



Nduati (Suing for/on behalf of Christian Church International (CCI) v Ndungu; Greystone Christian Church through its trustees Eliud Gitau Muiruri, Gachucha Mungai & Julius Murigi Mungai (Intended Interested Party) (Environmental and Land Originating Summons 13 of 2023) [2024] KEELC 13230 (KLR) (14 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13230 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 13 OF 2023**

**LN GACHERU, J
NOVEMBER 14, 2024**

BETWEEN

RUEL MURAGU NDUATI (SUING FOR/ON BEHALF OF CHRISTIAN CHURCH INTERNATIONAL (CCI) PLAINTIFF

AND

JAMES MUIRURI NDUNGU RESPONDENT

AND

**GREYSTONE CHRISTIAN CHURCH THROUGH ITS TRUSTEES
ELIUD GITAU MUIRURI, GACHUCHA MUNGAI & JULIUS MURIGI
MUNGAI INTENDED INTERESTED PARTY**

RULING

1. The Matter for determination is the Notice of Motion Application dated 15th April 2024, brought under Order 1 Rule 10, and Order 51 Rule 1 of the Civil Procedure Rules, as read together with Sections 3A and 6 of the Civil Procedure Act, and Article 159 of the Constitution of Kenya, wherein the Intended Interested Party as Applicant has sought for the following Orders: -
 1. That this Court be pleased to join the applicant herein as an Interested Party to this suit.
 2. That upon granting of prayer 1 above, this Court be pleased to Order that the Applicant be served with all pleadings in this suit.
 3. That there be a stay of proceedings in this matter until this application is heard and determined.
 4. That this Court be pleased to order that the matter be heard de novo.



5. That costs of this Application be in the cause.
2. This Application is supported by the grounds stated on its face as well as in the Supporting Affidavit sworn by Julius Murigi Mungai, on 15th April 2024, wherein the deponent averred that he represents Greystone Christian Church, the registered proprietor of land parcel No. Mutubiri/Nanga Block 2/244 (the suit property).
3. The deponent attached a copy of the Green card in respect of the suit property, and a letter dated 6th March 2023, bearing the Letterhead of Greystone Holdings Co. Ltd, and addressed “To whom it may concern” wherein it is stated that the suit property belongs to Greystone Christian Church.
4. Further, the deponent averred that the Applicant had purchased the suit land from one Margaret Wambui Kiarie, a shareholder of Greystone Holdings and Co. Ltd, and he annexed a letter from the Office of the Attorney-General dated 28th March 2019, wherein the said Margaret Wambui Kiarie is listed as one of the seven (7) Directors of Greystone Holdings Co. Limited.
5. The deponent further averred that the Applicant has occupied the suit property since year 2001, and has carried out numerous developments thereon as attested to by the photographs annexed to his Affidavit and marked “JMM3”.
6. The deponent annexed a copy of a document described as “Mutual Commitment to the Mission, Vision and Values” which was executed by the Applicant, and another entity known as Compassion Ministry, and signed inter alia by the Defendant and with the date stamp of “Christ Joy Christian Church, Greystone” dated 25th November 2022”.
7. He urged the Court to enjoin the Applicant to the proceedings as it would provide a true account in relation to the suit land; thereby, assisting the Court to resolve questions surrounding the ownership of the suit property. He added that the Applicant is in danger of losing sponsorship from its funders if not allowed the opportunity to defend its interests over the same.
8. The Plaintiff/Respondent Ruel Muragu Nduati, opposed the instant Application through his Replying Affidavit sworn on 9th May 2024, wherein he averred that the persons named as trustees of the Applicant are listed as witnesses in the matter before the Court, and they will give their testimony and therefore, they do not stand to suffer prejudice if the said application is not allowed.
9. Further, that the said representatives of the applicant are working with the Defendant in an attempt to bolster his Defence. The Plaintiff/ Respondent further averred that at the time of filing this application, he had closed his case, which means that he will not be afforded an opportunity to respond to the pleadings by the Applicant herein.
10. The Respondent cited the provisions of Order 11 of the Civil Procedure Rules, and argued that the lack of a prayer for the re-opening of the Plaintiff’s case renders the instant application frivolous. Further, that the Applicant failed to enclose any document or supply evidence in support of the contention that the persons named are the Trustees of Greystone Christian Church. That the documents provided by the Applicant belong to Greystone Holdings Co. Ltd, which entity is not affiliated to Greystone Christian Church.
11. The instant Application was canvassed by way of written submissions, wherein the parties filed their respective written submissions to support or oppose the instant application.



