



Lenana & 5 others v Director of Surveys Kenya & 5 others; Estate of Tutayo Ene Leeyio Lenkoko & another (Interested Parties); Kenya Railways Corporation (Proposed Interested Party) (Environment & Land Petition E005 of 2022) [2023] KEELC 21736 (KLR) (22 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21736 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND PETITION E005 OF 2022
A NYUKURI, J
NOVEMBER 22, 2023
IN THE MATTER OF ARTICLES 22, 23, 40, 43 47 AND 61 OF THE
CONSTITUTION OF KENYA 2010
AND
IN THE MATTER OF VIOLATION OF THE FAIR ADMINISTRATIVE ACTION
ACT
AND
IN THE MATTER OF THE LAND REGISTRATION ACT, NO.3 OF 2012
AND
IN THE MATTER OF SECTION 13 OF THE ENVIRONMENT AND
LAND COURT ACT, NO.19 OF 2011
AND
IN THE MATTER OF IMPUGNED CANCELLATION OF DEED PLANS
FOR PETITIONERS' PROPERTIES DESCRIBED AS L.R NO.S 31666-
31673, 3167-681 & 31577-31596

BETWEEN

GIDEON LENANA 1ST PETITIONER
DANIEL PARKION 2ND PETITIONER
STEPHEN KOYIAKI NAKUO 3RD PETITIONER
PAUL LENANA NAKUOH 4TH PETITIONER



FRED MAZUNGIO 5TH PETITIONER
NICHOLAS SENTEU KUNONI 6TH PETITIONER

AND

THE DIRECTOR OF SURVEYS KENYA 1ST RESPONDENT
THE DISTRICT LAND REGISTRAR MACHAKOS 2ND RESPONDENT
THE DISTRICT LAND SURVEYORS MACHAKOS 3RD RESPONDENT
THE CABINET SECRETARY FOR LANDS AND PHYSICAL
PLANNING 4TH RESPONDENT
THE CABINET SECRETARY FOR TRANSPORT AND
INFRASTRUCTURE 5TH RESPONDENT
THE CHIEF LAND REGISTRAR 6TH RESPONDENT

AND

THE ESTATE OF TUTAYO ENE LEEYIO LENKOKO INTERESTED PARTY
HON G GITARI INTERESTED PARTY

AND

KENYA RAILWAYS CORPORATION PROPOSED INTERESTED PARTY

RULING

Introduction

1. Before court is a Chamber Summons dated 30th November 2022 filed by the proposed 3rd interested party. The application seeks the following orders;
 - a. This court be pleased to admit Kenya Railways Corporation as the 3rd interested party to this suit.
 - b. Upon such joinder, the court be pleased to order the 3rd interested party be served with all the pleadings and documents filed by the parties.
 - c. That, the cost of the application be provided for.
2. The Application is based on grounds on the face of it and supported by the affidavit of one Christine Macharia, the senior legal officer of the applicant. She deposed that the proposed 3rd party is the registered proprietor of all that property known as LR No 28348(Stony Athi Railways Quarry), and that the same has always been government land reserved as quarry land for the applicant, designated as East African Railways Quarry Reserve in topological sheet 161/2 North Kaputei as reflected on Survey Plan No F.R. 359/67.
3. She further stated that the properties claimed by the petitioners being LR No 31666-31674, 3167-681 and 31577-31596 are among 20 parcels of land resulting from an irregular subdivision of LR No 28348 through survey plan F.R. 421/56.



4. She also deposed that the irregular subdivisions were cancelled and a further joint survey was carried out on 9th and 10th May 2022, whereof the survey report determined that the suit properties were an encroachment of the applicant's property.
5. The deponent further stated that there are two more suits instituted by the petitioners and with a bearing to the suit property, being Kajiado ELC No 776 of 2017 and Nairobi ELC JR No E003 of 2022. She also averred that the petitioners, the respondents herein and even the interested parties are all parties to the above suits and that the applicant being a key participant of matters in issue is well aware of the facts of the case and their presence in this suit would enable the court effectively and conclusively resolve all the matters in dispute. Further that the applicant being the registered and legitimate owner of the suit property has a legal interest therein and will be greatly prejudiced and would be at risk of being defrauded of its land which it holds in trust for the general public if they are not made party to this suit. He attached a report from the ministry of lands dated 21st July 2022, and pleadings in other filed suits alleged to be related to this suit.
6. The application is opposed. Gideon Lenana, the 1st petitioner, swore a replying affidavit dated 28th February 2023 in opposition to the application. He deposed that the applicant had not set out the case that they intended to make to the court and that the petitioners are the registered owners of the suit land situated in Machakos and not Kajiado. He deposed that the land alleged by the applicant does not exist and does not form part of the suit property. It was their averment that the applicant was trying to introduce a new cause of action altogether, being the ownership of LR No 28348, which is totally unrelated to the petitioner's case. The deponent also opined that the applicant should just file an independent suit since even if the court admitted them to this case as interested party, the court's powers would be limited and the applicant would not be able to advance their case. He also deposed that the applicant had not demonstrated any prejudice they would suffer should they not be joined to the suit and that the outcome of the suit will have no effect on them in any way.
7. The Application was canvassed by way of written submissions. Both the applicant and the petitioner/ respondents filed written submissions.

