



**Konchella v Kanchuel & 3 others; Olalui Group Ranch (Proposed Interested Party)
(Environment & Land Case E001 of 2023) [2023] KEELC 18166 (KLR) (13 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18166 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE E001 OF 2023**

EM WASHE, J

JUNE 13, 2023

BETWEEN

GIDEON S KONCHELLA PLAINTIFF

AND

THOMAS KANCHUEL 1ST DEFENDANT

SYMON SIATOTI KANCHUEL 2ND DEFENDANT

ALEX TUNAI KANCHUEL 3RD DEFENDANT

KIPALI KANCHUEL 4TH DEFENDANT

AND

OLALUI GROUP RANCH PROPOSED INTERESTED PARTY

RULING

1. The proposed Interested Party namely Olalui Group Ranch (hereinafter referred to as “the Applicant”) filed a Notice of Motion dated 17th February 2023 (hereinafter referred to as “the present application”) seeking the following Orders; -
 - a. That this application be certified urgent and heard on priority basis. (spent)
 - b. That pending the inter-parte hearing and determination of this application, this Honourable Court be pleased to stay the execution, implementation and/or operation of its orders on the 17th January 2023 and 22nd February 2023. (spent)
 - c. That this Honourable Court be pleased to order that the Applicant, Olalui Group Ranch be joined as an Interested Party and/or in the alternative the 5th Defendant in this suit and consequently grant it leave to file such pleading and documents as it may direct.



- d. That upon granting of prayer 3 above, this Honourable Court be pleased to vary and/or set aside its orders of the 17th January 2023 and 2nd February 2023.
 - e. That the costs of this Application be in the cause.
2. The prayers in the present application are premised on various grounds outlined in the body thereof and further expounded by the supporting affidavit sworn by Michael Lekishon Ole Risa on the 17th of February 2023.
 3. The present Application was served upon the Respondent herein who responded by filing a Replying Affidavit sworn by Gideon S.konchellah on the 30th of March 2023.
 4. The parties herein by consent decided to not file any written submissions in support of their respective positions in the present application and sought to solely rely on their respective affidavits.
 5. The Honourable Court has gone through the present application as well as the Replying Affidavit and identified the issues for determination as follows; -
 - Issue No. 1- Whether or not the applicant has established sufficient grounds to be joined as an interested party and/or 5th defendant.
 - Issue No. 2- If the answer to issue no 1 is affirmative, should the orders issued on the 17th of January 2023 & 2nd of February 2023 be varied and/or set-aside?
 6. This Honourable Court having identified the issues for determination as outlined hereinabove, the same will now be discussed herein below in accordance to the facts and applicable law.

Issue No. 1- Whether or Not the Applicant has Established Sufficient Grounds to be Joined as an Interested Party and/or 5th Defendant.

7. The Applicant in the present application is seeking this Honourable Court to allow its joinder in the proceedings instituted by the Respondent relating to the property known as L.R No.transmara/Transmara/Olalo/11 (hereinafter referred to as “the suit property”).
8. The Applicant states that the suit property is a subject of another proceeding known as Nakuru Court of Appeal Civil (application) No.80 of 2020 (hereinafter referred to as “the Court of Appeal proceedings”) which issued an injunctive order on the 18th of December 2020 prohibiting any entering upon, occupying, surveying, distributing, alienating, invading, disposing, transferring, evicting the applicants and its members, or in any manner dealing with the land parcels known as Narok/Transmara/Olalui/2 To Narok/transmara/olalui/14 pending the hearing and determination of the Appeal.
9. The Applicant further submits that the Respondents herein failed to disclose and/or concealed the existence of the Orders on the 18th of December 2020 by the Court of Appeal proceedings and therefore the recent Orders issued by this Honourable Court on the 17th of January 2023 and 2nd February 2023 should have not been granted.
10. The Applicant’s conclusion as appertains this present suit is that it was filed with a view of circumventing the orders issued on the 18th of December 2020 in the Court of Appeal proceedings and therefore both the Plaint and the pending Application should be dismissed.
11. The Respondent on the other hand opposed the present application on the grounds that the Applicant is not a necessary party in this suit.



