



**Karuri & another (Suing in the public interest, on their own behalf and on behalf of the 1500 residents of Tumu Tumu Mathingira in Masinga within the County of Machakos) v County Commissioner, Machakos County & 9 others; Kenya National Commission on Human Rights & 2 others (Interested Parties) (Environment & Land Petition 16 of 2019) [2023] KEELC 16788 (KLR) (13 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 16788 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ENVIRONMENT & LAND PETITION 16 OF 2019**  
**CA OCHIENG, J**  
**APRIL 13, 2023**

**BETWEEN**

**JOHN MWANGI KARURI ..... 1<sup>ST</sup> PETITIONER**

**RAPHAEL MUTUKU(SUING IN THE PUBLIC INTEREST, ON THEIR OWN BEHALF AND ON BEHALF OF THE 1500 RESIDENTS OF TUMU TUMU MATHINGIRA IN MASINGA WITHIN THE COUNTY OF MACHAKOS) ..... 2<sup>ND</sup> PETITIONER**

**SUING IN THE PUBLIC INTEREST, ON THEIR OWN BEHALF AND ON BEHALF OF THE 1500 RESIDENTS OF TUMU TUMU MATHINGIRA IN MASINGA WITHIN THE COUNTY OF MACHAKOS**

**AND**

**COUNTY COMMISSIONER, MACHAKOS COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**DEPUTY COUNTY COMMISSIONER, MASINGA SUB-COUNTY .... 2<sup>ND</sup> RESPONDENT**

**ASSISTANT COUNTY COMMISSIONER, NDITHINI DIVISION .... 3<sup>RD</sup> RESPONDENT**

**RAPHAEL KAMUTI MUSYOKA, CHIEF MANANJA LOCATION .... 4<sup>TH</sup> RESPONDENT**

**RIAKANAU FARMERS COOPERATIVE SOCIETY ..... 5<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT**

**NATIONAL LAND COMMISSION ..... 7<sup>TH</sup> RESPONDENT**



**NATIONAL POLICE SERVICE COUNTY COMMANDER, MACHAKOS .... 8<sup>TH</sup>  
RESPONDENT**

**INSPECTOR GENERAL OF POLICE ..... 9<sup>TH</sup> RESPONDENT**

**CHIEF LAND REGISTRAR ..... 10<sup>TH</sup> RESPONDENT**

**AND**

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS .... INTERESTED  
PARTY**

**CHAIRPERSON, NATIONAL CONSULTATIVE COORDINATION  
COMMITTEE ON INTERNALLY DISPLACED PERSONS .... INTERESTED  
PARTY**

**COMMISSION ON ADMINISTRATIVE JUSTICE ..... INTERESTED PARTY**

### **RULING**

1. What is before Court for determination is the 3<sup>rd</sup> Interested Party's Notice of Motion Application dated the 21<sup>st</sup> December, 2020 where it seeks the following Orders:
  1. That the Honourable Court be pleased to strike out the 3<sup>rd</sup> Interested Party from the suit herein as it is improperly joined.
  2. The costs of this Application to be provided for.
2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of Leonard Ngaluma where it avers that the Petition does not disclose any cause of action against the 3<sup>rd</sup> Interested Party. It claims the 3<sup>rd</sup> Interested Party has been improperly enjoined in this suit as there is no remedy sought against it. Further the Honourable Court has the power and prerogative to grant the orders as sought.
3. The Petitioners opposed the instant Application and filed a Replying Affidavit sworn by the 1<sup>st</sup> Petitioner John Mwangi Karuri where he deposes that the 3<sup>rd</sup> Interested Party has the latitude to make recommendations to any public body concerned in an alleged violation and those recommendations are binding. He made reference to the mandate of the 3<sup>rd</sup> Interested Party and insists that it has a role to play in the complaints herein as per Section 41 of the *Commission on Administrative Justice Act* (CAJA). He argues that the Petitioners herein have severally lodged complaints (now forming the subject matter of this suit) with the 3<sup>rd</sup> Interested Party and they promised the Petitioners that upon conclusion of their independent investigations into the matter, appropriate action would be commenced or recommended against the Respondents. He reiterates that the 3<sup>rd</sup> Interested Party failed to act as per its mandate and has also not demonstrated what prejudice it stands to suffer in this instance.
4. The other parties did not oppose the instant Application.
5. The Application was canvassed by way of written submissions.



