



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

ENVIRONMENT AND LAND COURT JUDICIAL REVIEW NO.8 OF 2021

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION BY HENRY KIPTIONY KIPLANGAT

AND

IN THE MATTER OF ARTICLES 47,50(1), 60 & 67 OF THE CONSTITUTION OF KENYA, 2010, IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT 2015

AND

IN THE MATTER OF THE DECISION BY THE MINISTER OF LANDS AND PHYSICAL PLANNING TO EXPUNGE LEASE AND LEASE RECORDS OF LAND PORTION NO. ELDAMA-RAVINE TOWNSHIP BLOCK 1/656 VIDE A LETTER DATED 26TH JULY 2021

BETWEEN

HENRY KIPTIONY KIPLANGAT.....APPLICANT

VERSUS

CABINET SECRETARY OF LANDS

AND PHYSICAL PLANNING.....1ST RESPONDENT

THE DIRECTOR, PHYSICAL PLANNING-

MINISTRY OF LANDS AND PHYSICAL PLANNING.....2ND RESPONDENT

THE DIRECTOR OF SURVEYS-

MINISTRY OF LANDS AND PHYSICAL PLANNING.....3RD RESPONDENT

THE DIRECTOR LAND ADMINISTRATION-

MINISTRY OF LANDS AND PHYSICAL PLANNING.....4TH RESPONDENT

THE CHIEF LAND REGISTRAR-

MINISTRY OF LANDS AND PHYSICAL PLANNING.....5TH RESPONDENT

THE DISTRICT LAND REGISTRAR KOIBATEK.....6TH RESPONDENT

AND

NANCY RUTH CHELAGAT.....1ST INTENDED INTERESTED PARTY

GEORGE GATHENYA2ND INTENDED INTERESTED PARTY

RULING

1. This ruling is in respect of the application dated **10th September 2021** brought by the intended interested parties. The application is brought under the **Constitution section 1A,1B, 3,3A of the Civil Procedure Act Order 1 Rule 10(2) and order 51 Rule 1 of the Civil Procedure Rules**. It seeks the orders which I set out verbatim as herein below:

- a) **This application be certified as urgent and orders be issued *ex parte* in the first instance;**
- b) **This Honourable Court be pleased to grant leave to NANCY RUTH CHELAGAT and GEORGE GATHENYA to be enjoined as necessary Interested Parties to these proceedings;**
- c) **The Interested Intended Parties be at liberty to apply for further orders and/or directions this Honourable Court may deem fit to grant;**
- d) **The costs of this application to be provided for.**

2. The application is supported by the affidavit of **NANCY RUTH CHELAGAT** and **GEORGE GATHENYA** on the grounds that: the suit was already scheduled for mention on the **28th of September 2021** before the court for directions; that the orders being sought were greatly prejudicial to them yet they had not been enjoined to the proceedings by the *ex parte* applicant.

3. The 1st intended interested party maintained that she had acquired **Uns. Residential Plot 'A' in Eldama Ravine** vide a Letter of Allotment dated **14th July 1997** and **reference No. 33032/X1** from the Government of Kenya which she accepted and paid **Ksh. 27,090/=** which was the amount specified in the Letter of Allotment. The 2nd intended interested party in the same manner acquired **Uns. Residential Plot 'B' and 'C' in Eldama Ravine**. He was issued with Letters of Allotment both dated **10th December 1995** and **Reference No. 147061/18** from the government of Kenya which he accepted and for which he paid **Ksh. 21,370**.

4. The 2nd intended interested party claimed to have been granted a lease for parcel No **Eldama Ravine Township BLOCK 1/638** and Parcel No. **Eldama Ravine Township BLOCK 1/640** both dated **14th October 2016** from the Ministry of Lands when his father, the late **Wachira Mwangi** who had applied for a conversion of Temporary Occupation Licence (T.O.L) into leasehold died.

5. The 1st intended interested party maintained that her property which included wooden posts and a barbed wire fence was destroyed by several young people in **2021** and a person claiming to be the new owner warned her not to set foot there again. He also asserted that there was nowhere that she could take him. The same land grabbers had also done the same to the 2nd intended interested party's plot in **January 2020** and later on in **May 2021** he was chased away by armed people. A new fence was subsequently erected around both plots by the land grabbers.

6. The intended interested parties therefore have a legitimate expectation that they must be involved and accorded an opportunity to be heard in any such decision pertaining to the land which is **Plot 'A' and 'B' Eldama Ravine**, and by extension parcel No. **Eldama Ravine Township Block 1/638 and Eldama Ravine Township Block 1/640**, presumably fraudulently converted to **Eldama Ravine Township Block 1/656**. The joinder of these intended interested parties would serve to enable the court to adequately and effectually adjudicate upon all the issues in this matter. It is their view that they then should be allowed to ventilate their issues and ensure that each of the party's position is well brought out before the final adjudication is made. They argue that failure to enjoin them would result in them being prejudiced seeing as they have substantial interest in this matter. They also submitted that the parties herein shall suffer no prejudice by the grant of this application.

