



**Ngumbao & 2 others (Suing as the Administrator of the Late Patrick Ngumba Mweni (Deceased))
v District Land Registrar, Uasin Gishu & 3 others; Kibor & 20 others (Intended Interested Party)
(Environment & Land Case 74 of 2015) [2024] KEELC 14058 (KLR) (16 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 14058 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 74 OF 2015
EO OBAGA, J
DECEMBER 16, 2024**

BETWEEN

**DERICK KATANA NGUMBAO 1ST PLAINTIFF
MERCYLINE USHINDE NZARO 2ND PLAINTIFF
MAIREEN DMA NGUMBAO 3RD PLAINTIFF
SUING AS THE ADMINISTRATOR OF THE LATE PATRICK NGUMBA
MWENI (DECEASED)**

AND

**DISTRICT LAND REGISTRAR, UASIN GISHU 1ST DEFENDANT
ATTORNEY GENERAL 2ND DEFENDANT
COUNTY LAND ADJUDICATION & SETTLEMENT OFFICDR, UASIN GISHU
COUNTY 3RD DEFENDANT
DANIEL MURIGI WAINAINA 4TH DEFENDANT**

AND

**MARK KIPROTICH KIBOR & 20 OTHERS & 20 OTHERS & 20 OTHERS & 20
OTHERS & 20 OTHERS INTENDED INTERESTED PARTY**

RULING

Introduction;

1. This is a ruling in respect of two separate Notices of motion both dated 4.3.2024. The first one is brought by the Intended Interested parties and it seeks the following orders:-



1. Spent
 2. That the Intended Interested party herein be enjoined in these proceedings as Interested parties.
 3. That the Honourable court be pleased to grant leave to the intended parties to fully participate in the proceedings herein and file such pleadings, statements, affidavits, submissions and other documents subsequent to joinder because they are purchasers for value of parcel numbers Uasin Gishu/Illula/154 into forty portions being Uasin Gishu/Illula/ 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786,787,788,789,790,791,792,793,794,795,796,797,798,799,800, 801,802, 803, 804, 805,.806, 807, 808, 809 and 810 respectively.
 4. That costs of this application be in the cause.
2. The second application is brought by the plaintiffs and it seeks the following orders: -
1. Spent
 2. That the Honourable court be and is hereby pleased to set aside the proceedings and orders issued on 11/10/2023.
 3. That the Honourable court be and is hereby pleased to stay proceedings and/or taking further direction in respect to the hearing of the Defendants case pending the hearing and determination of the instant application.
 4. That the Honorable court be and is hereby pleased to review and set aside the orders closing the plaintiff's case and grant issued on 11/10/2023 an allow the plaintiffs' to re-open their case.
 5. That the Honourable court be and is hereby pleased to review and set aside its orders, re-open the plaintiffs' case and grant leave to the plaintiffs' to file their list of witnesses and documents.
 6. That the Honourable court be and is hereby pleased to issue further direction and/or fix a further hearing date for the plaintiff's case or issue such orders it may deem just and fit to grant.
 7. That the Honourable court be ad is hereby pleased to allow the defence witness(es) to be recalled and cross examined by the plaintiff's and their advocates.
 8. That the costs of this application be in the cause.

The first application:

a. Applicants' contention;

3. The Applicants in this application contend that Patrick Ngumbao Mweni (Deceased) was registered owner of LR. No. Uasin Gishu/Illula/154 which he subdivided into Uasin Gishu Illula 771 to 810 which he then sold to individual purchasers. Some of the Applicants purchased their portions from third parties who had purchased the same from the Deceased.
4. Some of the Applicants have developed their plots and have settled on the same. The Deceased had signed the necessary documents to enable the parcels be transferred to the purchasers but the 4th Defendant caused a caution/restriction to be registered on the parent title. There was however one Applicant who had managed to obtain title to his plot.



5. The Applicants contend that the restriction was wrongfully placed against title of the Deceased as the 4th Defendant had his own land being Uaisin Gishu/Illula/63. They therefore argue that they have sufficient interest to enable them to be joined in this case as interested parties. They contend that any orders which may be given in this case will affect them and therefore it is important that they be joined in this case.

b. Position of plaintiffs and the 1st, 2nd and 3rd Defendants;

6. The plaintiffs and the 1st to 3rd Defendants indicated that they did not wish to oppose the application for joinder.

c. Fourth Defendant's contention;

7. The 4th Defendant opposed the Applicants' application based on a replying affidavit sworn on 12.3.2024. The 4th Defendant contends that he is the legitimate allottee of LR. No. Uasin Gishu/Illula/154 measuring 4.1. hectares (suit property) as per the records of the Settlement Fund Trustee (SFT).

He states that he fully paid the loan due to SFT and became the outright purchaser of the suit property. He further states that the Interested parties claim to the suit property is tainted with fraud and is therefore illegal, null and void. He argues that the Application has been brought too late in the day after the plaintiff's case was dismissed and his case has been closed and that the case is only pending defence hearing of the 1st to 3rd Defendants' case.

