



Moboko Shiembekho Limited v Agricultural Development Corporation & 2 others (Environment & Land Petition E006 of 2023) [2023] KEELC 22446 (KLR) (20 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22446 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND PETITION E006 OF 2023
A OMBWAYO, J
DECEMBER 20, 2023**

BETWEEN

MOBOKO SHIEMBEKHO LIMITED PETITIONER

AND

AGRICULTURAL DEVELOPMENT CORPORATION 1ST RESPONDENT

THE HON ATTORNEY GENERAL 2ND RESPONDENT

THE CHIEF LAND REGISTRAR 3RD RESPONDENT

RULING

1. Order 1 rule 1 of the [Civil Procedure Rules](#) under which the application is brought provides as hereunder:

“All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise.”

Order 1 rule 10(2) of the said [Rules](#) provides that:

“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.”



2. Before me are two applications dated 18th September 2023 and 18th October 2023, both seeking joinder of parties thus the National Land Commission and Edward Maina and Ndabithi Farmers Co. Limited. The National Land Commission seeks orders that she be enjoined as an interested party herein. Moreover, that she be granted an opportunity to submit written and oral arguments in the above petition and on any other information it may deem Important and relevant to allow for the just disposition of this matter.
3. The application is based on grounds that the National Land Commission (NIC) is a Constitutional Commission established under Article 67 (l) of the Constitution of Kenya 2010 and operationalized by the National Land Commission (NIC) Act, 2012 the Land Act, 2012 and the Land Registration Act& 2012 to perform the following functions:
 - a. To manage public land on behalf of the national and county governments;
 - b. To recommend a national land policy to the national government;
 - c. To advise the National Government on a comprehensive programme for the registration of title in the land throughout Kenya;
 - d. To conduct research related ta land and the use of natural resources, and make recommendations to appropriate authorities;
 - e. To initiate investigations. its: own initiative or on a complain into present or historical land injustices, and recommend appropriate redress;
 - f. To encourage the application of traditional dispute resolution mechanisms in land conflicts;
 - g. To assess tax land and premiums on immovable property in any area designated by law: and
 - h. To monitor and have oversight responsibilities over land use planning throughout the country.
4. According to the application, the participation of the proposed Interested Party in this matter is critical to ventilate pertinent issues in the acquisition of the suit property and aid the court" in fair determination of the issues in dispute, the administration, protection and management of public utility lands constitutional and statutory mandate of the proposed interested party.
5. The proposed interested party is a necessary and proper party whose joinder in the suit would enable the court to effectively and completely adjudicate upon and settle all the matters in question by offering impartial and expert reports and testimonies on whether the suit land is public or private.
6. That the presence of the proposed interested party is necessary as protector of the rule of law and legal processes as well as defender of public interest and public properties.
7. Neither the petitioner nor the Respondent stand to be prejudiced if this application is allowed.
8. It is in the interest of public and justice that the proposed interested party be enjoined as an interested party and granted a chance to participate in this matter. It is fair, just and expedient that application be allowed. This application is made in good faith and has been lodged expeditiously. I have not seen any response to the application.
9. The matters before me is simply whether to allow the applications for the joinder of the interested parties to these proceedings. The relevant tests for determination whether or not to join a party in proceedings were restated by Nambuye, J (as she then was) in the case of Kingori vs. Chege & 3 Others



[2002] 2 KLR 243 where the learned Judge stated that the guiding principles when an intending party is to be joined are as follows:

1. He must be a necessary party.
2. He must be a proper party.
3. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.
4. The ultimate order or decree cannot be enforced without his presence in the matter.
5. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.

10. In *Departed Asians Property Custodian Board vs. Jaffer Brothers Ltd* [1999] 1 EA 55 it was held as follows:

“A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involve in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involve in the cause or matter...For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the Court in that suit. Alternatively, a person qualifies, (on an application of a Defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.”

11. In *Civicon Limited vs. Kivuwatt Limited and 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.”

12. I do find that the National Land Commission has satisfied the court that she has an interest in the matter on a claim that the suit land is public land owned by the 1st respondent.



13. I do grant orders that National Land commission be enjoined in the suit and to file and serve a replying affidavit within the next 20 days.
14. In the second application, Edward Maina and Ndabithi Farmers Co. Limited pray that they be joined in this suit as interested parties and to be allowed to canvas the petition because they are the registered owners of the property and that they have resided on the property, owned, developed schools public utilities, cultivated maize and planted trees on the suit property. I have considered this application and do find that the applicants have not established sufficient interest in the property in dispute being grant number I.R 111997 L.R No 7281/37. The interested parties in the second application are claiming rights in L.R No 7281 and L.R No 6233 that are not subject to the petition. The application dated 18th October 2023 is not merited and is dismissed with costs.

RULING DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 20TH DAY OF DECEMBER 2023.

A O OMBWAYO

JUDGE

