



Ethics & Anti-Corruption Commission & another v Mwaita & 2 others (Environment & Land Case 66 of 2022) [2023] KEELC 16790 (KLR) (12 April 2023) (Ruling)

Neutral citation: [2023] KEELC 16790 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 66 OF 2022
FM NJOROGE, J
APRIL 12, 2023**

BETWEEN

ETHICS & ANTI-CORRUPTION COMMISSION 1ST PLAINTIFF

KENYA NATIONAL HIGHWAYS AUTHORITY 2ND PLAINTIFF

AND

HILLARY KIPKORIR MWAITA 1ST DEFENDANT

SILAS KOMEN MWAITA 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

RULING

1. This is a ruling in respect of the intended 2nd Plaintiff's/Applicant's Notice of Motion application dated 9/01/2023 seeking the following orders:
 1. Leave be granted to the Applicant to be joined in the case as the 2nd Plaintiff.
 2. Costs of this application be provided for.
2. The application is supported by the affidavit sworn by Eng. Fredrick Onyango the Assistant Director of the Applicant herein sworn on 9/01/2023. He deposes that the government vested upon the applicant various assets and properties previously under the care, use and control of the Ministry of Public Works; that one of the properties vested upon it is the suit property herein Nakuru/Municipality Block 20/232 situated in London Estate; that the suit property is partly developed by the Ministry of Public Works and has been in the active use and occupation by the government from mid-1980s to date; that the Applicant is in active possession of the suit property and currently in the process of erecting its regional headquarters therein; that the Applicant is a necessary party whose presence in the matter will assist the court determine the dispute herein; that no prejudice will be occasioned to any of the parties herein thus it would be fair and reasonable that the Applicant be joined to the suit.



Response

3. The 1st Defendant in response filed its grounds of opposition dated 17/03/2023 on the following grounds:
 1. The Notice of Appointment of Advocate is premature and incompetent in as it offends the provisions of Order 1 Rule 10(2) of the Civil Procedure Rules in that the intended 2nd Plaintiff is yet to be granted leave to be added as a plaintiff in these proceedings. The inclusion of KENHA as the 2nd plaintiff should also be struck off for the same reason.
 2. The intended 2nd plaintiff has filed a cross-petition in Nakuru ELC Petition 8 of 2021 which relates to the same subject matter i.e. LR No Nakuru Municipality Block 20/232, involving the same parties and relate to common questions of law and fact and all rights to relief claimed are the same. As such the present application is an abuse of court process and may embarrass the court and lead to unnecessary multiplication of suits prejudicial to the 1st Defendant as it would lead to escalation of legal costs as well as wastage of scarce judicial time and public resources in payment of unnecessary legal fees and for the interest of justice and public interest at large this application ought to be rejected.
 3. The intended 2nd plaintiff as pleaded is a statutory public body and its interests are sufficiently covered by the 1st plaintiff whose mandate includes protection of public interest as concurred by this court ruling of 26th January 2022 in Nakuru ELC Petition No 8 of 2021(Enclosed). It's the plaintiff who investigated facts surrounding the ownership of the suit property, filed a list of witnesses and list of documents to be relied upon. The 2nd intended plaintiff has no other evidence other than the ones provided by the plaintiff. Its role at best would be that of a 'watch dog'.
 4. The application is incompetent, bad in law embarrassing and an abuse of court process and the same ought to be struck out with costs.

Submissions

4. There are no submissions on record filed by any of the parties.

Analysis And Determination

5. This court has considered the application, supporting affidavit and grounds of opposition and the only issue for determination is whether the intended 2nd Plaintiff/Applicant ought to be joined in the suit.
6. Order 1 Rule 1, 3 and 8 of the *Civil Procedure Rules* provides as follows:
 - “(1). All persons may be enjoined as plaintiffs in whom any right to relief in respect or arising out of the same act or transactions is alleged to exist whether jointly, severally or in alternative where, if such persons brought separate suits any common question of law or fact would arise.”
 - (3). All persons may be joined as defendants against whom 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, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.”



Rule 8 provides as follows:

“(8)

- (1) Where numerous persons have the same interest in any proceedings, the proceedings may be commenced, and unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.
- (2) The parties shall in such case give notice of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct.
- (3) Any person on whose behalf or for whose benefit a suit is instituted or defended under sub-rule (1) may apply to the court to be made a party to such suit.”

7. In the instant suit, it is not in dispute that the suit property is claimed by the Applicant herein through the 1st Plaintiff. The Applicant claims that it is a necessary party to the suit as it has been in possession of the suit property and is in the process of construction. It further added that joining it to the suit would assist the court arrive at a just and conclusive determination.
8. The 1st Defendant on the other hand opposed the present application on the ground that the Applicant’s interest are sufficiently covered by the 1st Plaintiff stating that it would only be coming in as a ‘watch dog’ since there was no other evidence it intends to bring.
9. Since the 1st Plaintiff in this suit seeks to prevent the Defendants from, inter alia, acquiring the suit property from the 2nd intended Plaintiff/Applicant, I am of the view that the Applicant is a necessary party for the purpose of assisting the court to conclusively deal with the matter. The intended 2nd Plaintiff/Applicant has an identifiable stake in the suit by virtue of the suit property allegedly being owned by it. I am also not convinced that the Defendants’ stand to suffer any prejudice if the intended 2nd Plaintiff/Applicant is allowed to join these proceedings. Further, I am not also persuaded that while the 1st plaintiff clearly has wider statutory mandate to protect the greater public interest, the applicant who clearly has its own proprietary interests to protect should be barred from participating in the suit as a substantive party.
10. The upshot of the foregoing is that the application dated 9/01/2023 by the intended 2nd Plaintiff/Applicant is merited and is allowed as prayed. The counsel for the 1st and 2nd plaintiffs shall jointly within 30 days of this order therefore jointly amend the existing plaint to include any further particulars that may be necessary and which will reflect the joinder of the 2nd plaintiff and the same shall be served upon the defendants within 7 days of its filing. The defendants shall thereafter respond to that amended plaint as may be appropriate and within the rules. The costs of the instant application shall be in the cause.
11. The instant suit shall be mentioned on 15th May 2023 to ascertain compliance with the orders issued above and for the issuance of further directions.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 12TH DAY OF APRIL 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

