

53. Notwithstanding the foregoing, it is worthy to underscore that even if the Applicant had demonstrated [sic] the interest in the suit property [which is not the case], the proposed joinder would not have been legally tenable taking into account that the suit has since been adjudicated upon and determined. Quite clearly, one cannot be joined for the sake of joinder.

54. Consequently and in the premises, the final orders that commend themselves to the court are as hereunder;

- i. The Chamber Summons dated the 30th May 2024, be and is hereby dismissed.
- ii. Costs of the application be and are hereby awarded to the Petitioner/Respondent herein only.
- iii. Costs in terms of clause [ii] be and is hereby assessed in the sum of Kes.30, 000/= only.

55. It is so ordered.

DATED, SIGNED AND DELIVERED ON THE 24TH DAY OF OCTOBER 2024

OGUTTU MBOYA

JUDGE.

In the presence of:

Benson – Court Assistant

Ms. Kariuki for the Proposed Interested Party/Applicant

Mr. Newton Kariuki for the Petitioner/Respondent

Mr. Allan Kamau [Principal Litigation Counsel] for the 2nd and 4th Respondents

Ms. Gardale for the 3rd Respondent

N/A for the 5th Respondent

