



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC NO. 159 OF 2019

KASIGAU RANCHING (D.A) CO. LIMITED.....PLAINTIFF

VERSUS

THE CABINET SECRETARY MINISTRY OF PETROLEUM & MINING 1ST DEFENDANT

THE COMMISSIONER OF MINES AND GEOLOGY2ND DEFENDANT

THE HONOURABLE ATTORNEY GENERAL3RD DEFENDANT

LILIAN MERCY MUTUA T/A LILIAN M. GEMS4TH DEFENDANT

RULING

(Application for joinder as interested party; plaintiff filing suit to have cancelled a mining permit issued to the 4th defendant; plaintiff asserting to be owner of the land where the mining activities are taking place and contending that it never permitted the 4th defendant to mine in the land; applicant seeking to be joined to the suit asserting that it is her late husband who had the mining rights on the land; apparent that the estate that the applicant represents has interest in the case; application allowed)

1. The application before me is that dated 6 September 2021 filed by one Elizabeth Wangechi Ngilorit who is seeking orders to be joined in this suit as interested party. She avers that she has an identifiable legal interest in this suit hence the need to have her as interested party.
2. To put matters into context, the plaintiff filed this suit on 4 September 2019 vide a plaint. It averred to be the registered owner of the land parcel LR No. 12180. It pleaded that the 4th defendant has been illegally mining on the land with the assistance of the 1st and 2nd defendants (Cabinet Secretary Ministry of Petroleum and Mining and The Commissioner of Mines and Geology) who issued her with a mining permit No. MP/2018/0113 dated 7 November 2018. In the suit, the plaintiff seeks orders for the cancellation of the said Mining Permit issued to the 4th defendant and for the 4th defendant to be declared a trespasser on the suit land.
3. It is useful to add that there are two other related suits which were transferred to this case from Voi Magistrate's Court and consolidated with this suit. They are the cases originally filed in Voi Magistrate's Court as *Voi E & L No. 11 of 2019, Lilian Mercy Mutua T/A Lilian M. Gems vs Grace Wambu Kimotho & Others* and *Voi E & L No. 16 of 2018, Kasigau Ranching vs Lilian Mercy Mutua*. In the former case, Lilian Mercy Mutua who is the 4th defendant in this case, filed suit against the plaintiff and other persons to have them stopped from interfering with her mining activities on the suit land. In the latter case, the plaintiff sued her (Lilian) to stop her from the same land. The cases are therefore all related hence the order to have them consolidated.
4. In this application, the applicant avers that she is the wife and administrator of the estate of one Olongida Ngilorit Medukenya who she avers had interest in the same area where the subject mining activities are taking place and that he had a licence to undertake mining activities therein. Her late husband appears to have been in a sort of partnership with one David Muthui Kariuki before his demise. It is David Muthui Kariuki who purported to transfer his rights to mine to the 4th defendant. The applicant contests this asserting that Mr. Kariuki had no right to transfer any mining rights belonging to her late husband.
5. No party filed any documents to oppose the application and at the hearing of the application, Mr. Makuto, learned State Counsel, for the 1st – 3rd defendants, stated that he was not opposing the application. Ms. Ongonga holding brief for Ms. Isika for the 4th defendant thought that the application is not necessary as the applicant was a party in the cases filed in the Voi Magistrates Court. I reserved ruling on the application.
6. Although Ms. Ongonga stated from the bar that the applicant is already party in the other cases originally filed in Voi Magistrate's Court,

that is not the position. I have perused through the pleadings in the two files and nowhere is the applicant named as party. The applicant is thus justified to file this application seeking to be joined into this dispute.

7. Having gone through the application, it is apparent that the applicant is claiming that her late husband had mining rights in the same area that is the subject of this suit. I have seen that the applicant holds a limited grant of letters of administration in respect of the estate of her late husband. I am therefore persuaded that she has sufficient interest to allow her to be joined as interested party in this suit representing the estate of her late husband. Her involvement in the suit will however be limited to adducing evidence to assist the court in determining whether or not the 4th defendant has any rights to mine in the area in dispute. I make this clear because it appears as if the applicant has an axe to grind with the said Mr. Kariuki but this is not the arena for that battle. If she wants to pursue that exhaustively, she will need to file a separate suit against Mr. Kariuki. This suit has nothing to do with the adjudication of mining rights between her and Mr. Kariuki and the case will be limited to determining whether or not the 4th defendant has any rights to mine on the suit land and whether the mining permit issued to her ought to stand.

8. From the foregoing, it will be seen that I have allowed the application subject to the above.

9. I make no orders as to costs.

10. Orders accordingly.

DATED AND DELIVERED THIS 13TH DAY OF JANUARY 2022.

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA