



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO 359 OF 2016

KUGURU FOOD COMPLEX LTD.....PETITIONER

VERSUS

NATIONAL LAND COMMISSION1ST RESPONDENT

CHIEF LAND REGISTRAR2ND RESPONDENT

CHRISTINE OMONDI, CHARLES OYATSI & PHYLIS GITHUMU

(SUING AS THE OFFICE BEARERS OF

**RANGERS COURT WELFARE ASSOCIATION).....INTENDED
INTERESTED PARTY**

RULING

INTRODUCTION

1. This is a ruling on an application for joinder by the proposed interested party filed by Notice of Motion dated 3rd October 2016. The application for joinder is not opposed by the respondents. It is however opposed by the petitioner by a notice of preliminary objection, principally, on the ground of lack of *locus standi* - that “*the Application is untenable as the same has been filed by an ill-defined body not vested with legal capacity to sue and be sued and therefore incapable of filing such an application and consequently one which cannot participate in this constitutional petition.*”

2. The application had been filed in the name of the Rangers Court Welfare Association by Notice of Motion dated 16th September 2016, but it was subsequently withdrawn and refiled as Notice of Motion dated 3rd October 2016 in the names of three officials of the Association named as Christine Omondi, Charles Oyatsi and Phylis Githumu.

The Principles for joinder of Parties

3. In constitutional litigation, *The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* provides that-

“7. Interested party

(1) A person, with leave of the Court, may make an oral or written application to be joined as an interested party.

(2) A court may on its own motion join any interested party to the proceedings before it.”

4. The Rules define an Interested Party as follows:

““interested party” means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation.”

5. In similar terms, while considering an application for joinder of a party as a defendant in a regular suit, the Court of Appeal at Malindi in **Civicon Limited v Kivuwatt Limited & 2 others** [2015] eKLR held as follows:

*“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.**”*

Application of the Principle

6. The Court at this stage does not determine the proposed Interested Party’s case on the merits as that might prejudice the fair trial of the matter should the party be joined in the suit. The Court does not also look for a **prima facie** case of the applicant’s interest in the suit. The primary question in the petition, whether the suit property is private land, or was ever public land within the jurisdiction of the National Land Commission, is a matter for the trial court. The Court at this stage shall only consider whether the person seeking to join the proceedings has **sufficient interest** or identifiable stake or legal interest in the suit, which may or may not succeed at the trial.

7. In this matter, proposed Interested Party seeks to demonstrate its interest through grounds set out in the application as follows:

“(a) The applicants, among other members are either owners of the plots, residents and or tenants in some plots within the premises where yhe suit property is situate.

(b) It is the Intended Interested Party who formally made a complaint to the 1st Respondent to formally complain about the illegal encroachment of the parcel of land Known as LR 209/11095/159.

(c) The said parcel of land known as LR 209/11095/259 was initially earmarked as an open space (playground) in the original plan following the subdivision of Reference No. 209/11095 into various plots.

(d) The orders sought by the Petitioners’ herein seek to restrain the respondents from investigating the illegal acquisition and cancellation of title thereof as requested by the members of the Intended Interested Parties following the illegal acquisition of the land which was meant to be a public utility,

(e) It is in interests of justice that the Interested Parties be heard before any orders that may affect

them issued by this Honourable Court.

(f) The Orders sought herein will enable this Honourable Court to adjudicate upon and settle matter after hearing all the parties that may be affected by the ruling or judgment delivered by this Honourable Court.”

8. Indeed, the Petitioner sues as the registered proprietor of the suit property and sets out the cause of action at paragraphs 9-11 of the Petition, as follows:

“9. That some unidentified people wrote a protest letter to the First Respondent falsely misrepresenting that the petitioner was building on land set aside a playground for their children.

10. That consequently, the First Respondent without any legal basis and without seeking to review the grant of Title in the name of the Petitioner on the basis that it was open/undeveloped land then it fell within the classification of a public utility land.

11. That the First Respondent’s actions not only interfere with the Petitioners right to own property but also contravene express clauses of the constitution in meddling and/or seeking to unconstitutionally inhibit private property developers.”

9. In the affidavit supporting its application, the Proposed Interested Party has attached correspondence with National Land Commission, the Commission on Administrative Justice, the National Environment Management Authority and the National Construction Authority, among others, indicating its pursuit of its objection to the development on the suit property since November 2015 and their claim has consistently been that the association members had bought their parcels of land from the petitioner on the basis that the adjacent suit *“plot was meant to be a playfield when the plans were approved and as communicated by the seller Kuguru Food Complex Limited when selling the plots.”*

10. Further, in a letter dated 16th November 2016, which is attached to the Supplementary affidavit of Peter Kuguru, Director of the Petitioner sworn on 1st December 2016, the First Respondent has acknowledged receipt of the petition by the Rangers Estate Residents whose particular coincide with then Intended Interested Party’s case herein and which letter is copied to the **“Chairperson, (attention Christine Omondi) Rangers Estate residents Association, South C, Nairobi”**. Christine Omondi is the first Intended Interested Party as chairperson of the Association. On a balance of probabilities, I find that the proposed Interested Party are the complainants whose complaint led to the proceedings by the First respondent National Land Commission which are the subject of this petition.