12. According to the Respondent, the deponent herein did not have any legal capacity to file the present application as there was no proof of his authority to swear the supporting affidavit on behalf of the Applicants as its chairman.
13. The Respondent further stated that the property currently being litigated in this present suit was L.R.No. Narok/Transmara/Olalui/11 and not L.R.No.Narok/Transmara/Olalui/1.
14. The Respondent admitted to the existence of the orders issued on the 18th of August 2020 in the Court of Appeal proceedings relating to the properties known as L.R.No. Narok/Transmara/Olalui/2 To Narok/Transmara/Olalui/14 which in his view was meant to preserve the status quo of the said properties pending the hearing and determination of the pending Appeal.
15. Consequently therefore, the joinder of the Applicant is not necessary and if granted will cause unnecessary confusion on the cause of action in this proceeding.
16. This Honourable Court having summarised the two opposing submissions on this issue, it will not proceed to make its analysis and make its determination thereof.
17. However, for avoidance of doubt, this Honourable Court has recognised the existence of the orders issued on the 18th of August 2020 in the Court of Appeal proceedings and is bound by the directions outlined therein.
18. Be as it may, to be able to appreciate whether the Applicant is a necessary party in this suit either as an Interested Party and/or a Defendant, it will be significant to understand the dispute presented by the Respondent in this suit.
19. According to the Plaintiff filed on 16th January 2023 by the Respondent, the cause of action is that the 1st, 2nd, 3rd and 4th Defendants therein are unlawfully and without justification trespassing into the suit property and erecting, ploughing and/or planting sugar cane without any lawful proprietary rights.
20. The Respondent prays therefore is for the 1st, 2nd, 3rd and 4th Defendants to be permanently restrained from such trespass on the suit property and further be directed to demolish any illegal structures erected therein.
21. It is critical to point out that the 1st, 2nd, 3rd and 4th Defendants in this suit were never parties in the proceedings known as Narok ELC Case No. 335 of 2017 whose judgement in the subject of an Appeal before the Court of Appeal in Nakuru.
22. The Applicant herein invoked the provisions of Order 1 Rule 10 (2) of the *Civil Procedure Rules*, 2010 in the present application.
23. The provisions of Order 1 Rule 10(2) give this Honourable Court discretionary powers to add and or remove a Plaintiff or Defendant whose presence before the Court may be necessary in order to enable the Court effectually and completely adjudicate upon and settle the questions involved in the suit.
24. In the case of *Kingori v Chege & 3 Others* (2002) 2 KLR 243, the Court made the following Observations on applications for joinder; -

“...parties cannot be added so as to introduce quite a new cause of action or to alter the nature of the suit. Necessary parties who ought to have been joined are parties who are necessary to *the constitution* of the suit without whom no decree at all can be passed. Therefore in case of a defendant two conditions must be met: (1) There must be a right to some relief against him in respect of the matter involved in the suit. (2) His presence should be necessary in order to



enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit being one without whom no decree can be made effectively and one whose presence is necessary for complete and final decision on the questions involved in the proceedings. A proper party is one who has a designed subsisting direct and substantive interest in the issues arising in the litigation which interest will be recognisable in the Court of law being an interest, which the Court will enforce. A person who is only indicated or commercially interested in the proceedings is not entitled to be added as a party. But a person may be added as a defendant though no relief may be claimed against him provided his presence is proper for a complete and final decision of the question involved in the suit and such a person is called a proper party as distinguished from a necessary party... Order 1 rule 10 allows the Court to add a defendant on its own motion or upon application by either party either orally or formally by summons in chambers under Order 1 rule 22. Here the party has not moved on its own but has been moved by the intending party on its own formally. The use of the words “either party” denotes that the formal move has to be made by a party already participating in the proceedings and it would mean that an intending party cannot come on his own and choose which position he wants.” [Emphasis added].

Similarly, in this case none of the parties to the suit has sought to have the Applicant joined as a party to the suit. Accordingly, the Applicant cannot seek that he be joined as a Plaintiff to these proceedings.”

25. In another case of *Civicon Limited-versus- Kivumatt Limited & 2 Others* (2015) eKLR, the court observed as follows:

“Again the power given under the Rules is discretionary which discretion must be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”

26. The Supreme Court of Kenya in the case of *Communications Commission of Kenya & 4 Others- Versus- Royal Mecia Services Limited & 7 Others* Petition No. 15 of (2014) which the Court relied on the decision in Mumo Matemo Case defined an Interested Party as follows:

“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is 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 interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. Similarly, in the case of Meme v. Republic, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:



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

We ask ourselves the following questions:

- a) what is the intended party's state and relevance in the proceedings and
- b) will the intended interested party suffer any prejudice if denied joinder.?"

