



**Sehmi & another v Tarabana Company Limited & 5 others; Law
Society of Kenya (Proposed Interested Party) (Petition (Application)
E033 of 2023) [2024] KESC 13 (KLR) (12 April 2024) (Ruling)**

Neutral citation: [2024] KESC 13 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
PETITION (APPLICATION) E033 OF 2023
MK KOOME, CJ & P, PM MWILU, DCJ & VP, SC WANJALA, I LENAOLA & W OUKO, SCJJ
APRIL 12, 2024**

BETWEEN

HARCHARAN SINGH SEHMI 1ST APPELLANT

JASWARANA SEHMI 2ND APPELLANT

AND

TARABANA COMPANY LIMITED 1ST RESPONDENT

CHIEF LAND REGISTRAR, NAIROBI 2ND RESPONDENT

ROSPATECH LIMITED 3RD RESPONDENT

NATIONAL LAND COMMISSION 4TH RESPONDENT

INSPECTOR GENERAL OF POLICE 5TH RESPONDENT

THE ATTORNEY GENERAL 6TH RESPONDENT

AND

LAW SOCIETY OF KENYA PROPOSED INTERESTED PARTY

(Being an application for joinder of the Law Society of Kenya as an Interested Party)

Principles to be joined to a suit as an interested party

The application sought leave for admission of the applicant as an interested party. The court highlighted the principles for one to be joined to a suit as an interested party.

Reported by Kakai Toili

Civil Practice and Procedure – parties to a suit – interested parties - what were the principles for one to be joined to a suit as an interested party.



Brief facts

The application sought leave for admission of the applicant as an interested party, and thereafter, an opportunity to file a response and submissions to the petition, and no order as to costs. The applicant stated that its prayers were in line with its statutory mandate, being a representative of advocates tasked with overseeing due diligence in the transfer of property; the applicant intended to assist the court in clarifying the uncertainty in case law, regarding *inter-alia* applicability of the mirror principle, curtain principle, indemnity principle, the principle of indefeasibility of title under the Land Registration Act 2012, and its predecessor, the Registered Land Act, and the common law principle of *nemo dat quod non habet*.

Issues

What were the principles for one to be joined to a suit as an interested party?

Held

1. One must move the court by way of a formal application. Enjoinment was not as of right, but was at the discretion of the court; hence, sufficient grounds must be laid before the court, on the basis of the following elements:
 1. The personal interest or stake that the party had 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 was merely peripheral.
 2. 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.
 3. A party must, in its application, set out the case and/or submissions it intended to make before the court and demonstrate the relevance of those submissions. It should also demonstrate that the submissions were not merely a replication of what the other parties would be making before the court.
2. The issues highlighted by the applicant had been largely addressed by the parties to the appeal. Specifically, the applicant had neither identified any personal interest or stake that was clearly identifiable and proximate, nor the prejudice it was likely to suffer in case of non-joinder. Furthermore, the applicant had not demonstrated the relevance of its submissions to the issues of general public importance identified by the Court of Appeal. In any event, the applicant's submissions went beyond the delineated questions. There was no basis upon which the applicant could be admitted as an interested party.

Application dismissed; each party to bear its own costs.

Citations

Cases

Kenya

1. *Attorney General v Ndiu & 73 others* Petition 12 (EO16) of 2020; [2021] KESC 17 (KLR) - (Followed)
2. *Muruatetu & another v Republic & 5 others* Petition 15 & 16 of 2015 (Consolidated); [2016] KESC 12 (KLR) - (Followed)
3. *Rai & 3 others v Rai & 4 others* Petition 4 of 2012; [2013] KESC 20 (KLR) - (Followed)
4. *Trusted Society of Human Rights Alliance v Matemo & 5 others* Petition 12 of 2013; [2014] KESC 32 (KLR) - (Followed)

Statutes

Kenya

1. Constitution of Kenya articles 50(1); 159; 163- (Interpreted)
2. Land Registration Act (cap 300) In general - (Cited)
3. Law Society of Kenya Act (cap 18) section 4- (Interpreted)



4. Registered Land Act (Repealed) (cap 300) In general - (Cited)
5. Supreme Court (General) Practice Directions (cap 9B Sub Leg) In general- (Cited)
6. Supreme Court Act (cap 9B) sections 3, 3A, 11A, 23(2B)- (Interpreted)
7. Supreme Court Rules, 2012 (cap 9B Sub Leg) rules 2, 3, 12, 13, 18, 22, 24, 24(1); 24(2); 31; 64- (Interpreted)