8. The 4th Defendant further argues that joinder will not serve any useful purpose as the Applicants will not seek to enforce any rights against him. He states that the title to the suit property was erroneously issued to Julius Chepsoi Chepkieng when the same was supposed to be issued to him. The Land Registrar advised Julius Chepkieng to return the title for rectification but he did not do so. He instead transferred the same to Judith Amakinata Ekiring who in turn transferred it to the Deceased.

d. Applicants' submissions;

9. The Applicants adopted the definition of an interested party as provided for in the [Constitution of Kenya \(Protection of Rights and Fundamental Freedoms\) Practice and Procedure Rules 2013](#), Rule 2 which defines an Interested party as follows: -

“Interested party means a person or entity that has 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.”

10. The Applicants relied on the case of [Trusted Society of Human Rights Alliance –vs- Mumo Matemu & 5 others](#) Supreme Court petition No. 12 of 2013 (2014) eKLR where the Supreme Court 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.”

11. The Applicants also relied on the case of [Francis Karioko Muruatetu & another –vs- Republic & 5 others](#) (2016) eKLR which set out principles for joinder as personal interest or stake in the subject matter of



the suit, possibility of prejudice that may result from non-joinder and a demonstration of a unique case intended to be made by the proposed interested party.

e. Fourth Respondent's submissions;

12. The 4th Defendant submitted that the Applicants have sought to be joined in these proceedings after 9 years and that the application is only meant to delay the finalization of this case. He relied on the case of *Kingori –vs- Chege & 3 others* (2002) eKLR 243 where the guiding principles for joinder were set out as one must be a necessary party and must be a proper party.
13. The 4th Defendants also relied on the case of *Kayongo –vs- Embakasi Ranching Co. Ltd & another* (2023) KLR where it was held as follows:-

“Accordingly, a necessary party is one without whom no order can be made effectively, while a proper party is one whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings.”

f. Analysis and determination;

14. I have carefully considered the Applicants' application as well as the opposition to the same by the 4th Defendant. I have also considered the submissions of the parties. The only issue for determination is whether the Applicants have met the threshold for joinder to these proceedings. To begin with, the Applicants have demonstrated that they purchased portions of the suit property from the Deceased. The Deceased was a second purchaser of the suit property, the first being Judith Amakinata Ekering. The title from SFT was given to one Julius Chepsoi Chekieng. It is claimed that this title was erroneously given to Julius Chepsoi Chekieng.
15. The Applicants purchased their properties from either the Deceased or third parties who purchased the same from the deceased. The Applicants have settled on the purchased portions and some have titles to their properties. Any decision which will be made will certainly affect the Applicants. Failure to join them in these proceedings will greatly prejudice them. They have demonstrated that they have interest in the litigation. This is more so because the 4th Defendant is seeking cancellation of title in favour of the Deceased from whose root the Applicants claim their entitlements. The Applicants have therefore met the threshold set out in the case of *Trusted Society of Human Rights Alliance* (Supra).
16. The 4th Defendant submitted that the Applicants have brought these application 9 years after the suit was filed. It is important to note that this case is yet to be concluded. An Interested party can even be joined after judgement. See *Tang Gas Distributors Ltd –Vs- Said & other* (2014) EA 448 where it was held as follows: -

“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 judgement where damages are yet to be assessed; that it is only when a unit or proceeding has been finally disposed of and there is nothing more to be done that the rule becomes in applicable; and that a party can even be added at the appellate stage.”



The second application;

a. Applicants; contention;

17. The Applicants contend that they were unable to give instructions to their counsel as the 1st Applicant who has been leading this case on behalf of the 2nd and 3rd Applicants was unwell for a longtime. He now states that he is well and ready and willing to pursue their case.
18. The Applicants state that this application is made in good faith and will not prejudice the 4th Respondent who will have opportunity to file further documents and witness statements.

b. Fourth Defendant's contention;

19. The 4th Defendant opposed the Applicants' application based on a replying affidavit sworn on 4.4.2024. The 4th Defendant contends that the Applicants' application is an abuse of the process of court. On the 11.10.2024 counsel for the Applicants was present when the court confirmed the case for hearing and allocated time for it. When time for hearing came up, neither the Applicants nor their counsel were present. The court proceeded to dismiss the Applicants case and proceeded with defence of 4th Defendant.
20. The 4th Defendant states that the Applicants should have brought an application for reinstatement of the dismissed suit instead of bring up an application for review as there is no claim that there is discovery of new and important evidence to warrant a review.
21. The 4th Defendant states that the 1st Applicant is barely 29 years and that the medical chits which he has annexed to his application are not clear and are contradictory on what is ailing him.

c. Plaintiffs' submissions;

22. The Plaintiffs submitted that there is need to set aside the orders of 11.10.2023 dismissing the Plaintiffs case. They relied on the case of *Enoch Nyakundi Onchwari –Vs- Rural Electrification Authority* (2016) eKLR which quoted the case of *Patel –Vs- EA Cargo Handling Services Ltd* (1974) EA 75 at page 76 where it was stated as follows:-

“There are no limits or restrictions on the Judge's discretion except that if he does vary the judgement he does so such terms as may be just... The main concern of the court is to do justice to the parties, and the court will not impose conditions on itself to fetter the wide discretion given it by the rules.”