27. Lastly, in the case of *Skov Estate Limited & 5 others v Agricultural Development Corporation & another* [2015] eKLR, the Court expressed itself as follows; -

“In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter.

It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party.

In other words, there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.”

- 28. Turning to the present application, this Honourable Court has taken time to go through the grounds and the supporting Affidavit of the Applicant but has been unable to find any grounds explaining the significance of the Applicants being joined in this suit.
- 29. The Applicants have failed to plead their interest in the trespass dispute and how their joinder would help in the settlement of the dispute thereof.
- 30. Similarly, the Applicants have not demonstrated how the prayers sought by the Plaintiff against the Defendants would affect them or their presence would be necessary in the implication of the said Decree.



31. The only reason the Applicants rely upon in this present application for joinder is the existence of an Appeal before the Court of Appeal and the subsequent orders issued on the 18th of August 2020.
32. In addition to the above, the Applicant alleged that the Orders issued on the 17th of January 2023 and well as 2nd February 2023 by this Honourable Court are contravening the Ruling of the Court of Appeal pronounced on the 18th of August 2020.
33. The Ruling of the Court of Appeal pronounced on the 18th August 2020 expressly prohibits the Respondent in the present Application as well as the other Respondents in the intended Appeal from entering upon, occupying, surveying, distributing, alienating, invading, disposing, transferring, evicting the applicants and its members, or in any manner dealing with the land parcels known as Narok/Transmara/Olalui/2 To Narok/Transmara/Olalui/14 pending the hearing and determination of the Appeal.
34. While it is true that the Respondent did not disclose the existence of the Court of Appeal Orders issued on the 18th August 2020, this Honourable Court's Orders issued on the 17th of January 2023 and 2nd February 2023 did not contravene the same.
35. The first order issued by this Honourable Court on the 17th January 2023 was an injunction against the 1st, 2nd, 3rd and 4th Defendants who were not parties to the intended Appeal and orders issued on 18th August 2020 from trespassing, entering, cultivating, grazing and/or acting in any manner adverse to the ownership of the property known as L.R.No.narok/Transmara/Olalui/11 which is in the name of the Plaintiff.
36. This Order was therefore in the Honourable Court's view supplementing the directions issued by the Court of Appeal on the 18th of August 2020 by ensuring that other strangers and/or persons who were not in the previous suit known as Narok ELC Case No. 335 Of 2017 as well as the intended Appeal do not meddle and/or interfere with one of the subject matters which is the suit property in this suit.
37. The Second Order issued by this Honourable Court on the 2nd of February 2023 was to ascertain independently through the office of the Sub-County Land Registrar whether or not the Defendants herein had indeed trespassed into the suit property and if so, to what extent did their occupation affect the suit property in this suit.
38. By undertaking this exercise, the Honourable Court would be presented with actual facts on the ground to enable make the relevant determinations and exercise its discretion objectively.
39. This exercise undertaken through the Orders issued on the 2nd of February 2023 by this Honourable Court do not contravene the Court of Appeal Orders issued on 18th August 2020 but in fact work towards ensuring that no strangers who are not a party to in the intended Appeal do not take advantage of the Court of Appeal orders by alleging that they do not bind them individual but only those named in the intended Appeal.
40. What the Respondent in the present Application is doing is to ensure that strangers who were not parties in the proceedings known as Narok ELC Case No. 335 OF 2017 and the intended Appeal before the Court of Appeal do not violate the Court of Appeal Orders issued on the 18th of August 2020 thereby interfering, meddling and/or frustrating any further orders that may be issued by the Court of Appeal once the intended Appeal is determined.
41. The dispute in the present suit does not touch on any ownership dispute relating to the properties known as L.R.No.Narok/Transmara/Olalui/2 To L.R.No. Narok/transmara/olalui/14 which the Applicant has an interest of.