Applicant's submissions

8. Counsel for the applicant submitted that the 3rd proposed party should be joined to the suit since it had a legitimate interest over the subject matter. He cited the provisions of Order 1 Rule 10 (2) of the *Civil Procedure Rules* and the cases of *Communications Commission of Kenya and 4 others v Royal Media Services Limited & 7 others* [2014] eKLR and *Francis K. Muruatetu and another v Republic & 5 others* (2016) eKLR which decisions set out the criteria for joinder. It was their contention that the issues raised by the petitioners and the interested parties arise from their alleged interest on the land, out of cancelled titles arising out of the unlawful subdivision over the land owned by the applicants. It was argued for the applicants that the decision of the court may have adverse effects on the them. It was also their submission that being the registered owner of the subject property, they stand to be prejudiced if they are denied joinder to defend their interest.

Respondent/Petitioners' submissions

9. Counsel for the respondent relied on Order 1 Rule 10 (2) of the *Civil Procedure Rules* and on the decisions in the cases of *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others* [2014] eKLR and *Francis Kariuki Muruatetu v another v Republic & 5 others* [2016] eKLR and submitted that to warrant joinder as interested party, the applicant's interest must be clearly identifiable and proximate enough to stand apart from anything that is merely peripheral. Counsel argued that the



applicant had not met the threshold for joinder as an interested party. It was their submission that the proposed interested party had not set out the case they intended on making before this court and that they would not be prejudiced if joinder was not allowed, as documents relied upon were not sufficient to disclose their interest. It was also their submission that the application was not meritorious and that the applicant had not substantiated their allegations that the suit property was once known as LR 28348, as required under Section 107 of the Evidence Act. He also argued that the applicant was trying to introduce a new cause of action altogether, contrary to the Supreme Court's holding in the Francis Kariuki Muruatetu's case. It was also submitted that the issues raised by the applicant would not help the court effectually and competently determine the matter.

Analysis and Determination

10. The court has considered the application, the response thereto and the rival submissions by the parties. The sole issue for determination is whether the applicant has satisfied the requirement for joinder as an interested party.

11. Rule 2 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, gives definition of "interested party" as follows;-

"interested party" means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation.

12. Order 1 rule 10 (2) of the Civil Procedure Rules provides for joinder of parties as follows;

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.

13. In the case of Communications Commission of Kenya and 4 others v Royal Media Services Limited & 7 others Petition No 15 of [2014] eKLR the Supreme Court of Kenya held 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.

14. Essentially, for an applicant to be joined to a suit as interested party, they ought to have an identifiable stake in the issues before court. In the instant application, the issue raised in the petition herein is ownership of LR No 31577 - 31588 and 31666 t0 31681 which is alleged to belong to the petitioners



and the legality of a letter dated 21st February 2022 written by the Director of Surveys of Kenya purporting to cancel the deed plans in respect of the above titles. In the instant application, the applicant states that they are the registered owners of LR No 28348 which was unlawfully subdivided to create the suit properties herein and that the petitioners have encroached on their property. They state that if they are not joined to this suit as interested party, they will be defrauded of their land.

15. The applicant's claim is that the suit properties belong to them. Therefore, they claim ownership thereof. The question therefore is whether the applicant ought to be joined to this suit as an interested party in view of the fact that they claim ownership of the suit property and challenge creation of the petitioners' titles.
16. Having noted that the issues in the petition herein is the legality of the cancellation of the deed plans for titles registered in the petitioners' names, it is clear that the issue sought to be introduced by the applicant being whether they are the lawful owners of the suit property, and whether the petitioners are trespassers thereon, are new issues that did not arise in the petition. In my view, the applicant intends to introduce a new cause of action which would call for relief in their favour. Since an interested party is not a primary party in a suit, they cannot introduce a new cause of action to a suit. As the applicant claim ownership of the suit property, it is the view of this court that they ought to file their own suit stating their claim, and the reliefs desired.
17. In the premises, I find and hold that the application dated 30th November 2022 lacks merit and the same is hereby dismissed with costs to the Respondent.
18. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 22ND DAY OF NOVEMBER, 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM.

A. NYUKURI

JUDGE

In the presence of:

Mr. Kurgat for petitioners

Mr. Omore holding brief for Mr. Dachi for 3rd proposed interested party

Mr. Bariki holding brief for Mr. Kirimi for 1st interested party

No appearance for respondents

Josephine - Court Assistant

