



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO. E17 OF 2021

HASS PETROLEUM (K) LIMITED.....PLAINTIFF

VERSUS

CITY MANAGER, CITY OF KISUMU.....DEFENDANT

NATIONAL LAND COMMISSION.....1ST INTENDED INTERESTED PARTY

ETHICS AND ANTI-CORRUPTION COMMISSION.....2ND INTENDED INTERESTED PARTY

RULING

BRIEF FACTS

The Defendant herein filed Notice of Motion Application seeking for orders that:

- 1. The 1st and 2nd Interested Parties be hereby enjoined as the 1st and 2nd Interested Parties in the Petition filed in this Honourable Court.**
- 2. The 1st and 2nd Intended Interested Parties be allowed to participate in these proceedings as Interested Parties and to file a response to the Petition herein within such time as the Honourable Court may deem fit to grant.**
- 3. The 1st and 2nd Interested Parties be allowed to submit with leave of court any other information the 1st and 2nd Intended Interested parties may deem important and relevant to allow for the just disposition of the Petition before this Honourable Court.**
- 4. Cost of this Application be in the cause.**

The Application was supported by the Affidavit of **Michael Abala Wanga** where he stated that the Petition before this Honourable Court relates to public land that was illegally, irregularly and/or acquired through a corrupt scheme and the 1st Intended Interested Party is the custodian of Public Land in Kenya knowledge of disposal of public land, present or historical is within its province.

It is the Defendant’s case that the 1st Intended Interested Party has a constitutional duty to monitor the registration of all rights and interests in land and therefore has a duty to help the court effectively and completely adjudicate on all the issues in this petition in relation to the suit property.

That the court will benefit immensely from the information and records adduced before it by the intended interested parties should they be allowed to participate in these proceedings and the 1st Intended Interested Party’s constitutional obligation to administer public land on behalf of the county governments, including Kisumu County and to ensure that Public Land under the management of Kisumu County Government is sustainably managed for the intended public purposes. Consequently, the 1st Intended Interested Party has an identifiable stake which is public interest by virtue of being the custodian of public land in these proceedings.

The Defendant further stated that the role of the 1st Intended Interested Party which is to provide for the management and administration of public land which include allocation of land, disposing of public land and leasing and the orders sought in the petition will affect the 1st Intended Interested Party directly and adversely if granted in the manner and form sought by the Petitioner herein.

That the 2nd Intended Interested Party is a Constitutional Commission established pursuant to Article 79 of the Constitution whose functions among others, include to undertake preventive measures against unethical and corrupt practices and conduct investigations on with respect to

any corrupt practices. He further stated that the suit property was acquired illegally, irregularly and/or through a corrupt scheme and consequently, this Honourable Court would benefit from the 2nd Intended Interested Party's response to the Petition.

The 2nd Intended Interested Party has a statutory obligation to institute and conduct proceedings in court for purposes of the recovery or protection of public property and it is in the interest of justice that the 1st and 2nd Intended Interested Parties to be joined in the proceedings and therefore it is necessary for the 1st and 2nd Intended Interested Parties to participate in these proceedings as interested parties to avoid a multiplicity of suits which may arise out of fears that their rights may be infringed or threatened.

This court directed parties to canvass the Application by way of written submissions.

Defendant/Applicant's Submissions

The Defendant herein filed Submissions with respect to the Application and the main issue raised for determination was whether the Intended Interested Parties have an identifiable stake and/or legal interest in this suit.

The Defendant stated in his Submission that the elements to be satisfied in order for the Intended Interested Parties to be enjoined in these proceedings as Interested Parties are that they must have an identifiable stake or must have a legal interest or must have a duty in the proceedings.

