



**M’uthi & 2 others v Kamani & 9 others; Zara Properties Ltd (CPR/2010/24490)
 (Proposed Applicant) (Environment & Land Case 69 & 92 of 2015 & 183 of 2011
 (Consolidated)) [2023] KEELC 18128 (KLR) (16 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18128 (KLR)

**REPUBLIC OF KENYA
 IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
 ENVIRONMENT & LAND CASE 69 & 92 OF 2015 & 183 OF 2011 (CONSOLIDATED)
 EK WABWOTO, J
 JUNE 16, 2023**

BETWEEN

SAMWEL NJERU M’UTHI PLAINTIFF

AND

DEEPAK KAMANI 1ST DEFENDANT

GEORGE ONER OGALO 2ND DEFENDANT

ZARA PROPERTIES LIMITED 3RD DEFENDANT

ZAMINA PROPERTIES LIMITED 4TH DEFENDANT

**AS CONSOLIDATED WITH
 ENVIRONMENT & LAND CASE 92 OF 2015**

BETWEEN

ZAMINA PROPERTIES LIMITED PLAINTIFF

AND

SAMWEL NJERU M’UTHI 1ST DEFENDANT

PETER KIMULWO 2ND DEFENDANT

YE LAND COMPANY LIMITED 3RD DEFENDANT

**AS CONSOLIDATED WITH
 ENVIRONMENT & LAND CASE 183 OF 2011**

BETWEEN



AMICON CONSTRUCTION LTD PLAINTIFF

AND

ZARA PROPERTIES LIMITED 1ST DEFENDANT

CHIEF LAND REGISTRAR 2ND DEFENDANT

COMMISSIONER OF LANDS 3RD DEFENDANT

HON. ATTORNEY GENERAL 4TH DEFENDANT

AND

ZARA PROPERTIES LTD (CPR/2010/24490) PROPOSED APPLICANT

RULING

1. This ruling is in respect to the application dated May 25, 2023, in which the Proposed Defendant/Applicant sought for the following orders;
 - a. Spent
 - b. Zara Properties Limited (CPR/2010/24490) be joined as a Defendant to the consolidated suits herein.
 - c. Costs
2. The application was supported by the affidavit sworn by James Kipleting Ruto on May 25, 2023 under the following grounds:
 - i. That Zara Properties ltd (CPR/2010/24490) is a legally registered owner of property LR No 209/12261 situated along Mombasa Road which is the substratum of the suits herein
 - ii. That Zara Properties Ltd (CPR/2010/24490) is properly registered as opposed to Zara Properties Ltd (C106174) also known as Prompt Fire Protection Limited, a fact already determined and settled in Court of Appeal in Nairobi C.a. No 216 Of 2018
 - iii. That Zara Properties Ltd (CPR/2010/24490) has a legitimate claim to the suit property as legally registered proprietor.
3. In submissions dated May 31, 2023, the Proposed Defendant/Applicant it was submitted that summons for appearance and pleadings, together with the decision in the Court of Appeal Nairobi C.A. No 216 of 2018, presupposes that the Proposed Defendant/Applicant is a party to the suits. It was further submitted that this application was based on the recommendation of the Courts in specific Hon Justice Obaga and Hon Justice Wabwoto. It was also emphasized that as rightful owners of the suit property, failure to enjoin them would be tantamount to a violation of right to property and fair hearing.
4. The 3rd Defendant in ELC 92 of 2015 filed grounds of opposition and submissions dated June 8, 2023 citing that:
 - i. The application is not competent in that neither of the parties participating in the proceedings has made a formal move to enjoin the applicant.



- ii. The application is an abuse of the Court process since there are notices of appeal against the ruling of Justice Obaga of October 8, 2020 and ruling by Justice Wabwoto on May 25, 2023. Relying on Judicial review Miscellaneous application 685 of 2017 *Staya Bhama Gadbi vs Director of Public Prosecutions & 3 others* (2018)eKLR, it was submitted that this application was a forum shopping exercise that should not be tolerated.
 - iii. The application offends the doctrine of *res judicata* as outlined in *Independent Electoral & Boundaries Commission v Maina Kiai & 5 others* [2017] since the issue of the Proposed Defendant had been litigated under the same title and determined.
 - iv. The application is incompetent as it does not show which of the three cases the Applicant intends to be enjoined to.
5. I have considered the application and submissions and filed and the main issues for determination in respect to the said applications are as follows: -
- i. Whether the Proposed Defendant/Applicant should be enjoined as the Defendant?
 - ii. Who should bear costs of this application?
6. On the issue of joinder, it is a well-established principle the first point of consideration is whether the Applicant can be recognized as an interested party. The *Black's Law Dictionary* defines "interested party" as:-
- "A party who has a recognizable stake (and therefore standing) in a matter."
7. 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]
8. The principles for joinder are well outlined in in *Meme v Republic* (2004)1 124, eKLR which are:
- a. Joinder of a person because his presence will result in the complete settlement of all questions involved in the proceedings;
 - b. Joinder to provide a protection of a party who would otherwise be adversely affected in law;
 - c. Joinder to prevent a likely course of proliferated litigation
9. The land mark decision was echoed by the Supreme Court in *Communications Commission of Kenya & 4 Others vs Royal Media Services Ltd. & 7 Others* (2014) eKLR where it was stated:
- "A Proposed Interested party 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.
10. 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 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.”
11. In essence, any natural person or corporate 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 would therefore be joined to the proceedings to protect his or her interests.
12. In the instant case, I have considered the averments that the Proposed Defendant/Applicant is claiming to protect its rights by virtue of being the registered owner of LR No 209/12261 situated along Mombasa Road and now seeks to set the record straight by joining the suit. whereas the Proposed Applicant was previously struck out due to duplicitous manners, the Court of Appeal in NRB CA No 218 of 2018 at paragraph 20 of the said judgment stated that Zara Properties Ltd (CPR/2010/24490) suffered a calculated land grab scheme orchestrated by Zara Properties Ltd.
13. In view of the foregoing, I am satisfied that it is necessary to join the Proposed Applicant as a defendant. I find that the application dated May 25, 2023, is merited and hereby allowed with an order that each party to bear its own costs. The Applicant shall have 7 days from today to file and serve all its pleadings, bundle of documents and witness statements that it seeks to rely on during trial.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 16TH JUNE, 2023

E.K. WABWOTO

JUDGE

In the presence of:

Ms. Mutuku h/b for Mr. Miyare for the Proposed Defendant/Applicant

Mr. Lusi for the 1st, 3rd and 4th Defendant in ELC No 69 of 2015.

Mrs. Ndungu for the 3rd Defendant in 92 of 2015.

Mr. Were for the Plaintiff in ELC No 69 of 2015.

N/A for other parties.

Court Assistant – Caroline Nafuna.

