



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT OF KENYA

AT KAPSABET

ELC PETITION NUMBER 5 OF 2021

(FORMERLY ELDORET ELC PETITION NO 13A OF 2020.)

MEDIHEAL HOSPITAL & FERTILITY CENTRE LIMITED.....PETITIONER

-VERSUS-

COUNTY GOVERNMENT OF NANDI.....RESPONDENT

RULING

1. Two Notice of Motion applications are before this court for determination, since they seek similar reliefs parties herein agreed that the same could be canvassed simultaneously by way of written submissions.
2. The First application was filed by the County Government of Nandi on 15th June 2021 (hereinafter referred to as the CGN application) and it seeks orders for;
 - a) joinder of Jacob Kipkemboi Rono, David Kiplagat Kosgei, Agui Songok, Ruth Jepngetich and the Nandi County Land Registrar as 2nd to 6th Respondents in a cross Petition
 - b) the CGN granted leave to file a cross- petition.
3. The Second application was filed on 8th October 2021 by DYMPHINA CHEMAIYO TEK the widow and Administratrix of the Estate of the late Peter Kipserem Tek, who seeks to be joined in as a 2nd Respondent in the main petition. This application shall be referred to as “the 2nd Application”
4. Both applications are vehemently opposed by the petitioner who through Godfrey Kipkorir Kiptoo has filed a Replying Affidavit opposing both the joinder of the proposed Respondents as well as the leave to file a cross-petition.

APPLICANTS CASE

5. In respect to the application dated 15.6.2021 the grounds in support thereof are interalia;
 - i) the proposed respondents in the cross petition having been initial registered owners before transfer to the petitioner and that their acquisition of the said titles was fraud, misrepresentation and without following the due process and hence the need for joinder of the proposed respondents in the suit for effectual and complete adjudication and settlement of the issues herein.
 - ii) that the proposed cross petition seeks to plead the illegalities tainting the title issued to the proposed respondents in the first instance before the transfer to the Petitioner and ensure that all issues are pleaded.
6. in respect of the application dated 8.10.2021 it is grounded on grounds that the proposed respondent **DYMPHINA CHEMAIYO TEK** is the Administratrix of the estate of the late PETER KIPSEREM TEK who was the registered owner of NANDI/KAPSABET/292 and that since the said property is being litigated on the proposed respondent ought to be made a party.

RESPONDENTS CASE

7. It is the Respondents case that the proposed respondents in the cross petitions having sold the property to the petitioner no longer have and any interest in the suit properties and that their joinder is thus meant to delay the Petition which petition challenges an advert by the CGN

which had threatened to repossess illegally acquired parcels including the parcels belonging to the petitioner.

8 That having no interest in the suit properties the proposed respondents there is no cause of action against them.

9. In opposition to the 2nd application the Respondent reiterates that the property did not belong to PETER KIPSEREM TEK and that the National Land Commission together with the CGN had issued their no objection letter before the property was purchased by the Petitioner.

10. That they are no relief sought against the Applicant in the main petition and therefore cannot be joined as a respondent in the petition.

ANALYSIS AND DETERMINATION.

11. The principles of joinder of a party were well enumerated in the decision in **Meme vs Republic [2004]1 124**, which principles are;

a) joinder of a person because his presence will result in the complete settlement of all questions involved in the proceedings

b) joinder to provide a protection of a party who would otherwise be adversely affected in law

c) joinder to prevent a likely course of proliferated litigation.

12. The Application dated 15.6.2021 seeks joinder of 5 Respondents in a cross petition so because their presence in the suit shall complete the settlement of all questions and avoid proliferated litigation, whilst the application dated 8.10.2021 seems to be based on the ground that the joinder of a party likely to be adversely affected in law.

13. A look at the draft cross petition by the CGN the same seeks declaratory orders against the proposed respondents and pleads specific actions against them. It would thus be prudent to allow the CGN to file the cross petition and a joinder of the respondents in the cross petition.

14 With regard to the application by Dymphia, no reliefs have been sought against her or her late husband in the main petition thus her application to be joined as a respondent yet she has not been sued is misconceived. As was held in **CAROL CONSTRUCTION ENGINEERS LTD V NAOMI CHEPKORIR LANGAT [2019] eKLR** wherein the court in dismissing a similar application observed the hardship that would be rendered to the plaintiff thus;

"it will be wrong for this court to impose upon the plaintiff some persons as defendants when in fact the plaintiff has no issue with such persons."

15. But since Dymphia has shown an interest in **Nandi/Kapsabet Municipality /292** the Court allows her joinder not as a respondent but as an interested party. Accordingly leave is granted to the County Government of Nandi to file a cross petition and include the proposed 5 respondents in the cross petitions.

16. Leave is equally granted to Dymphia Tek the widow and Administratrix of the Estate of the late Peter Tek as an interested party in the main petition.

DATED AT KAPSABET THIS 17TH DAY OF JANUARY, 2022.

M. N. MWANYALE

JUDGE

Ruling delivered in the presence of: -

Ms. C. Karuga holding brief for Ms. Chesoo for Petitioner

Ms. Koech Lelei for the proposed 2nd Respondent

Ms. Sambu for the Respondent