



**Sigu v District Land Registrar, Machakos & another; Ethics and Anti-Corruption Commission (Interested Party) (Environmental and Land Originating Summons 31 of 2022) [2023] KEELC 22294 (KLR) (18 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22294 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ENVIROMENTAL AND LAND ORIGINATING SUMMONS 31 OF 2022**

**A NYUKURI, J**

**DECEMBER 18, 2023**

**IN THE MATTER OF THE LAND REGISTRATION ACT, 2012 AND LAND ACT 2012**

**AND**

**IN THE MATTER OF REGISTRATION OF LEASE IN  
RESPECT OF MACHAKOS MUNICIPALITY BLOCK 1/755**

**BETWEEN**

**JOEL ADUMA SIGU ..... APPLICANT**

**AND**

**DISTRICT LAND REGISTRAR, MACHAKOS ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**ETHICS AND ANTI-CORRUPTION COMMISSION ..... INTERESTED PARTY**

**RULING**

**Introduction**

1. Before court is a notice of motion dated 7<sup>th</sup> July 2023, filed by the intended interested party seeking the following orders;
  - a. Spent
  - b. That leave be granted to the Commission to be joined in these proceedings as an interested party or in any other capacity as the court may deem fit to order.



- c. That the applicant/respondent does serve the commission with all the pleadings filed on its behalf in this suit and the commission be at liberty to file pleadings in response thereto within such period and on such terms as the court may direct or order.
  - d. That costs of this application be provided for.
2. The application is premised on the supporting affidavit sworn on 7<sup>th</sup> July 2023 by Salad Wato Boru an investigator with the applicant. The applicant's case is that pursuant to their mandate under the [\*Ethics and Anti-corruption Commission Act\*](#), they are investigating allegations that Machakos Municipality Block 1/32 (formerly LR 909/563) also known as Ngei Estate measuring 4.08 acres which was set aside for public purpose was fraudulently, illegally and unlawfully allocated to private persons. He deponed that preliminary investigations had established that by a Part Development Plan (Approved Development Plan No. 39) of department reference 56/67/3 approved on 9<sup>th</sup> November 1967 by the then Commissioner of Lands, the suit property was earmarked for development of staff rental housing scheme. He stated further that in 1968 survey was done on the suit property resulting in the creation of parcel No. L.R No. 909/563 measuring 4.08 acres and that in 1970 the National Housing Corporation built 24 housing units on the said parcel which still remains to date.
  3. She further stated that on 22<sup>nd</sup> November 1973 parcel L.R No. 909/563 was converted to Machakos Municipality Block 1/32 which was illegally subdivided to create several parcels among them parcel Nos. Machakos Municipality Block 1/755 (suit property). She averred that on 19<sup>th</sup> June 1998, in total disregard of the existing alienation and public user, the applicant herein was irregularly issued with a letter of allotment RefNo. 21658/XIII over land described as UNS. Residential Plot No. A-Machakos, which allotment letter was supported by a Part Development Plan No. MKS/56/97. He averred that the latter was surveyed as Machakos Municipality Block 1/755. She stated that subsequently, the applicant was issued with a lease dated 18<sup>th</sup> December 2018, which lease was returned to the registrar to correct an error on the name on the lease.
  4. He further deponed that in the course of investigation, he learnt that the applicant had filed the Originating Summons herein seeking to compel the Land Registrar Machakos to issue him with title document in respect of the suit property in respect of the aforesaid letter of allotment issued to the applicant.
  5. He stated that the outcome of these proceedings will adversely affect investigations and preclude the Commission from taking any action in respect of the suit property which is public land. That the Commission is desirous of shedding light on these proceedings by filing necessary pleadings and evidence to assist the court arrive at a just determination. He stated that the Commission is a necessary party in these proceedings and it is therefore important for the Commission to participate in these proceedings. He attached Part Development Plan; two survey plans and letter dated 22<sup>nd</sup> October 1968; and a conversion list.
  6. The application is opposed. Joel Aduma Sigu, the applicant/respondent herein, filed a replying affidavit sworn on 14<sup>th</sup> July 2023. He deponed that the application was intended at delaying the determination of the Originating Summons herein.
  7. He stated that the mandate of investigating allegations of illegal and fraudulent allocation of land, vests in the National Land Commission pursuant to sections 5 and 6 of the [\*National Land Commission Act\*](#). He stated further that on 14<sup>th</sup> December 2018, the National Land Commission wrote to him requesting to be furnished with the applicant's ownership documents in respect of parcel Machakos Municipality Block 1/755, and explain how he acquired it. That upon sufficient explanation, the National Land Commission wrote to the respondent on 12<sup>th</sup> February 2019 stating that the matter



had been vacated. He maintained that the applicant herein has not shown by evidence whether that position has changed. He stated that on 16<sup>th</sup> December 2022, the applicant herein served the respondent with a letter dated 18<sup>th</sup> November 2022 notifying him that they were investigating allegations of illegal and fraudulent allocation of public land reserved for staff housing within Ngei estate and that his parcel was one of them and that he would be accorded an opportunity to be heard, on how he acquired ownership thereof.