The Defendant relied in the case of **Kenya Medical Laboratory Technicians and Technologists Board & 6 Others v Attorney General & 4 Others (2017) eKLR** where Mativo J held as follows:

“A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights. In determining whether or not an applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party the true test lies not so much in an analysis of what are the constituents of the applicant's rights, but rather in what would be the result on the subject-matter of the action if those rights could be established. It is apparent that a party claiming to be enjoined in proceedings must have an interest in the pending litigation, but the interest must be legal, identifiable or demonstrate a duty in the proceedings directly identifiable by examining the questions involved in the suit. “

The **Black's Law Dictionary** defines an interested party as "*A party who has a recognizable stake (and therefore standing) in the matter.*" It also defines a "Necessary Party" as "*a party who being closely connected to a lawsuit should be included in the case if feasible but whose absence will not require dismissal of proceedings.*"

It is the Defendant's Submissions that discretion in granting the orders sought herein should be exercised judiciously based on sound principles. That the main purpose of joining parties is to enable the court to avoid multiplicity of suits.

The Defendant submitted that the Intended Interested Parties have a constitutional obligation to assist the Honourable Court in determining this Petition and place reliance in the case of **Judicial Service Commission – vs – Speaker of the National Assembly & Another [2014] eKLR** the court, referring to the definition of an interested party under The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules as defined above stated that: -

“From the foregoing it is clear that an interested party is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly nonpartisan as he is likely to urge the court to make a determination favourable to his stake in the proceedings.”

In **Mumo Matemu vs. Trusted Society of Human Rights Alliance and 5 Others (2013) eKLR** the court held as follows: -

“Moreover, we take note that our commitment to the values of substantive justice, public participation, inclusiveness, transparency and accountability under Article 10 of the Constitution by necessity and logic broadens access to the courts. In this broader context, this Court cannot fashion or sanction an invitation to a judicial standard for locus standi that places hurdles on access to the courts, except only when such litigation is hypothetical, abstract or is an abuse of the judicial process. the standard guide for locus standi must remain the command in Article 258 of the Constitution.”

The Defendant stated that the Intended Interested Parties being Constitutional Commissions, they should be enjoined in this Suit and prayed that this Honourable Court do grant the orders sought.

Plaintiff's Submissions

The Plaintiff's failed to file their Submissions to the Application dated 1st July 2021.

ANALYSIS AND DETERMINATION

This court has looked at the Application and the Submission filed and is of the view that the main issue for determination is whether the Intended Interested parties should be enjoined in this suit.

Order 1 Rule 10 (2) of the **Civil Procedure Rules** provides as follows: -

" The court may at any stage of the proceedings either upon or without the application for either party and on such terms as may appear to the court to be just order that the name of any party whose presence before the court may be necessary in order to enable the court to effectually and completely to adjudicate upon and settle all questions involved in the suit (Emphasis added).

Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others [2015] eKLR:

"...Consequently, 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."

The principles set out in paragraph 37 of **Francis Kariuki Muruatetu & Another v Republic & 5 others Petition 15 as consolidated with 16 of 2013 [2016] eKLR** demonstrate elements applicable where a party seeks to be enjoined in proceedings as an interested party, they are:

One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

(i) The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.

(ii) The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.

(iii) Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.

From the court record it is clear that the Defendant did not seek leave to file the Notice of Motion application. The Defendant in his supporting affidavit has stated that the 1st Intended Interested Party's constitutional obligation to administer public land on behalf of the county governments, including Kisumu County and to ensure that Public Land under the management of Kisumu County Government is sustainably managed for the intended public purposes. Consequently, the 1st Intended Interested Party has an identifiable stake which is public interest by virtue of being the custodian of public land in these proceedings and further that the 2nd Intended Interested Party is a Constitutional Commission established pursuant to Article 79 of the Constitution whose functions among others, include to undertake preventive measures against unethical and corrupt practices and conduct investigations on with respect to any corrupt practices, the Defendant has not clearly demonstrated to this court the prejudice that he will likely to suffer in the event the Intended Interested parties are not enjoined to this suit.

It is also not proper for the Defendant herein to apply to enjoin the Intended Interested Parties and yet the Intended Interested Parties being capable of suing and being sued should make the application of being enjoined in this suit in the event that they will be affected by the decision of this court. In the circumstances herein, I dismiss the Notice of Motion application dated 1st July 2021.

DATED AT KISUMU THIS 21ST DAY OF JANUARY, 2022

ANTONY OMBWAYO

JUDGE

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2019.

ANTONY OMBWAYO

JUDGE