



Maina v Nairobi City County Government; Muthaiga North Residents' Association (Proposed Interested Party) (Environment and Land Judicial Review Case E001 of 2023) [2023] KEELC 17895 (KLR) (25 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17895 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 OF 2023**

EK WABWOTO, J

MAY 25, 2023

BETWEEN

JANE NJERI MAINA EXPARTE APPLICANT

AND

NAIROBI CITY COUNTY GOVERNMENT RESPONDENT

AND

MUTHAIGA NORTH RESIDENTS' ASSOCIATION PROPOSED INTERESTED PARTY

RULING

1. This ruling is in respect to the application dated 13th February 2023, in which the Proposed Interested Party sought for the following reliefs;
 - a. ...Spent.
 - b. Muthaiga North Residents' Association be joined in these proceedings as an Interested Party.
 - c. The costs of this application be provided for.
2. The application was supported by the affidavit sworn by Antony Mwangi on 13th February 2023 under the following grounds:
 - i. The proposed interested party is the welfare association of the residents of Muthaiga North Area, within which the property LR No. 14861/18, the subject of the proceedings herein is situated.
 - ii. The proposed interested party has a stake in these proceedings as the development in question is in its neighborhood. It is the proposed interested party who reported the Ex-Parte



Applicant's illegal development to the Respondent's attention through its Urban Planning Development department.

- iii. The interests of the proposed interested party will not be well articulated unless it appears in the proceedings to champion its interests. The proposed interested party will assist the court with crucial information to enable it to settle all the questions in these proceedings. It is the proposed interested party who furnished the Respondent with information leading to the cancellation of authority to construct.
 - iv. The proposed interested party is directly affected by the actions of the Ex-parte Applicant and the outcome of this case. Therefore, it will be highly prejudicial to the proposed interested party if the suit were proceed without it being a party to these proceedings
3. The application was opposed. The Ex parte Applicant filed grounds of opposition dated 8th March 2023 in which it was stated that the Muthaiga North Resident's Association was an unincorporated body that lacked locus to present the application. It was also argued that the proposed interested party did not have an identifiable interest in the subject matter. The judicial review proceedings were said to challenge the process and decision contained in letter ref no. UP/UD&P/VOL.1/03/2023 that cancelled the development permit therefore there is no reason for joinder as the Association was the decision maker and already a party.
 4. The proposed interested party filed a Supplementary Affidavit dated 23rd March 2023 sworn by Antony Maina as Chairman of Muthaiga North Residents' Association and written submissions of the same date. It was averred that the Association comprised of 21 member estates within Muthaiga North Area and its mandate is to promote and protect the welfare and interests of the Muthaiga North residents. Moreover, it was deponed that joinder was essential to prove that public participation was not done and therefore withdrawal of the development permit was procedural.
 5. Pursuant to the directions issued by the Court, the application was canvassed by way of written submissions. The proposed interested party filed its submissions dated 23rd March 2023 while the Exparte Applicant filed her written submissions dated 8th March 2023.
 6. The proposed interested party, relying on the case of *Republic v Committee on Senior Counsel & Another Ex parte Allen Waiyaki Gichuhi* (2021) eKLR and *Welamondi vs The Chairman, Electoral Commission of Kenya* (2002) 1 KLR 486 argued that an unincorporated society has capacity to bring both judicial review and statutory challenge. Nonetheless, it was submitted that the Association was duly registered under the *Societies Act* within which the suit property- LR No. 14861/18 was situated.
 7. Relying further on the case of *Francis Kariuki Muruatetu & Another -Vs- Republic & 5 others* (2016) eKLR, it was submitted that the Proposed Interested Party should be enjoined in the suit as it would protect the rights of members and residents likely to be affected by the development.
 8. I have considered the application, written submissions filed and the main issue for determination in respect to the said application is Whether Muthaiga North Residents' Association should be joined to these proceedings as an Interested Party.
 9. On the issue of joinder, The *Black's Law Dictionary* defines "interested party" as:-

"A party who has a recognizable stake (and therefore standing) in a matter."



10. Order 1 Rule 10, (2) of the *Civil Procedure Rules*, outlines that:

“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 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.” [Emphasis mine]

11. The Supreme Court in *Communications Commission of Kenya & 4 Others vs Royal Media Services Ltd. & 7 others* (2014) eKLR stated:

“An Interested Party is one who has a stake in the proceedings, though he or she was not a party to the cause ab initio. He or she is the one who will be affected by the decision of the Court when it is made either way. Such a person feels that his or her interests will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. A party could be enjoined in a matter for the reason that;

- i. Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
- ii. Joinder to provide protection of the rights of a party who would otherwise be adversely affected in law;
- iii. Joinder to prevent a likely course of proliferated litigation.

12. On the threshold to be reached by a party seeking joinder, the holding by Muriithi J. in *Benjamin K Kipkulei v County Government of Mombasa & Another* [2015] eKLR is useful:-

“....The test for joinder of a party as an interested party is not that the applicant must show a stake or interest that must prevail in the suit, as that is not possible before the full hearing of the matter; the applicant should demonstrate a legal interest that calls for hearing before a decision on the dispute before the court is adjudicated. In common judicial parlance, I would say that the applicant ought to show on ‘an arguable case’ basis that he has an interest recognized in the law and capable of protection....”

13. In essence, any natural person or legal entity who may not be a party to proceedings and has an interest in the subject matter of such proceedings to the extent that they will undeniably be affected by court’s decisions, is for all intents and purposes an interested party, and ought to be allowed to join such proceedings to protect his or her interests.

14. In the instant case, I have considered the Ex-parte Applicant’s averments in respect to the proposed Interested Party who claims to have an interest by virtue of representing its members as residents of Muthaiga North Area. Firstly, I take note of the Proposed Interested Party’s registration certificate no. 24107 dated 21st October 2004 which would extinguish the argument that the Proposed Interested Party lacked locus standi by virtue of being unincorporated or unregistered. Secondly, the Preamble of Constitution of Muthaiga North Residents’ Association states that:

“Muthaiga North Residents’ Association is the Apex Society duly registered to be the custodian of the rights of all residents living within Muthaiga North Estate.”



15. In view of the foregoing, I am satisfied that it is necessary to join the Proposed Interested party as a party to this suit as it will aid the Court in effectively determining the dispute between the parties. I am of the view that the inclusion of the Proposed Interested party is necessary for the effective and complete adjudication of all issues arising in this instant suit.
16. On the issue of costs as it relates to this application, I do not deem it fit to grant any orders of costs to either party and in the circumstances, I would direct each party to bear own costs.
17. Consequently, the Proposed Interested Party's application dated 13th February 2023, is merited and disposed in the following terms:
 - i. Muthaiga North Residents' Association is hereby joined as the Interested Party.
 - ii. The Interested party to file its response to the main motion within 21 days from today.
 - iii. Each party to bear own costs of the application.
18. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25TH MAY, 2023

E.K. WABWOTO

JUDGE

In The Presence Of:

..... for the Ex-Parte Applicant

..... for the Respondent.

..... for the Proposed Interested Party/Applicant

Court Assistant – Caroline Nafuna.