RESPONSE

7. No response was made to this application by the respondents; the *ex parte* applicant however filed grounds of opposition dated **21/9/2021**. In those grounds he stated that the application is untenable because the intended interested parties raise issues of ownership of **Eldama Ravine Township Block 1/656** which is already registered in the name of the *ex parte* applicant and the court lacks jurisdiction to deal with the issue of ownership in exercising its judicial review jurisdiction.

SUBMISSIONS

8. The intended interested parties filed their submissions and cited the provisions of **Order 1 Rule 10(2) of the Civil Procedure Rules**; the cases of **Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others [2014] eKLR, Central Kenya Limited Vs Trust Bank & 4 Others CA NO 22 Of 1998** and the case of **Civicon Limited Vs Kivuwatt Limited & 2 Others 2015 EKLR**. They also cited the case of **Francis Kariuki Muruatetu & another Vs the Republic - Petition 15 of 2016**. Citing **Order 1 Rule 10 (2) of the Civil Procedure Rules**, the intended interested party submits that the test for an application for joinder is whether an interested party has an identifiable interest in the subject matter of the litigation though the interest need not succeed at the end of the trial; secondly, it must be shown that the interested party is a necessary party whose presence is necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. They state that perchance this court grants the orders of judicial review sought by the applicant, then the *ex parte* applicant's lease documents would be reinstated there by denying the interested parties a chance to present their case.

9. The *ex parte* applicant also filed extensive submissions on the application citing numerous cases including **Francis Kariuki Muruatetu & Another Vs The Republic - Petition 15 Of 2016; Shirvling Supermarket Limited Vs Jimmy Ondicho Nyabuti & 2 Others, 2018 eKLR; Seventh Day Adventist Church (East Africa)Ltd Vs PS Ministry Of Nairobi Metropolitan Development & Another 2014 eKLR, and Republic Vs District Land Registrar Nakuru, Hon Lee Maiyani Kinyanjui, Ex Parte Lawi Kigen Kiplagat – Nakuru**

High Court ELC J.R. No 1 of 2020 eKLR. The *ex parte* applicant urged that the joinder application has not fulfilled any of the preconditions laid by the Supreme Court in the case of **Francis Kariuki Muruatetu & Another Vs The Republic - Petition 15 Of 2016**; he states that the intended interested parties have *mala fides* because they seek to protect a right of ownership of property which they claim or perceive to have yet the court lacks jurisdiction over issues of ownership in judicial review proceedings. He avers that the impugned letter was not copied to the intended interested parties. He states it is therefore not clear what their participation in the proceedings would bring.

DETERMINATION

10. The issues that arise from this application are:

a) Should the intended interested parties be granted leave to be enjoined as interested parties to these proceedings?

b) Who should bear the costs for this application?

11. The issues stated in the application are discussed herein below:

a) Should the intended interested parties be enjoined as interested parties to these proceedings?

12. The intended interested parties seek to be enjoined in the suit as interested parties on the basis that they have substantial interest in the property.

13. According to the **Black's Law Dictionary, 8th Edition**, an interested party has been defined as, "...a party who has recognizable stake and therefore a standing in the matter."

14. In the **Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others [2014] eKLR** case, the Supreme Court held that:

"[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..."

15. The interested parties were able to exhibit their respective letters of allotment as well as their leases and a record of payments made as land rent for the land for previous years. They allege that they had initially already taken ownership of the land and had already erected fences around them. There is also evidence of some interest in the land as there had already been a dispute between their two families which they then settled before a land dispute tribunal. Based on the above elements, I find that both of the intended interested parties have demonstrated that they have personal stakes and interests in the suit property as stated in their application.

16. The *ex parte* applicant is rather apprehensive, but unnecessarily so as this court is well aware of the extent of its judicial review jurisdiction. It is sufficient to assuage his fears by stating here that this court would not, whether the intended interested parties are joined to these proceedings or not, delve into the issue of ownership of the suit land. It is very possible that by virtue of the participation of the intended interested parties more light may be shed on the reason for the issuance of the impugned letter or decision.

17. In view light of the foregoing, I find that they have demonstrated that they would be prejudiced if they were to be excluded from these proceedings. In order for this Honourable Court to adequately and effectually adjudicate upon all the issues in this matter, it would require their input.

18. Consequently, I find that the 1st and the 2nd intended interested parties are an integral part of the proceedings herein and I order that they be enjoined to this instant suit as the 1st and 2nd interested parties respectively. This case shall be mentioned on **8/12/2021** for further directions.

b) Who shall bear the costs for this application?

19. The costs for this application shall be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 22ND DAY OF NOVEMBER, 2021.

MWANGI NJOROGE

JUDGE, ELC, NAKURU.