11. The proposed Interested Party is registered as a self-help group under the Ministry of Gender, Children and Social Development with a list of 147 persons shown as members but without any signature of authority to sue on their behalf given to the three officials named in the application of 3rd October 2016. I, respectfully, agree with Kimondo, J. in ***Kituo Cha Sheria v. John Ndirangu Kariuki & Anor.*** Nairobi Election Petition No. 8 of 2013 (2013) eKLR on the general rule of common law on suit by an unincorporated person that –

“As a general rule, unincorporated legal persons including societies, clubs and business-names can only bring proceedings through their registered or elected officials or in their proprietor’s names. See The Fort Hall Bakery Supply Co. Vs Fredrick Muigai Wangoe [1959] E.A. 474 at 475. Templeton J, relying on Banque Internationale de Commerce de Petrograd Vs Goukassaow [1923] 2 KB 682 found that the entity before the court was a mere name only and could not maintain the action. In the latter decision at page 688, Bankes L.J. delivered himself as follows:-

“the party seeking to maintain the action is in the eye of our law no party at all but a mere name only, with no legal existence”.

See also *Savana Jua Kali Association Vs Amos Ngata* [2005] e KLR, *Kenya National Union of Nurses Vs Attorney General Industrial Court, cause 1049 of 2012* [2012] e KLR.”

12. In addition to a suit by an association, the Constitution of Kenya 2010 permits suits by persons in their own behalf or on behalf of others, or on behalf of a group or class of persons or in public interest. See Articles 22 and 258 of the Constitution. The three named officials in this Petition could well sue in their own names or on behalf of a group or class of persons being the residents or owners of the adjacent properties. Indeed, the Court of Appeal (Ouko, JA with whom Musinga, Kiage, M’Inoti and J. Mohamed JJA. agreed) in *Randu Nzai Ruwa & 2 others v Secretary, the Independent Electoral and Boundaries Commission & 9 others* [2016] eKLR has upheld the expanded *locus standi* as follows:

*“I come to the conclusions on this ground that the strict common law rule of standing which insists that a person or group of people will only have the requisite locus standi if they can show that they have a personal and sufficient interest in the matter, a greater interest than that of the rest of the public, has now been evolved and broadened under the Constitution. **The Constitution today gives standing to any member of the public who is not a mere busy-body or a meddling interloper, and who acts in good faith to institute proceedings challenging any violations under the Bill of Rights.***

*.....[U]nder the Constitution the **appellants did not have to be members of a registered group to access the court; and that even as individuals they had the right to complain to the court about what they perceived to be a violation or threatened violation of their and other people’s rights and fundamental freedoms. They ought to have been heard on the merit of their grievance.***”

CONCLUSION

13. In this case, the Rangers Court Welfare Association may sue through its officials. Its said officials may also sue as representatives of a group or class of persons even though the Association was not incorporated, not to mention their right to sue in their own individual capacity. The proposed Interested Party, however, chose to present its application as an association and there should have been evidence that the persons listed as officials are the duly appointed or elected and registered officers of the Association and that they had the authority of the members of the Association to sue on their behalf. Nonetheless, I would in the interests of substantive justice principle of Article 159 of the Constitution allow the proposed Interested Party to sue through the names of the alleged officials subject to the filing along with its replying affidavit to the Petition a certified copy of registration of the persons as the officials of the Association and authority of the members to sue on their behalf, with liberty to apply to the Petitioner in default.

14. The proposed Interested Party has a clearly identifiable stake as the complainant before the First respondent and, therefore, a party to the proceedings of the First Respondent, which are the subject of the injunctive relief sought in the Petition. Even if the proposed interested Party’s complaint was not the actual complaint leading to the proceedings before the National Land Commission, its aforesaid communication with the relevant bodies demonstrates an interest in the suit challenging the First Respondent’s proceedings on the suit property due to its like objection. Moreover, the proposed Interested Party asserts a beneficial interest in the suit property, which creates an identifiable stake in the suit by the Petition challenging the proceedings by the First respondent regarding the title thereof. As an unincorporated body, which therefore has no capacity to sue or be sued in its name, the Rangers Court Welfare Association will be joined through its officials named in the Notice of Motion of 3rd October 2016.

ORDERS

15. For the reasons set out above, the proposed Interested Party’s application by Notice of Motion dated 3rd October 2016 is granted as prayed, and the Petition shall be amended to join the three named officials of the Association as Interested Parties suing on behalf of the Rangers Court Welfare Association.

Liberty to apply.

16. The Interim Order is extended until hearing of the petition or until further orders of the Court.

17. Costs in the Cause.

DATED AND DELIVERED THIS 28TH DAY OF DECEMBER 2016.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Mugo for the for the Petitioners

Mr. Sekwe for the Attorney General for the 2nd Respondents

Mr. Mbuthia for the 1st Respondent

Mr. Ngaiywa for the Proposed Interested Party