Advocates

Mr. Kevin Michuki for the applicant

Mr. Mumo b/b for Mr. David Njoroge for the 1st and 2nd appellants

Mr. Khayega Chivai for 1st respondent

Mr. Allan Kamau State Counsel, for the 3rd, 5th and 6th respondents

RULING

1. Upon perusing the notice of motion dated January 22, 2024, and filed on January 23, 2024, by the applicant pursuant to articles 50(1), 159 and 163 of the Constitution, sections 3, 3A, 11A and 23(2B) of the Supreme Court Act 2011, rules 2, 3, 12, 13, 18, 22, 24, 31 and 64 of the Supreme Court Rules 2020, and the Supreme Court (General) Practice Directions 2020; seeking leave for admission as an interested party; thereafter, an opportunity to file a response and submissions to the petition; and no order as to costs; and
2. Upon reading the grounds on the face of the application, and supporting affidavit sworn by Florence W. Muturi, the Chief Executive Officer of the Law Society of Kenya, on January 16, 2024, wherein she avers that, the applicant's prayers are in line with its statutory mandate, being a representative of advocates tasked with overseeing due diligence in the transfer of property; the applicant intends to assist the court in clarifying the uncertainty in case law, regarding inter-alia applicability of the mirror principle, curtain principle, indemnity principle, the principle of indefeasibility of title under the Land Registration Act 2012, and its predecessor, the Registered Land Act, and the common law principle of *Nemo dat quod non habet*; and
3. Upon further considering the applicant's additional grounds to the effect that, in line with its objectives under section 4 of the Law Society of Kenya Act, it seeks to assist the court in settling the issues in question, and in so doing, provide guidance to the courts, practitioners, and the general public; protect the Constitution, advance the rule of law and the administration of justice. In addition, the applicant avers that it has met the principles for admission as an interested party established by this court in Francis Kariuki Muruatetu & another v Republic & 5 Others, SC Petition No. 15 of 2015 as consolidated with Petition No. 16 of 2015 [2016] eKLR (the Muruatetu Case); and Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others, SC Petition No. 12 of 2013; [2015] eKLR; and
4. Upon considering the applicant's submissions dated January 22, 2024 and filed on January 23, 2024, wherein the applicant reiterates its grounds in support; and further submits that it has a non-partisan role in the proceedings, and is apprehensive that the parties herein will inadequately articulate and canvass the delineated issues affecting its members' practice, within the limited confines of their respective interests; and
5. Upon considering the 1st and 2nd appellants' grounds of opposition and written submissions both dated January 31, 2024, and filed on February 1, 2024, to the effect that the applicant has failed to file a response to the appeal before seeking leave to be joined as an interested party in contravention of rule 24(1) of the Supreme Court Rules; disclose its case, grounds, or file draft submissions it intends to advance before the court in contravention of rule 24(2), indicate the specific relevance it would



add to the proceedings, and substantial departure (if any) from arguments advanced by the parties; and, demonstrate any personal interest or proximate stake in the appeal as well as the prejudice it would suffer if the application is denied. Ultimately, it is urged that the applicant has failed to meet the threshold for admission as an interested party established in *Attorney General v David Ndi & 73 Others* (Petition 12 (E016) of 2020) [2021] KESC 17 (KLR); and

6. Further noting that the 3rd, 5th and 6th respondents vide their grounds of opposition and written submissions, both dated 31st January 2024, and filed on 1st February 2024, opposed the Motion on similar grounds as the appellants, and further submit that the mere claim that one seeks to protect the public interest, is an insufficient ground for joinder of an interested party; and
7. Upon reading the applicant's further affidavit sworn by Florence W. Muturi on February 5, 2024 in response to the appellants' and respondents' arguments, in which it contends that, its factual depositions have not been controverted by the objectors; the assertion that filing a response is a prerequisite to an application for joinder as an interested party is a gross misinterpretation of the *Supreme Court Rules*; filing a response only accrues as of right to the respondents, therefore any other party must seek leave of the court before lodging any pleading; it has clearly identified its stake in the proceedings, and at this juncture, it cannot adequately elaborate its departure from the parties' submissions to the appeal as the same are yet to be filed; and
8. Having read and considered the applicant's supplementary submissions dated February 7, 2024 and filed on even date, wherein the applicant restates its averments and further urges that; it should be allowed to prosecute its cause taking into account its role as an interested party that was not involved in the proceedings before the superior courts below; and the claim that it seeks to establish a new case is unsubstantiated; and
9. Bearing in mind that the Court of Appeal in its ruling dated November 10, 2023, certifying the appeal as one involving a matter of general public importance, identified three issues, viz: legitimate expectation in the renewal of leases; whether an irregular allocation can create a genuine title; and whether an innocent purchaser's title can be challenged; and
10. Noting the principles for joinder of an interested party established by this court in the *Muruatetu* case where the court stated:

“[37]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”
11. We now determine as follows:



- i. Having carefully appraised the application, the responses thereto and submissions by the parties, and guided by the provisions of rule 24 of the Supreme Court Rules 2020, and the principles established by this court in the Muruatetu case, we find that the issues highlighted by the applicant have been largely addressed by the parties to the appeal;
 - ii. Specifically, the applicant has neither identified any personal interest or stake that is clearly identifiable and proximate, nor the prejudice it is likely to suffer in case of non-joinder;
 - iii. Furthermore, the applicant has not demonstrated the relevance of its submissions to the issues of general public importance identified by the Court of Appeal;
 - iv. In any event, the applicant's submissions go beyond the delineated questions. As such, we do not see any basis upon which the applicant can be admitted as an interested party; and
 - v. While costs should generally follow the event in view of this court's decision in Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai Estate of & 4 Others, SC Petition No. 4 of 2012; [2013] eKLR, we find that in these circumstances, the appropriate order is for each party to bear their own costs. We recognize that the applicant was motivated by its statutory mandate, save that the issues delineated by the Court of Appeal are well covered by the primary parties.
12. Consequently and for the aforesaid reasons, we make the following orders:
- a. The notice of motion dated January 22, 2024 and lodged on January 23, 2024, is hereby dismissed;
 - b. Each party shall bear its own costs.
- It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF APRIL 2024.

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M. K. KOOME
CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT

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P. M. MWILU
DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE SUPREME COURT

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S. C. WANJALA
JUSTICE OF THE SUPREME COURT

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I. LENAOLA
JUSTICE OF THE SUPREME COURT

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W. OUKO
JUSTICE OF THE SUPREME COURT



I certify that this is a true copy of the original

REGISTRAR,

SUPREME COURT OF KENYA