## Analysis and Determination

6. Upon consideration of the instant Notice of Motion Application including the respective Affidavits as well as the rivaling submissions, the only issue for determination is whether the 3<sup>rd</sup> Interested Party should be struck off this suit.
7. The 3<sup>rd</sup> Interested Party insists that it has not been properly joined in these proceedings which fact is vehemently opposed by the Petitioners.
8. On striking out a party from a Constitutional Petition, Rule 5(d) (i) and (ii) of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, 2013 also known as *Mutunga Rules* deals with joinder/misjoinder of parties to a Petition and provides that:

“(d) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear just—(i) order that the name of any party improperly joined, be struck out; and (ii) that the name of any person who ought to have been joined, or whose presence before the court may be necessary in order to enable the court adjudicate upon and settle the matter, be added.”

9. I note these provisions are in pari materia with Order 1 Rule 10(2) of the *Civil Procedure Rules* which stipulates thus:

“(2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

10. Section 8 of the *Commission on Administrative Justice Act* provides the functions of the 3<sup>rd</sup> Interested Party and states thus:

“The functions of the Commission shall be to -

- a. investigate any conduct in state affairs, or any act or omission in public administration by any State organ, State or public officer in National and County Governments that is alleged or suspected to be prejudicial or improper or is likely to result in any impropriety or prejudice;
- b. investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector;
- c. report to the National Assembly bi-annually on the complaints investigated under paragraphs (a) and (b), and the remedial action taken thereon;
- d. inquire into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehaviour, inefficiency or ineptitude within the public service;



- e. facilitate the setting up of, and build complaint handling capacity in, the sectors of public service, public offices and state organs;
- f. work with different public institutions to promote alternative dispute resolution methods in the resolution of complaints relating to public administration;
- g. recommend compensation or other appropriate remedies against persons or bodies to which this Act applies;
- h. provide advisory opinions or proposals on improvement of public administration, including review of legislation, codes of conduct, processes and procedures;
- i. publish periodic reports on the status of administrative justice in Kenya;
- j. promote public awareness of policies and administrative procedures on matters relating to administrative justice;
- k. take appropriate steps in conjunction with other State organs and Commissions responsible for the protection and promotion of human rights to facilitate promotion and protection of the fundamental rights and freedoms of the individual in public administration;
- l. work with the Kenya National Commission on Human Rights to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referrals and collaboration; and
- m. perform such other functions as may be prescribed by the Constitution and any other written law.”

11. I note the Commission on Administrative Justice has been included in the instant Petition as an Interested Party. The definition of an Interested Party under Rule 2(b) of the [Mutunga Rules](#) states that:

“Interested Party” means a person or entity that has an 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.”

12. I have had a chance to peruse the Petition and I note the fulcrum of the dispute herein revolves around historical injustices relating to rights to land. I note Article 62(2) (e) of the [Constitution](#) of Kenya 2010 mandates the National Land Commission to deal with historical land injustices and states *inter alia*:

“to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress.”

13. Insofar as the Petitioners have raised other rights they claim to have been violated, to my mind I find that since the fulcrum of the dispute herein revolves around historical land injustices, it is trite that it is the National Land Commission which is the Constitutional body mandated to deal with the said issues. Further, I note the said National Land Commission is already a party to the suit.

14. From a reading of Section 8 of the [Commission on Administrative Justice Act](#), it is my considered view that it does not have the mandate to deal with the violations emanating from rights to land as indicated



herein. Further, on perusal of the Petition, I find that there is indeed no remedy sought as against the 3<sup>rd</sup> Interested Party.

15. In the circumstances, I find that the 3<sup>rd</sup> Interested Party is not properly joined in these proceedings and will strike it out.
16. It is against the foregoing that I find the instant Application merited and will allow it.
17. I make no order as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 13<sup>TH</sup> DAY OF APRIL, 2023**

**CHRISTINE OCHIENG**

**JUDGE**