23. On the issue of delay in bringing this application, the Applicants submitted that the delay was due to the illness of the 1st Applicant. Reliance was placed on the case of *Mwangi S. Kaimenyi –Vs- Attorney General & another* (2014) eKLR which set out the principles to be considered in determining whether delay is inordinate or not.



d. Fourth Defendant's submissions;

24. The 4th Respondent's submitted that the Applicants' application is not merited. He relied on the case of *Shah -vs- Mbogo & another* (1967) EA 116 where it was held as follows: -

“Discretion of a court to set aside ex-parte proceedings is intended to avoid injustice or hardship resulting from accident, excisable mistake or error. But is not designed to assist a person who has deliberately sought whether by evasion or otherwise, to delay justice.”

25. The 4th Respondent further submitted that the Applicants' application had been brought after 6 months which delay is inordinate and that it has been brought under wrong provisions of the law.

26. The 4th Defendant also relied on the case of *John Nabashon Mwangi -vs- Kenya Finance Bank Ltd (in liquidation)* 2015 eKLR where it was stated as follows:-

“For the court to exercise its discretion in favour of setting aside exparte proceedings, applicant must not only show sufficient cause that prevented his attendance, but also demonstrate good faith in that his application is not geared towards derailing the course of justice. He who comes to equity must do so with clean hands.”

e. Analysis and determination;

27. I have carefully considered the Applicants' application, the opposition to the same by the 4th Defendant as well as the submissions filed. The only issue for determination is whether the Applicants have demonstrated that they deserve the discretion of the court to set aside the orders of 11.10.2023 dismissing their case and make other consequent orders. There is no contention that on 11.10.2023 when this suit came up for hearing, the Applicants were not in court. Their counsel applied for adjournment which application was rejected. The case was set for hearing in open court.

28. When the case was called out in one court for hearing, neither the Applicants nor their counsel were in court. The court proceeded to dismiss the Applicant's case for non attendance and proceeded to hear the 4th Defendant's counter-claim. The reason for this application is that the 1st Applicant who was leading this case on behalf of his sisters who are the 2nd and 3rd Applicants was sick. He was unable to give instructions to his Advocates. When he was a bit better, he came to his lawyers and explained his absence and failure to give instructions. The 1st Applicant annexed medical documents to show that he has been battling with hypertension and diabetes.

29. The reason given for failure to be in court is that the 1st Applicant who was leading this case on behalf of the other Applicants was unwell. When he was finally traced, the present application was filed. Infact the counsel for the Applicants had filed an application to cease acting for the Applicants. This application was filed in October, 2023. It had to be withdrawn on 5.3.2024 after the Applicants were traced and were ready to explain their absence and lack of instructions to the Advocates.

30. The 4th Respondent stated that there was delay of 6 months in filing the application to set aside the dismissal. This delay has been adequately explained by the Applicants. The delay was due to illness on the part of the 1st Applicant. This is excusable. The mere fact that wrong provision of the law were cited cannot defeat the application. The court can clearly discern what the Applicants are seeking. I therefore find that the Applicants' application is well founded.



Disposition;

31. I allow the first application for joinder in the following terms:-
- a. The Interested parties are joined in these proceedings as Interested parties.
 - b. The Intended parties are at liberty to file their documents and witness statement in support of their case including defences within 21 days from the date hereof.
 - c. The documents to be filed to be served upon all the parties within 14 days of filing.
 - d. The plaintiffs and Defendants have 14 days within which to file responses to the Interested parties' documents if any.
 - e. The costs of this application shall be costs in the cause.
32. I allow the second application for setting aside in the following terms:-
- a. The court's order of 11.10.2023 dismissing the plaintiff's suit is hereby set aside.
 - b. The dismissed suit is reinstated for hearing.
 - c. The Plaintiffs are granted leave to file witness statements and documents in support of their case within 21 days.
 - d. The 4th Defendant who has already testified shall be recalled for cross examination by the parties to this case.
 - e. The defendants are at liberty to file further witness statements and documents if any within 14 days.
 - f. The costs of this application shall be costs in the cause.
- It is so ordered.

DATED, SIGNED and DELIVERED at ELDORET on this 16th day of DECEMBER, 2024.

E. O. OBAGA

JUDGE

In the virtual presence of:-

M/s Jemeli for Mr. Mwinamo for 4th Defendant.

Court Assistant –Laban

E. O. OBAGA

JUDGE

16TH DECEMBER, 2024