The Applicant/Intended Interested Party's Submissions

12. The Applicants filed its written submissions dated 24th June 2024, through the Law Firm of C.W Macharia & Associates, and submitted that Greystone Christian Church is the registered owner of the suit land; however, it was not enjoined in the suit herein. The Applicant stated that the mentioned church has brought the instant application through its trustees pursuant to the provisions of Order 1 Rule 10(2) of the Civil Procedure Rules. Reliance was placed in the holding of the Court in the case of *Trusted Society for Human Rights Alliance v Mumo Matemu & others* (Supreme Court Petition No. 12 of 2023 (2015) eKLR.
13. The Applicant urged the Court to allow its application because Greystone Christian Church, holds a legal right to the suit property as the registered owner thereof; and it is in occupation of the suit land.

The Plaintiff/Respondent's Submissions

14. The Plaintiff/Respondent filed his written submissions dated 25th June 2024, through the Law Firm of Thaama Mbugua & Associates Advocates., wherein he identified a single issue for determination by the Court being; whether the Orders sought are merited.
15. The Respondent relied on the following the cases; - *Kitale ELC Case No.4 of 2021*; and *Fancis Karoki Muruatetu & Another vs Republic and 5 Others Petition No. 15 as considered with No.16 of 2013 (2016)*, concerning the requirements for successful application for joinder as an interested party.
16. The Plaintiff/Respondent further submitted that the Intended Interested Party hold no interest in the instant suit. He refuted the Applicant's contention that they are trustees of Greystone Christian Church. Further he reiterated that the documents attached by the Applicant belong to Greystone Holdings Co. Ltd, and which entity is unaffiliated with Greystone Christian Church.
17. The Plaintiff/Respondent further submitted that the persons standing in as trustees of the Intended Interested Party, are listed as witnesses in the main suit, and they filed their Witness Statements dated 25th January 2024, on 26th January 2024; thus, they will have an opportunity to contribute in respect of the instant suit by giving their evidence and testimonies at the hearing of the Defendant's case.
18. It was further submitted that the suit was filed in May 2023, while the Defendant filed his response on 13th June 2023, during which time the alleged trustees of the Intended Interested Party sought to be heard as witnesses, and elected not to seek joinder as Interested Parties.
19. Further, it was argued that the present Application is an afterthought; that the application and annexures thereto lack probative value, and is meant to seal loopholes in the Defendant's case after the Plaintiff has already closed his case. He added that the pre-trials had closed in respect of the instant suit, while the Defendant has filed his pleadings. The Court was urged not to allow the instant Application, as it would unnecessarily prolong the matter.
20. The court has considered the instant Application, the pleadings in response to it, the rival written submissions, the relevant provisions of law, cited authorities and the proceedings in general, and finds the issues for determination are; -
 - i. Whether the Applicant/ Intended Interested Party is entitled to the Orders sought?
 - ii. Who should bear costs of this Application?



i). Whether the Applicant/ Intended Interested Party is entitled to the Orders sought.

21. The Applicant herein is seeking to be joined in the instant suit as an Interested Party, and the persons named thereon have been named in their capacity as trustees of Greystone Christian Church, which entity they claim is the registered owner of the suit property. The Plaintiff/Respondent in opposing the Application herein contended that the persons named as representing the Applicant have failed to demonstrate that they are Trustees of Greystone Christian Church.
22. Further, he submitted that the documents provided by the alleged trustees, as establishing a link between themselves and Greystone Christian Church, belong to a different entity, that is Greystone Holdings Co. Ltd, which entity is not affiliated to Greystone Christian Church.
23. In the case of *Muruatetu & Another vs Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae)* [2016] KESC 12 (KLR), the Supreme Court addressed the requirements for successful joinder as an Interested Party in the following terms:

“...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:

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. 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. 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.”

24. Further, in the case of *JMK vs MWM & MFS* [2015] KECA 524 (KLR), the Court understood the meaning and import of the provisions of Order 1 Rule 10(2) of the Civil Procedure Rules as follows:

“Order 1 Rule (10) (2) of the Civil Procedure Rules empowers the court, at any stage of the proceedings, upon application by either party or *Suo moto*, to order the name of a person who ought to have been joined or whose presence before the court is necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit, to be added as a party.”

24. Similarly, the Court in the case of *Central Kenya Ltd. Vs. Trust Bank & 4 Others, CA No. 222 of 1998*, reasoned as follows;

“...all amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs.”

25. In the instant Application, the Applicant herein has contended that Greystone Christian Church, wherein they persons named are Trustees, is the registered proprietor of the suit property. The Court has perused a copy of the extract from the Green card in respect of the suit property marked as the Applicant’s annexure “JMM3”. In the said document, it is shown that Greystone Christian Church



was registered as the proprietor of the suit property on 23rd October, 2001. From the above referred document, the Court is satisfied that Greystone Christian Church, is the registered owner of the suit land.

