



Lemashisha & 2 others (Suing on their behalf and on behalf of 443 members of the Olongonot Community) v Kiambu Nyakinyua Farmers Co Ltd & 2 others; Sonneh Ruuh Limited & 21 others (Intended Interested Party) (Environment and Land Case Civil Suit 199 of 2012) [2023] KEELC 17437 (KLR) (16 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17437 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE CIVIL SUIT 199 OF 2012**

FM NJOROGE, J

MAY 16, 2023

BETWEEN

**DANIEL LEMASHISHA 1ST PLAINTIFF
MURE PARSITAU SAYO 2ND PLAINTIFF
MOSES JONG OLE KIPISHIAN 3RD PLAINTIFF
SUING ON THEIR BEHALF AND ON BEHALF OF 443 MEMBERS OF THE
OLONGONOT COMMUNITY**

AND

**KIAMBU NYAKINYUA FARMERS CO LTD 1ST DEFENDANT
LAND REGISTRAR NAIVASHA 2ND DEFENDANT
NATIONAL LAND COMMISSION 3RD DEFENDANT**

AND

**SONNEH RUUH LIMITED INTENDED INTERESTED PARTY
KIWAKA GENERAL MERCHANTS LTD INTENDED INTERESTED PARTY
VALLERIE ZOLA ANYANGO INTENDED INTERESTED PARTY
DAVID KAMAU KIMANI INTENDED INTERESTED PARTY
PETER GITHIRWA WAWERU INTENDED INTERESTED PARTY
SUSAN WAMBUI BIZER INTENDED INTERESTED PARTY
CHRISTOPHER KANAI KAMAU INTENDED INTERESTED PARTY
JECINTA WAMBUI KIMANI INTENDED INTERESTED PARTY**



DAVID KAMAU KANAI INTENDED INTERESTED PARTY
LUCY WARIGIA GITHIRWA INTENDED INTERESTED PARTY
STEPHEN KIMANI KAMAU INTENDED INTERESTED PARTY
JOSEPH NJUGUNA KANAI INTENDED INTERESTED PARTY
TRACY YVONNE AKOTH INTENDED INTERESTED PARTY
STEPHEN KINORO KAMAU INTENDED INTERESTED PARTY
FRANCIS GIKONYO INTENDED INTERESTED PARTY
TERESIA NJOKI KIMANI INTENDED INTERESTED PARTY
CAROLINE WATHITHI INTENDED INTERESTED PARTY
JOHN KANGETHE INTENDED INTERESTED PARTY
RACHEL WANJIRU KIMANI INTENDED INTERESTED PARTY
TERESIA NJOKI KANAI INTENDED INTERESTED PARTY
PETER GAITHO KIMANI INTENDED INTERESTED PARTY
MARY WANGARI KANAI INTENDED INTERESTED PARTY

RULING

1. This ruling is in respect of the Notice of Motion application dated 11/11/2022. The said application is expressed to be brought under Sections 1A and 1B of the *Civil Procedure Act* and Order 1 Rule 6 of the Civil Procedure Rule and the inherent jurisdiction of the court. The application seeks the following: an order that the proposed 4th to 107th defendants herein suing on their own behalf and on behalf of others as defendants in this suit.
2. The application is supported by the supporting affidavit sworn by Grace Nyambura Kuria who describes herself as a duly “registered member of the proposed defendants” having authority from the applicants to swear the affidavit on their behalf.
3. The grounds upon which the application is brought are as follows: the applicants have awaited instructions from the 1st defendant on how to proceed to defend the matter herein; that most of the founding directors and shareholders of the 1st defendant have since passed away and factions of the 1st defendant are embroiled in confrontations as to who are the 1st defendant’s officials and the issue has not been determined; that the 1st defendant has no legally recognized officials who could issue instructions on the defence of the suit and its members in excess of 1000 are keen to defend the suit as owners of the suit property; that the proposed defendants therefore seek to be joined as defendants both on their own behalf and on behalf of the other members of the 1st defendant to be able to adequately defend their interests in the light of the 1st defendant leadership predicament.
4. The application and the supporting affidavit both have some draftsmanship flaws which this court is inclined to disregard in favour of substantive justice.
5. In response to the application, the plaintiffs filed a replying affidavit sworn by Saitoti Ole Swakei who stated as follows: that he is the chairman of the plaintiff community; one of the previous chairman now having passed on; that a similar case Nakuru ELC 85 of 2017 (formerly Nairobi High Court ELC



No. 76 of 2014) which was filed by the 1st defendant was dismissed with costs for want of prosecution on 8/1/2020 when the 1st defendant and its membership failed to appear in court for the hearing which is an indication that the 1st defendant and its membership were unwilling and had given up their claim over the suit land; that the advocates having conduct of the matter for the applicant have had the conduct of the matter since May 2022, have knowledge of it and had enough time to secure instructions from the 1st defendant or its membership; that the 1st defendant was served by substituted service on 10/2/2022 but only entered appearance on the day of hearing in this matter and has never filed a defence; that the 1st defendant and its members have known the existence of this suit all along and the present application is brought in bad faith to delay the plaintiff's claim over of the suit land. It is also urged that the proposed 4th to the 107th defendants have not identified themselves and their interest in the suit land; that the deponent of the supporting affidavit, Grace Nyambura Kuria lacks the requisite to sue; that the proposed 4th to 107th defendants owe the plaintiffs costs in the earlier suit and an order on security for costs should be made to secure the proposed defendants' commitment to these proceedings; that if the advocates have instructions to represent the 1st defendant in these proceedings there ought to be a board resolution to that effect and if the 1st defendant company is unable to issue instructions then the advocates are not properly on record. This court will not deal with that last issue in this application as it is unrelated to what is being sought.

6. This court earlier dealt with an application dated 9/1/2023 in which it partially allowed the plea that the interested parties be joined and order the joinder of only 4 of them as interested parties. In doing so this court observed that only those parties had demonstrated interest in the land subject matter of the suit by exhibiting copies of title deeds which have been issued in their names in their application.
7. In the present application, no title deeds are attached at all and this court is unable to verify whether the 4th to the 107th proposed defendants have any interest in the suit land. Statements made in the supporting affidavit require to be backed up by exhibits, in this case title deeds or share certificates, or certificates of official search which would demonstrate that either the applicants were members of the 1st defendant and that they owned parcels of land allocated to them by the 1st defendant. Therefore, on the basis of the reasoning of this court in the previous application for joinder dated 9/1/2023, the present application cannot therefore succeed;
8. It is noteworthy that even the deponent of the supporting affidavit has not supplied the court with any copy of the documents of the sort described above relating to her; consequently, in the present application even her own plea of joinder must be rejected. The application is made worse in that no authority of the proposed defendants is attached to the supporting affidavit.
9. I therefore find the application dated 11/11/2022 lacks merit and it is hereby struck out with costs to the plaintiffs. However, this court, noting that the matter involves membership of the 1st defendant and on the basis of the disclosures as to leadership squabbles between the 1st defendant's factions hereby grants liberty to the filing of a competent application by any of the present applicants for leave to represent the membership of the 1st defendant in this case within 60 days of this order. This matter shall be mentioned on 19/6/2023 for further directions.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 16TH DAY OF MAY 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

