



**Gerald v Warui & 5 others; Land Registrar, Kirinyaga & another
(Interested Parties); Kagunya (Applicant) (Environment & Land Case
417 of 2013) [2023] KEELC 16069 (KLR) (28 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 16069 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE 417 OF 2013
EC CHERONO, J
FEBRUARY 28, 2023**

BETWEEN

JAMES MWANGI GERALD PLAINTIFF

AND

ANTONY WARUI 1ST DEFENDANT

**JACINTA WAIRIMU AND FRACIA NJOKI (SUED AS ADMINISTRATORS OF
THE ESTATE OF ELIUD RIGARIA MURANGO) 2ND DEFENDANT**

**JOYCE WATIRI AND EVA NJERI (SUED AS ADMINISTRATORS OF THE
ESTATE OF JOSEPH KARIUKI MUCHIRI) 3RD DEFENDANT**

**SAMSON MUREITHI MURIUKI (SUED AS ADMINISTRATOR OF THE
ESTATE OF NICHODEMUS MURIUKI ALIAS MURIUKI SAMSON
MURIITHI) 4TH DEFENDANT**

SIMON WACHIRA 5TH DEFENDANT

SAGANA HEALTH CENTRE 6TH DEFENDANT

AND

LAND REGISTRAR, KIRINYAGA INTERESTED PARTY

DISTRICT SURVEYOR, KIRINYAGA INTERESTED PARTY

AND

DAVID MIANO KAGUNYA APPLICANT



RULING

1. By a Notice of Motion dated February 1, 2022, the Applicant/Intended Interested party moved this Honourable Court seeking the following orders;
 1. THAT this Honourable Court be pleased to issue an order to enjoin the Applicant herein as an interested party.
 2. THAT the costs of this application be in the cause
2. The application is supported by grounds apparent on the face of the said application and the Affidavit of the Applicant sworn on even date. According to the Applicant, He was the registered owner of land parcel NO KIINE/SAGANA/3961 which Title has since been cancelled. He further stated that His title is a resultant subdivision of land parcel NO KIINE/SAGANA/356 which is the subject of this matter. He stated that the resultant land parcel NO. KIINE/SAGANA/3961 was transferred to him by the 4th Defendant after assisting him financially in pursuit of his claim in the matter.
3. The Applicant also averred that due process was followed while acquiring his title deed.

The application is opposed by the Plaintiff/Respondent vide a Replying Affidavit sworn on May 23, 2022. According to the plaintiff/Respondent, he is aware that the Applicant had been assisting the 4th defendant financially in the latter's claim in the suit property but adds that the Applicant's interest, if any, are intertwined with that of the 4th Defendant and that there is no need to join the Applicant as an interested party.

The Plaintiff/Respondent further contends that the Applicant has no demonstrable interest in the suit property and that the application is therefore an afterthought. He further stated that the Applicant has not demonstrated any identifiable stake or legal interest in the proceedings herein

Analysis And Determination

4. It is trite law that joinder of a party in a suit is governed by Order 1 of the *Civil Procedure Rules*. In determining whether or not to grant an application for joinder as a party, the court should ask itself whether any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist. The Court may also ask itself whether such a party is necessary for the determination of the real matter in dispute or whether His or Her presence is necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit.
5. The Applicant in His Supporting Affidavit has deposed that His title deed NO KIINE/SAGANA/3961 has been cancelled vide an order given on July 21, 2021, a copy of which is annexed thereto and marked DMK-1. According to the Applicant, He is a necessary party and that His presence will enable the Court to effectually and completely adjudicate all the issues in dispute.
6. I agree with the Applicant that being a registered owner of a resultant portion of the suit land parcel NO KIINE/SAGANA/356, He is has an identifiable stake or legal interest or duty in the proceedings before this Honourable Court and may be prejudiced unless joined as a party. That was the findings in the case of *Francis Karioki Muruatetu & Another v Republic & 5 Others (2014) eKLR* where an interested party was defined as follows;



‘One who has a stake in the proceedings, though he or she was not party to the cause abinitio. He or She is one who will be affected by the decision of the court when it is made, either way. Such as person feels that his or her interest will not be well articulated unless he himself or She herself appears in the proceedings, and champions his or her cause’

7. I agree with the finding of the Judge in the above decision. The upshot of my findings is that the Notice of Motion application dated July 1, 2022 is merited and the same is allowed as prayed.

Orders accordingly.

READ and SIGNED Virtually at BUNGOMA this 28th day of February, 2023

HON. E.C CHERONO ELC JUDGE

In the presence of;

Mr Kimwere for 1st Dedendant

Mr. Mbaabu for the 4th, & 6th Defendants

M/S Wanjiru Waweru for the 2nd Interested Party

Joy C/A

Page 1 of 5

