



Mody & another v Scorpion Properties Limited & 8 others (Environment and Land Case Civil Suit 2156 of 2007 & Environment & Land Case 196 of 2015 (Consolidated)) [2023] KEELC 21877 (KLR) (21 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21877 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 2156 OF 2007 &
ENVIRONMENT & LAND CASE 196 OF 2015 (CONSOLIDATED)**

LN MBUGUA, J

NOVEMBER 21, 2023

BETWEEN

P.I MODY PLAINTIFF

AND

SCORPION PROPERTIES LIMITED 1ST DEFENDANT

ROBERT OTACHI 2ND DEFENDANT

THE NATIONAL LAND COMMISSION 3RD DEFENDANT

THE CHIEF LAND REGISTRAR 4TH DEFENDANT

THE COUNTY GOVERNEMENT OF NAIROBI 5TH DEFENDANT

TONIE LESLIE WESONGA 6TH DEFENDANT

**AS CONSOLIDATED WITH
ENVIRONMENT & LAND CASE 196 OF 2015**

BETWEEN

KENYA WINE AGENCIES LIMITED PLAINTIFF

AND

JINA HARJI VARSANI 1ST DEFENDANT

VERBAL DHANJI VARSANI 2ND DEFENDANT

THE COMMISSIONER OF LANDS 3RD DEFENDANT



RULING

1. Before me is the application dated 29.9.2023 where the Applicant, the Ethics and Anti-Corruption Commission (EACC) is seeking orders to be joined in these proceedings as an Interested Party or in any other capacity the court deems fit. It also seeks orders to be served with proceedings herein as well as leave to file pleadings, witness statements and the necessary documents.
2. The applicant avers that in exercise of its duties under Section 11 (1) (j) of the *Ethics and Anti-Corruption Commission Act* 2011, it unearthed that the land parcel Nairobi Block 91/56 measuring 0.809371 Ha is public land allocated to the Defunct Nairobi City Council for the building of a fire station in 1978. It is further averred that the suit parcels Nairobi Block 91/216 and 217 were excised from the aforementioned parcel Nairobi Block 91/56.
3. It was argued that due process was ignored in the purported conversion of public land to private land, of which the said acquisition of Nairobi Block 91/56 by private persons was mentioned in the Ndung'u report as irregular and illegal.
4. The application is opposed by the 2nd Defendant vide his replying affidavit sworn on 16.10.2023. He avers that relevant government bodies and independent commissions well suited and mandated to deal with land issues have filed their response to the suit, thus the Applicant has not raised any new issues.
5. That on 11.5.2023, he was summoned to appear at the Applicant's offices to record his statement regarding the subject suit which is prejudicial to him as the Applicant is carrying out parallel proceedings in the matter and has already solicited evidence to use adversely against him in this suit.
6. The application is also opposed by the Plaintiff vide the replying affidavit of its director, one Rahim Chatur sworn on 11.10.2023. He avers that the application has been brought too late in the day as the suit was filed in year 2007 and the Intended Interested Party never made an application to be enjoined in the suit but waited until the suit was set down for hearing to make the application.
7. He argues that the Applicant has not laid down any novel issues which cannot be articulated by the 3rd - 5th Defendants. That there is no nexus between the Applicant's mandate and the suit herein as the 3rd Defendant has the mandate to investigate issues of land, thus the applicant has no stake in the dispute.
8. The 1st and 4th Defendants are not opposed to the application while the 3rd, 5th and 6th Defendants did not file responses to the application. However, the 6th defendant indicated that they associated themselves with the sentiments expressed by the parties opposing the application.
9. The application was canvassed by way of written submissions. The Applicant's submissions are dated 18.10.2023. The case of *Communications Commission of Kenya and 4 others v Royal Media Services Limited & 7 others* Petition No.15 of [2014] eKLR is relied upon to submit that joinder of the Applicant will prevent proliferation of litigation by preventing multiplicity of suits.
10. Further that enjoining the Applicant will assist the Court to effectually and completely adjudicate upon and settle all questions arising in the suit in light of the findings of the investigations touching on the suit property.
11. The Applicant also submits that it should be allowed to file pleadings as was allowed in similar matters being the case of *Presbyterian Foundation v Charles Ndungu & 3 others* [2016] eKLR, *Republic v Kwale County Lands Registrar & another; Abshir & 2 others (Intended Interested Party)* (*Miscellaneous Judicial Review 11 of 2021*) [2022] KEELC 13757 (KLR), *John Waboi Mwangi &*