42. As stated earlier, this suit is purely one of trespass of the property known as L.R.No.Narok/Transmara/Olalui/11 by the Defendants herein.
43. The Applicant's presence in this suit is therefore not necessary as there will be no relief against it in the present suit or their presence necessary in order to enable the Court effectively and completely adjudicate upon and settle all the questions involved in the suit.
44. The other point raised by the Respondent is that the deponent of the present application has no locus standi to institute any proceedings against on behalf of Olalui Group Ranch.
45. According to the Respondent, the person known as Michael Kelishon Ole Risa is a stranger and has not presented any authority to file any proceedings including the present application.
46. The Applicant despite being served with the Replying Affidavit by the Respondent did not file any further Affidavit to reply this particular issue.
47. Indeed, the Court has perused the Supporting Affidavit to the present Application sworn by Michael Kelishon Ole Risa sworn on the 17th February 2023.
48. The said Supporting Affidavit describes Michael Kelishon Ole Risa as the Chairman Olalui Group Ranch.
49. An illegible copy of the Certificate of Incorporation seems to have been annexed as to confirm the legitimacy of Olalui Group Ranch as MKLOS 1.
50. The Honourable Court has tried its best to pick out the name of the deponent from the said annexure MKLOS 1 but it is not possible using the copy placed the Honourable Court to confirm whether or not the deponent is among the Group Representatives of Olalui Group Ranch.
51. Be as it may, Section 8(1) of the *Land (Group Representatives) Act*, Cap 287 provides that the Group Representatives have powers to sue or be sued in their corporate name.
52. The interpretation of the Court as to the provisions of Section 8(1) of the *Land (Group Representatives) Act*, Cap 287 is that in any proceedings instituted by the Group Ranch, all the persons named in the Certificate of Incorporation must be collectively named as parties and give their consent to such proceedings to be instituted and/or defended.
53. This is what indeed happened in the proceedings known as Narok ELC CASE NO. 335 OF 2017 which have been annexed in the Applicants supporting affidavit.
54. Unfortunately, in this present application, the deponent has failed to collectively name the other Group Representatives in line with the provisions of Section 8(1) of the *Land (Group Representative) Act*, Cap 287 or file any Authority to swear and/or appear on their behalf and/or any Resolution of the said Group Representatives to file the present application on their behalf.
55. The failure to include the other Group Representatives and/or file a Resolution to file the present application and/or attach any authority to swear and/or appear on behalf of the other Group Representatives clearly paints a picture of a man acting on his own accord.
56. In the case of *Kipsiwo Community Self Help Group -Versus- The Attorney General & 6 others* (2013) eKLR, the Court observed as follows; -

“ the person bring action has to demonstrate that he has permission to bring the action on behalf of the members of the group, or on behalf of the people he seeks to represent, if it



is a representative suit. The importance of this, is so as to recognise the persons who seek redress, and so that orders are not issued in favour or against people who cannot be precisely identified. This may look minor, but it is extremely significant. In litigation, rights and duties will be imposed on the litigants. If the Court does not know who the litigants are, then it becomes impossible for the Court to enforce its own orders, for it will never be clear, who the beneficiary of the order was, or who had the obligation to obey or enforce such orders.”

57. In essence therefore, this Honourable Court is inclined to agree with the Respondent’s submission that the deponent of the present Application does not have the necessary locus standi to file the present application for lack of a Resolution from the other Group Representatives and/or Authority to swear the pleadings thereof as required by law.
58. In the circumstances, this Honourable Court in its considered view is that the Applicant in the present Application is not a necessary party deserving to be joined in this suit either as an Interested Party or 5th Defendant.

Issue No. 2- If the Answer to Issue No 1 is Affirmative, Should The Orders Issued on the 17th of January 2023 & 2nd of February 2023 be Varied and/or Set-aside?

59. The second issue for determination was based on the outcome of the first issue.
60. This Honourable Court having made a finding that the Applicant is not a necessary party in this suit or possessed of any power and/or authority to institute the present application, it would be an exercise in fruitality to discuss this second issue.

The second prayer to vary and/or set-aside the orders issued by this Honourable Court on the 17th January 2023 and 2nd February 2023 is also declined.

In conclusion therefore, the Honourable Court’s determination of the Application dated 17th February 2023 is pronounced as follows; -

- a. The notice of motion application dated 17th february 2023 be and is hereby dismissed with costs to the respondent.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON DAY OF 13TH JUNE 2023.

EMMANUEL.M.WASHE

JUDGE

IN THE PRESENCE OF:

Court Assistant: Mr. Ngeno/Miss Mempe

Advocates for the Proposed/Interested Party/Applicant: Mr. Ogolla (N/A)

Advocates for the Plaintiff: Ms. Atieno h/b For Mr. Kosewe

Advocate for the Defendant: Mr. Jura

