



Republic v Chairman National Land Commission & another; Chogo & another (Exparte Applicants); African University Trust of Kenya (Proposed Interested Party) (Miscellaneous Application E052 of 2022) [2023] KEELC 18969 (KLR) (26 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18969 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
MISCELLANEOUS APPLICATION E052 OF 2022
NA MATHEKA, J
JULY 26, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

CHAIRMAN NATIONAL LAND COMMISSION 1ST RESPONDENT

NATIONAL LAND COMMISSION 2ND RESPONDENT

AND

KAZUNGU MOLI CHOGO EXPARTE APPLICANT

CHANGA WA MOLO CHOGO EXPARTE APPLICANT

AND

AFRICAN UNIVERSITY TRUST OF KENYA PROPOSED INTERESTED PARTY

RULING

1. The Application is dated 24th August 2022 and is brought under Order 53 Rule 3(2) & (4) and Order 51 Rule 1 of the *Civil Procedure Rules*, Article 50(1) of the *Constitution* Seeking the following orders;
 1. That this Honourable Court be pleased to join African Trust University in these proceedings as an Interested Party.
 2. That this Honourable Court be pleased to order the ex-parte Applicants to serve African Trust University, the proposed interested party, with all pleadings, affidavits and court documents in these proceedings.



3. That costs of this Application be provided.
2. It is premised on the grounds that Order 43 Rule 3(2) of the Civil Procedure Rules, 2010 requires the ex-parte Applicants to serve the application for judicial review on all persons directly affected by the orders sought in the judicial review application. The proposed interested party is directly affected by the order of mandamus sought in the judicial review Application dated 24/8/2022 in these proceedings because the application seeks an order of mandamus to compel the Respondents to correct the names in the gazette notice dated 1/3/2019 in accordance with the determination of the National Land Commission dated 7/2/2019 in respect of the suit property L.R. MN/I/5141. The proposed interested party is the registered owner of the suit property L.R. MN/I/5141. The ex-parte Applicants admit this fact at paragraphs 6 and 19 of their Verifying Affidavit sworn on 11/8/2022 in support of the judicial review application. The proposed interested party, African Trust University, was a party as a Respondent to the said determination of the National Land Commission dated 7/2/2019, now sought to be enforced in the present judicial review proceedings through the orders of mandamus. The suit property L.R. MN/I/5141 is also the subject of two other pending suits previously instituted by the ex-parte Applicants against the proposed interested party as a defendant and respondent, being: ELC No. 134 of 2013 (O.S) Kazungu Moli Chogo & 6 others -v- Perhan Torun & 6 others, where the proposed interested party is the 5th Respondent and CMCC (ELC No. 10 of 2021 Kazungu Moli Chogo & Another -v- Feisal Sherman & 3 others, where the proposed interested party is the 4th Defendant.
3. That unless the proposed interested party is joined to these proceedings, the proposed interested party's right to be heard under Article 50(1) of *the Constitution* will be violated because the order of mandamus, if granted, would directly affect the proposed interested party without the proposed interested party being given an opportunity to be heard. There is a likelihood that the Court will make adverse findings against the proposed interested party because the Verifying Affidavit in support of the judicial review Application adversely mentions the proposed interested party as follows that the proposed interested party conspired with the staff of the National Land Commission to hide the file and the determination dated 7/2/2019 from the ex-parte Applicants. That the proposed interested party has continued to harass the Applicants and their families using the County Government of Mombasa and local police and the Provincial Administration to unlawfully evict the ex-parte Applicants from the suit property. On 20/9/2022, the advocates for the proposed interested party wrote to the advocate for the exparte applicants requesting to be served with all the pleadings in these proceedings. On 22nd 2022, the advocate for the ex-parte applicants responded to the request by declining to serve the proposed interested party with the pleadings in these proceedings, thus necessitating the filing of this application. That Order 53 Rule 3(4) of the Civil Procedure Rules, 2010 empowers this Court to order the exparte Applicants to serve the pleadings upon any person who ought to have been served. Joining the proposed interested party to these proceedings will not derail the expeditious disposal of these proceedings and the parties will not suffer any prejudice.
4. The Ex-Parte Applicants state that the substantive Application dated 24th August 2022 is strictly limited and confined to the issue of correction of the Gazette Notice Number 1995 dated 1st March 2019 as published by the Respondents and has nothing to do with the Interested Party or their alleged claim over the suit property. That the Interested Party has irregularly and unfairly used their huge financial powers and might to influence the inaction and/or illegal conduct on the part of the Respondents in their quest to perpetuate their unlawful and fraudulent claim over our ancestral land. That the Interested Party have no role to play in the correction and publication of the Addendum and Corrigendum to the Gazette Notice Number 1995 dated 1st March 2019 and their Application to be enjoined in this Application is solely aimed at obfuscating and protracting issues to delay the conclusion of the dispute that was determined by the National Land Commission. That the order for



rectification of the Gazette Notice will not affect the Interested Party in any way since they are aware of the decision of the National Land Commission.

5. That the allocation of the suit property to Mohamed Yusuf Haji and subsequent purported transfer of the land to Zayed Bin Sultan Alnahyan Charitabe & Humanitarian Foundation in 2002 and subsequent transfer of the lease to African University Trust of Kenya were found to have been void and illegal by the National Land Commission which ordered for the land to revert back to them and as such the Interested Party are not the owners of the and which reverted back to them in 2019.
6. That ELC Case N. 134 of 2013 (O.S) as filed and all other cases that may be pending before any Court of law will be finally settled upon publication of the Addendum and Corrigendum thereby saving the Court's the judicial time that would have been used in hearing the cases. That in the circumstances the Interested Party's application is misconceived and no value will accrue in having them as Parties to the Application since no specific Order or relief is sought against them.
7. This court has considered the application and the submissions therein. The applicant seeks to be enjoined as an interested party. As to whether they ought to be enjoined in the suit as an interested party, the Court is guided by Order 1 Rule 10(2) of the Civil Procedure Rules which states;

“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 party improperly joined, whether as plaintiff or defendant, be struck out, and 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”.

8. The Supreme Court decision in Communications Commission Of Kenya And 4 Others vs Royal Media Services Limited & 7 Others Petition No. 15 OF (2014)eKLR where the Court pronounced itself on who an Interested Party is and held as follows:

“In determining whether the applicant should be admitted into these proceedings as an interested party, we are guided by this Court's decision in the Mumo Matemo case where the court (at paragraphs 14 and 18) held:

“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.?"

9. It is therefore clear that the parties who should be made parties to a suit are persons who are necessary for a complete and effectual adjudication of disputes before the court. In the instant case the proposed interested party is the registered owner of the suit property L.R. MN/I/5141. I find that the proposed interested party is directly affected by the order of mandamus sought in the judicial review Application dated 24th August 2022 in these proceedings because the application seeks an order of mandamus to compel the Respondents to correct the names in the gazette notice dated 1st March 2019 in accordance with the determination of the National Land Commission dated 7th February 2019 in respect of the suit property L.R. MN/I/5141. I find that the proposed interested party has a right to be heard under Article 50(1) of *the Constitution* being the registered owner of the suit property and also having adversely been mentioned in the matter. I find that the applicant has a stake in the matter and should be enjoined in order to reach a complete settlement of the matter. I therefore find this application is merited and I grant the same with costs to be in the cause.

10. It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 26TH DAY OF JULY 2023.

N.A. MATHEKA

JUDGE