26. The Plaintiff/Respondent had averred and submitted that the alleged trustees have not provided any evidence to demonstrate that they were appointed as Trustees of Greystone Christian Church. Further, this Court has considered the documents filed by the Applicant in support of the instant Application; particularly the letter dated 6th March 2023, bearing the letterhead of Greystone Holdings Co. Ltd. The said letter is not from Greystone Christian Church, but a different entity.
27. The above referred letter states that the suit property belongs to Greystone Christian Church, whose Trustees are named as follows: Eliud Gitau Muiruri, Gachucha Mungai and Julius Murigi Mungai (the movers of the instant Application).
28. However, it is noteworthy that the letter dated 6th March 2023, which bears the Letterhead of Greystone Holdings Co. Ltd, is the only document availed by the Applicant to confirm the persons named as trustees, were appointment as Trustees of Greystone Christian Church. In the said letter dated 6th March, 2023, Greystone Holdings Co. Ltd, is described on the Letterhead as follows: “Growers of Coffee, Beans and General Farming”.
29. On the basis of the above information, it is not evident whether Greystone Holdings Co. Ltd and Greystone Christian Church, are affiliated entities, as they are engaged in widely different pursuits. The Plaintiff/ Respondent further averred and submitted that the two entities are totally unrelated.
30. It is trite that he who alleges must prove, as provided by Sections 107, 109 and 112 of the *Evidence Act*. Having advanced a claim that the persons named are the Trustees of Greystone Christian Church, the Applicant, through it deponent was obligated to avail evidence to support that contention, that indeed the three named persons were trustees of Greystone Christian Church. The evidence produced by the Applicant does not bear the Letterhead of Greystone Christian Church, but of a different entity.
31. Further, the Applicant has not demonstrated any linkage between Greystone Holdings Co. Ltd and Greystone Christian Church. Therefore, this Court is not persuaded that the three named persons alleging representing the Applicant, Greystone Christian Church, have established that they are the Trustees of the said Greystone Christian Church, and thus that they possess the requisite authority to act on its behalf.
32. In the case of *Central Kenya Ltd. vs. Trust Bank & 4 Others, CA. No. 222 of 1998*, the Court expressed the rationale for joinder of parties to a suit as follows:

“The paramount consideration is whether the party concerned is necessary for the effectual and complete adjudication of all the questions involved in the suit.”
33. Having analyzed the available evidence and exhibits as above, this Court is not persuaded that the Applicant herein has drawn any nexus between the registered proprietor of the suit property, Greystone Christian Church, and alleged trustees. For that reason, the Court holds and finds that the Applicant’s joinder as Interested Party is not necessary for the effectual and complete adjudication of the issues raised in the suit herein.
34. Further, the Plaintiff has already closed his case and stands to be prejudiced if the instant Application is allowed as he will to reopen the case at an expense, and attendant delay, whereas to the Proposed Interested Party, through the alleged trustees will have an opportunity to give evidence in court, as they are lined up as Defence witnesses. Further, the alleged trustees as the representatives of the Applicant



herein have waited more than a year from the date of their Witness Statements to the initiation of the present Application, and no explanation was offered for the Applicant's failure to approach the Court during the period from 25th January 2023, to 15th April 2024, for joinder as an Interested Party.

35. Consequently, this Court is satisfied that the interests of the Applicant herein will not be abridged if the instant Application is disallowed, because the named alleged trustees, will have a chance to testify before the Court having already been listed as witnesses. For the avoidance of doubt, the Witness Statements of Gachucha Mungai, Julius Murigi Mungai, and Eliud Gitau Muiruri, all dated 25th January, 2023, are contained in pages 35 to 43 of the Defendant's bundle of documents.
36. Therefore, this Court is satisfied that the instant Application is not merited, and accordingly, the Intended Interested Party's Application dated 15th April 2024, is found not merited, and is dismissed entirely.

ii). Who should bear costs of this Application?

37. The Application herein has been dismissed, and the same had been opposed by the Plaintiff/ Respondent herein. Thus, the Plaintiff/ Respondent is the successful litigant and is entitled to costs of the instant Application. Therefore, the instant Application is dismissed entirely with costs to the Plaintiff/ Respondent herein.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14TH DAY OF NOVEMBER 2024.

L. GACHERU

JUDGE.

14/11/2024

Delivered online in the presence of;

Joel Njonjo – Court Assistant

Ms Mbugua for the Plaintiff/ Respondent

Ms Gachango for the Defendant

N/A for Intended Interested Parties/Applicants.

L. GACHERU

JUDGE

14/11/2024.

