



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wahonjo v Mogere & another; Biko (Intended Interested Party) (Environment & Land Case 27 of 2018) [2024] KEELC 7024 (KLR) (23 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7024 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ENVIRONMENT & LAND CASE 27 OF 2018**  
**A NYUKURI, J**  
**OCTOBER 23, 2024**

**BETWEEN**

**BARASA ERIFAZI WAHONJO ..... PLAINTIFF**

**AND**

**ASKA MOGERE ..... 1<sup>ST</sup> DEFENDANT**

**PAMELA BWARI ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**STEVE BIKO ..... INTENDED INTERESTED PARTY**

**RULING**

**Introduction**

1. Before court is a notice of motion dated on 2<sup>nd</sup> October 2023 filed by the intended interested party one Steve Biko, seeking to be joined to these proceedings as interested party and also for an order of permanent injunction to restrain the plaintiff from evicting him and from interfering with his alleged quiet possession of the land known as LR No. 28691 Mavoko.
2. The application is supported by the affidavit of the applicant sworn on 2<sup>nd</sup> October 2023. The applicant's case is that on 24<sup>th</sup> January 1998, he was allocated Plot No. 742 Athi River which was later surveyed as LR No. 28691 Mavoko. He stated that he has been in possession of the same property from 2010 to date and has erected a stone perimeter wall around the property and also seven permanent rental units occupied by tenants.
3. He averred that on 11<sup>th</sup> July 2023, he was served with a decree in this suit and that he was never served with summons relating to the suit. He sought for opportunity to respond to the suit. He attached allotment letter; bankers' cheque; deed plan; his letter to Chief Land Registrar; permission to develop and pictures; bundle of land rate receipts and clearance certificates.



4. The application was opposed. Kevin Wakwaya, advocate for the plaintiff swore a replying affidavit dated 26<sup>th</sup> October 2023, opposing the application. He stated that the dispute in this case was over ownership of LR No. 28682 between the plaintiff and the respondents and that judgement was made on 1<sup>st</sup> March 2023 in favour of the plaintiff ordering the defendants to vacate the suit property in 90 days and the perimeter wall be demolished. He stated that now the court was functus officio and that no reason has been given by the applicant to reopen this concluded matter.
5. He also stated that the applicant referred to parcel LR No. 28691 which is a different parcel from the suit property herein. He contended that the applicant ought to file a substantive claim and not approach the court by way of the application before court.
6. The application was canvassed by way of written submissions. On record are the submissions filed by the intended interested party dated 17<sup>th</sup> June 2024, which the court has duly considered.

### **Analysis and determination**

7. This court has carefully considered the application, response thereto and submissions, and the only issue that arise for determination is whether the applicant deserves to be joined to these proceedings and obtain permanent injunction against the plaintiff.
8. Order 1 Rule 10 (2) of the [Civil Procedure Rules](#) provides as follows;
  2. 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.
9. Therefore, the court has jurisdiction to join any person to proceedings whose presence before the court is necessary to completely adjudicate and settle all questions involved in the suit.
10. An interested party is a person who has a recognizable interest or stake in proceedings although he or she has no claim like that of a primary party. The [Black's Law Dictionary](#) defines an interested party as a party who has a recognizable stake (and therefore standing) in a matter.
11. In the case of [Communication Commissions of Kenya & 4 Others v Royal Media Services Limited & 7 Others](#) [2014] eKLR, the Supreme Court stated 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 champion his or her cause.
12. In the instant case, the dispute between the plaintiff and the defendants herein was about ownership of the parcel of land known as LR No. 28682 Mavoko and vide a judgment made on 1<sup>st</sup> March 2023, the court found that the suit property belongs to the plaintiff and ordered the defendants to vacate. On the other hand, the applicant herein avers that he is the owner of LR No. 28691 Mavoko. Clearly, this is a different parcel from the suit property. In addition, if the applicant has a claim over the parcel of land namely LR No. 28691 and has a dispute with the plaintiff, that claim is different from the claim between the plaintiff and the defendants herein which was determined. There is no pending suit with pending issues to be determined within which the applicant can be joined. Therefore, the applicant



cannot purport to make his claim in this matter when judgment has already been delivered and nothing is pending. If the applicant has a claim over his land with the plaintiff, he ought to file a fresh suit and make his claim. Clearly, the applicant has no stake in the decided case in which judgment has been made and, the plaintiff's rights as against the defendants, declared by court.

13. In the premises, I find and hold that the application dated 2<sup>nd</sup> October 2023, lacks merit and the same is hereby dismissed with costs to the plaintiff.

14. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 23<sup>RD</sup> DAY OF OCTOBER 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

In the presence of;

Mr. Gakaria holding brief for Mr. Mwenda for intended interested party

Ms. Masava holding brief for Mr. Wakwaya for plaintiff/respondent

No appearance for defendants

Abdisalam – Court Assistant