another v Commissioner General of Prisons & 2 others; Ethics & Anti-Corruption (Intended Interested Party) [2020] eKLR.

12. The Plaintiff filed written submissions dated 18.10.2023 where they contend that the application has been brought rather late in the day as the suit was filed way back in the year 2007 and has been in court for the last 16 years and no reason for the delay was proffered. The cases of *Trusted Society of Human Rights Alliance v Mumo Matemy & 5 others* [2015] eKLR, *Ibrahim Mungara Mwangi v Francis Ndegwa Mwangi* [2014] eKLR as well as the case of *Benjob Amalgamated Limited & Another v Kenya Commercial Bank Limited Nicholas Kiptoo Arap Korir Salat v IEBC & 6 others* were cited to buttress this point.
13. It was further submitted that the Applicant has not met the test for joinder laid down by the Supreme Court in the case of *Francis Kariuki Muruatetu & another v Republic & 5 others* [2016] eKLR. Further, that the applicant has no stake in the matter and that the Attorney General who is a party to the suit has power under Article 156 of *the Constitution* to represent the national government in these proceedings. Adding that there are no draft pleading to assist the court to discern the Applicant's identifiable stake in the matter.
14. I have considered all the rival arguments, to join or not to join the EACC in these proceedings is the issue for determination.
15. The Applicant contends that it has discovered that the suit property is public land and has documents that will assist the court to reach a just finding.
16. Order 1 Rule 10 (2) of the *Civil Procedure Rules* gives this court discretion to join a party whose presence before the court may be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions in the suit. The threshold for being joined as an Interested Party is well captured in *Francis Kariuki Muruatetu and Another v Republic & 5 Others* [2016] eKLR.
17. I have considered the Application against the threshold in the above mentioned case. I find that the lengthy affidavit filed by the Applicant as well as annexures thereto are mostly documents that are already on record.
18. The court takes cognizance of the fact that the applicant has the mandate to institute and or participate in court proceedings for recovery and or protection of public properties. However, the court notes that the Attorney General is appearing in these proceedings for the Chief Land Registrar, thus the applicant is in a position to cooperate and collaborate with the aforementioned state agency to advance their mandate. Further it is noted that the documents it intends to produce have already been filed by the principle parties herein or can adequately be produced by the Attorney General.
19. Of great concern however is the passage of time. I am inclined to agree with the Plaintiff and the 2nd Defendant that the application has been brought rather late in the day, just when the hearing of the suit has taken off. The Applicant has sought leave to file pleadings and witness statements and as noted by the parties herein, it intends to introduce new issues. Introducing a fresh cause at this time will prejudice the parties noting that the matter has been in court since year 2007.
20. The Supreme court held as follows over a similar issue in *Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others* [2014] eKLR.

“We cannot exercise our discretion to enjoin a party that disguises itself as an Interested Party, while in actual fact merely seeking to institute fresh cause..”



21. In the circumstances, the application for joinder by EACC is found to have no merits. The same is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF NOVEMBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Mbithi holding brief for O.Mogeni for Plaintiff

Wesonga for Plaintiff in 196 of 2015

A.Kamau for the 4th Defendant (Registrar)

Githui for 1st Defendant and Counter Claimant

M/s Mutinda holding brief for Ayecko for 6th Defendant

Nyakoe for 5th Defendant

Maina for Intended Interested Party

Muriithi for 1st - 2nd Defendant in 196 of 2015

