



**Muhindi v Misoi; Livali (Proposed Interested Party) (Environment & Land Case 12 of 2014) [2023] KEELC 77 (KLR) (19 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 77 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 12 OF 2014  
EO OBAGA, J  
JANUARY 19, 2023**

**BETWEEN**

**RAPHAEL KAGALI MUHINDI ..... PLAINTIFF**

**AND**

**MARY JEROTICH MISOI ..... DEFENDANT**

**AND**

**SILAS LIVALI ..... PROPOSED INTERESTED PARTY**

**RULING**

1. This is a ruling in respect of notice of motion dated May 18, 2022 in which the proposed interested party/applicant seeks the following orders:-
  - a. Spent
  - b. Spent
  - c. That the proposed interested party/applicant be and is hereby admitted as an interested party in the suit herein,
  - d. That judgment issued by this court (Lady Justice MA Odeny –Judge) on June 24, 2021 and the consequential orders and proceedings therefrom be and are hereby set aside,
  - e. That the proposed interested party be and is hereby allowed to file his defence to the plaintiff’s claim and this matter be heard afresh.
  - f. Costs of the application be provided.



### **Background:**

2. The defendant in this suit is owner of LR No Nandi/Chebilat/129 measuring 3.8 hectares (suit property). On August 17, 1995, the plaintiff purchased 0.83 hectares out of the suit property of which he took possession and remains in possession to date. On January 17, 2014, the plaintiff sued the defendant claiming that he has acquired 0.83 hectares out of the suit property.
3. The case was fully heard and a judgment delivered on June 24, 2021 in favour of the plaintiff. During the hearing, the defendant had admitted that she sold 0.83 hectares to the plaintiff but that she was only keen on transferring 0.4 acres to the plaintiff.

### **Applicant's Contention:**

4. The applicant contends that the case proceeded to conclusion without his knowledge despite the fact that he is the plaintiff's neighbour. He states that he purchased one acre from the defendant in 2009 and took possession and has put up his house where he resides. As evidence of purchase, he produced a letter from the area chief confirming that he purchased one acre from the defendant.
5. The applicant states that he learned of the case when the plaintiff who was accompanied by persons from lands office visited the land. He therefore contends that if execution of the judgment is allowed to proceed, he will be prejudiced as he will be affected. He states that the only land known to exist in favour of the defendant is 0.7 acres and that there are other people staying on the land who may be affected.
6. The applicant further stated that the area chief had tried to have the suit referred back for arbitration in vain. It is on this basis that he wants the judgment set aside and he be allowed to be joined in the proceedings and be allowed to defend himself.

### **Respondent's Contention:**

7. The plaintiff/respondent contends that the applicant cannot be joined in a case where there is a judgment which has been delivered. The respondent states that this court has no jurisdiction to join one into a suit after judgment and that the only option the applicant has is to file a suit of his own where he will urge his case.

### **Analysis and Determination:**

8. I have considered the applicant's application as well as the opposition to the same by the respondent. I have also considered the submissions by the parties. The only issue for determination in this application is whether the applicant can be joined in this suit and be allowed to defend the same.
9. There is no contention that the suit herein has been concluded and a judgment has been rendered. The applicant appears to have been aware about the suit in court as the plaintiff is his neighbour and if the documents he has filed in support of his application are anything to go by. *Black's Law Dictionary* defines a proceeding as the regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment.
10. It is therefore clear that judgment having been delivered, there is no proceedings pending upon which the applicant can be joined. The applicant cannot seek to have proceedings of a suit to which he was not a party set aside post judgment. The respondent has no claim against the applicant to which the applicant can be allowed to defend. If the applicant has any claim of whatever nature, he can bring it in a separate suit and not in this one.



**Disposition:**

11. It is clear that the applicant's application is devoid of merit. The same is dismissed with costs to the respondent.
12. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 19<sup>TH</sup> DAY OF JANUARY, 2023.**

**E. O. OBAGA**

**JUDGE**

In the virtual presence of;

Mr. Mogambi for Plaintiff/Respondent

Mr. Cheruiyot for Proposed interested party/Applicant.

Court Assistant –Akidor