8. That although he responded to the letter and sought for a meeting through his counsel, no response was made by the applicant. Further that the County attorney Machakos, wrote a letter stating that the suit property does not fall within Temporary Occupation Licence area. He stated that the assertion that the 24 housing units were built by the National Housing Corporation, was not correct because those 24 units were condemned by the County Government.
9. He stated that all the adjacent plots have been fully developed by individuals who were issued with leases and that he does not understand why it is only his plot that is an exception. He attached letters from the National Land Commission, letter from the applicant herein; letter from the respondent's counsel; letter from the County attorney of Machakos County and email extracts.
10. In a rejoinder, Mr. Salad Wato Boru filed a further affidavit sworn on 12<sup>th</sup> September 2023. He stated that the Commission had brought the application in good faith pursuant to its constitutional and statutory mandate. Further that the jurisdiction of the National Land Commission to review all grants and disposition of public land as provided for in section 14 of the *National Land Commission Act*, lapsed on 2<sup>nd</sup> May 2017, and therefore that the mandate to determine the legality or depositions over public land now falls on the ELC. He stated that the applicant is an independent commission and has power on its own initiative or on complaint by any person to conduct investigations. He stated that a letter by National Land Commission that the matter had been vacated does not mean that the suit property was regularly acquired. Further that the county attorney has no role in determining the legality of grants or disposition of public land. He stated that in the course of investigations, the respondent wrote a letter dated 22<sup>nd</sup> October 2022 claiming ownership of the suit property. He stated that although the respondent's counsel wrote two letters to the Commission, he maintained that the Commission's letter dated 18<sup>th</sup> November 2022 had addressed the respondent's concerns. He also stated that on 11<sup>th</sup> April 2023, the applicant was given opportunity to be heard and he wrote his statement and issues raised in his correspondence were duly addressed. He maintained that the houses built by the National Housing Corporation on the suit property remains on the suit property to date. He maintained that the Commission had met the threshold of joinder.
11. The instant application was disposed by way of written submissions. On record are submissions filed by the Commission on 4<sup>th</sup> October 2023 which the court has duly considered.

### **Analysis and determination**

12. I have carefully considered the application and supporting affidavits, the response and submissions. In my considered view, the only issue that arise for determination is whether the intended interested party has met the threshold for joinder as an interested party in these proceedings.
13. The Black's Law Dictionary defines an interested party as "a party who has a recognizable stake (and therefore standing) in the matter."
14. Order 1 Rule 10 (2) of the Civil Procedure Rules provides for the jurisdiction of the court to join a party to a suit, whose presence in the proceedings is necessary to assist the court to effectually and completely determine all the issues in dispute.



15. To be joined to any court proceedings as interested party, an applicant must demonstrate that they have an identifiable stake in the issues before court and that their presence in the suit is necessary to enable the court fully determine the questions in dispute. A peripheral interest in a matter is not sufficient for joinder as interested party.

16. In the case of *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others* [2014] eKLR the Supreme Court of Kenya stated 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 joined in a matter for the reasons that

- i. Joinder of a person because his presence will result in the complete settlement of all the questions 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 interested party's state and relevance in the proceedings and
  - b. Will the intended interested party suffer any prejudice if denied joinder?

17. In the instant application, the intended interested party avers that the suit property is Government land set aside for civil servants rental housing scheme, having twenty four houses and that therefore the same was not available for alienation and allocation to the respondent. The intended interested party maintains that the subdivision of the suit property and subsequent allocation to the respondent was unlawful. On the other hand the respondent states that the mandate to investigate allegations of unlawful allocation of public land vests in the National Land Commission and not the applicant and that he gave a satisfactory explanation of his acquisition of the suit property to the National Land Commission which vacated the matter.

18. Having considered the response and the issue that was raised by the applicant, my view is that the respondent did not respond to the issue of whether the applicant had met the threshold of joinder but delved in the merits of his case on the legality of acquisition of the suit property. As this matter has not been heard on merit, I refrain from commenting on whether the acquisition was lawful as that may embarrass the trial of the matter.

19. On whether the applicant has demonstrated an identifiable stake in the issues herein, I note that the respondent has filed an Originating Summons seeking to compel the land registrar to issue him with title on the basis that he was lawfully issued with an allotment letter and a lease. The applicant has faulted the legality of the process of allocation of the suit property on the basis that the suit property is public land reserved for civil servants rental housing scheme. The respondent has conceded that there are 24 houses on the suit property but alleges that the same were condemned by the County Government.



20. Having considered the issues herein and noting that it is the respondent's case that he was lawfully allocated the suit property, and the issue raised by the applicant herein being the legality of allocation of public land, it is therefore necessary for the court to establish whether the process in the allocation of public land to the applicant was in compliance with the law and whether the applicant is entitled to the orders sought. In my view therefore, the intended interested party herein has demonstrated an identifiable stake in the issues raised in the proceedings before court. I therefore hold and find that they are a necessary party to these proceedings, and their presence in these proceedings will enable the court to completely determine all the questions arising in this suit.
21. In the premises, I find and hold that the application dated 7<sup>th</sup> July 2023 is merited and the same is allowed in the following terms;
- a. Leave be and is hereby granted to the Ethic and Anti-Corruption Commission to join these proceedings as interested party.
  - b. The respondent/applicant is ordered to serve the interested party with all the pleadings filed in this suit, in 14 days and the interested party is ordered to file their pleadings in response thereto in 21 days of service.
  - c. The costs of the application shall be in the cause.
22. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 18<sup>TH</sup> DAY OF DECEMBER, 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

**In the presence of:**

Mr. Wanyama holding brief for Mr. Ayieko for the applicant

Ms. Lunyolo for intended interested party

No appearance for Attorney General

Josephine - Court Assistant

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