



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI**  
**CONSTITUTION AND HUMAN RIGHTS DIVISION**

**PETITION NO 556 OF 2013**

YORK WORLD WIDE HOLDINGS LTD .....PETITIONER

VERSUS

KENYA FOREST SERVICE .....1<sup>ST</sup> RESPONDENT

THE HON. ATTORNEY GENERAL .....2<sup>ND</sup> RESPONDENT

**RULING**

1. This ruling pertains to an application by Friends of **Karura Forest Community Forest Association**, a proposed interested party, to be enjoined in the proceedings. The application was opposed by the petitioner which filed grounds of opposition dated 1<sup>st</sup> July 2014. The respondents did not oppose the application.

2. The application is dated 19<sup>th</sup> May 2015 and is supported by the affidavit of Mr. Karanja Njoroge. It seeks an order that Friends of Karura Forest Community Forest Association (FKF) be joined in this suit as an interested party, and that the costs of the application be provided for.

3. The grounds on which the application is brought are as follows:

- 1) The applicant is registered under the Societies Act and its objectives include the following***
  - a) To support in a non-political manner the Kenya Forest service in its mission to manage, protect and enhance the Karura Forest.***
  - b) To undertake non-political activities aiming at enhancing and protecting the Karura Forest.***
  - c) To do all such nonpolitical things which are deemed to be conducive on the attainments of the aims and objects of the Association.***
  - d) To raise funds to support the Association's nonpolitical aims and objects and activities in general.***
  - e) To protect in a nonpolitical manner the interests of its members as neighbors, users and friends of the Karura Forest.***

*2) By an agreement dated 1<sup>st</sup> February 2013, the applicant herein was allowed by the Kenya Forest service to manage Karura Forest.*

*3) The applicant has been managing the said Forest since the year 2009.*

*4) The subject of these proceedings is land within the said Karura Forest.*

*5) In this regard, the Applicant's participation in the proceedings is highly necessary.*

4. In the affidavit sworn on its behalf by its Chairman, Mr. Karanja Njoroge, the applicant avers that it is an association registered under the Societies Act. Its objectives include to support, in a non-political manner, the **Kenya Forest Service (KFS)** in its mission to manage, protect and enhance the Karura forest, undertake nonpolitical activities aimed at enhancing and protecting the Karura Forest, and to do all such non-political things which are deemed to be conducive to its aims and objectives.

5. The applicant states that it entered into a Memorandum of Understanding (MOU) with the KFS in 2009 under which it undertook a campaign to sensitize the public on the environmental importance of protecting and conserving Karura Forest. It also raised funds for the construction of an electric fence around the forest, which was built under its supervision and completed in February 2010. This fence, according to the applicant, secured all the 1,041 hectares of the forest.

6. The applicant further avers that the MOU also enabled it to create a joint forest management committee mandated to manage the conservation of the forest, open the forest for recreational and educational activities for the public, as well as maintain the fence and train community based forest scouts as additional security. These efforts made Karura Forest safe and secure for public leisure and educational activities. A forest management plan was developed by stakeholders, FKF and KFS and approved by the Director of the KFS on 14<sup>th</sup> December 2013. As a result, it signed a Management Agreement on 1<sup>st</sup> February 2013 that gave it a further mandate, for a period of five years, over joint management of the forest with the KFS. It has been managing the forest jointly with the KFS since 2009.

7. The applicant contends that the subject of these proceeding is land within the said Karura Forest; that it is its obligation under the said agreement to protect, conserve and manage the forest, and it is necessary for it to be enjoined in these proceedings in furtherance of its mandate. The applicant argues that the property the subject matter of this petition is within the fenced forest. It contends therefore that it has an identifiable interest and wishes to contribute in the proceedings as an interested party.

8. The petitioner opposes the petition and has filed grounds of opposition together with submissions dated 1<sup>st</sup> July 2014 and 23<sup>rd</sup> February 2015 respectively. According to the petitioner, the first issue to deal with is whether the applicant has a legitimate stake in the property that is owned by the petitioner. The petitioner contends that it relies on three titles which have no encumbrance whatsoever, which were issued by the Government of Kenya, and the petitioner is the second holders of the titles.

9. It contends that the applicant has only made a bare statement that the titles are within the forest. Its contention is that its properties are not part of the forest, and it relies on a locational map annexed to the petition to submit that the properties are on the fringes of the United Nations complex.

10. According to the petitioner, at the time the UN (complex) was developed there was an idea that a hotel should be developed. Its contention is that where there is a contest between a title holder and a trespasser the question is whether a person with a management agreement can have a legitimate interest in that contest.

11. It is also the petitioner's contention that KFS is a statutory body, and it queried what the applicant would tell the Court that the AG or KFS cannot. In its view, no matter how noble its undertaking, the applicant has no legitimate interest in the matter.

12. The petitioner relied on the decision of the Supreme Court in the case of **Trusted Society of Human**

**Rights Alliance vs Mumo Matemu & 5 Others(2014) eKLR and Judicial Service Commission vs Speaker of the National Assembly & Another(2013)eKLR** with respect to who can be said to have a legitimate interest in a matter, arguing that the applicant did not have an interest in the three titles that it holds. It submitted that KFS cannot delegate its right to come before the Court or with respect to titles to a third party, and that the applicant would be a busy body in the proceedings. It also relied on the case of **Law Society of Kenya vs The Attorney General High Court Petition No. 185 of 2005** in support of its arguments against the joinder of the interested party.

13. In making a determination of the application before me, it is necessary to consider the petitioner's claim. In the petition dated 19<sup>th</sup> November 2013, the petitioner seeks the following orders:

*a) The Honourable Court be pleased to hold and declare that as the registered proprietor of Land Reference No 20851 (0.6120 hectare), land Reference No 20852 (0.8160 hectare) and Land Reference No 20853 (3.060 hectares) the petitioner's right to the properties can only be upset by due process, after following all laid down procedure;*

*b) The Honourable Court be pleased to hold and declare that the findings and recommendations by the commission of inquiry into the illegal/irregular allocation of land also known as 'the Ndungu Commission' that titles to land Reference no.20851 (0.6120 hectare), land Reference No 20852 (0.8160 hectares) and Land reference no 20853 (3.060 hectares) the property of the petitioner be revoked without heeding the process laid down by the now repealed constitution of Kenya section 75 on private property is void and remain void, un-implementable and no reliance can or should be placed upon it by any arm, department or office of the Government of Kenya in deciding facilitating or dealing with an issue of right, privilege or entitlement or legal entitlement of the petitioner;*

*c) The Honourable Court be pleased to find and hold that the recommendations and findings by commission of inquiry into the illegal/irregular allocation of land also known as the Ndungu Commission' that the excision of (3) hectares of land allocated to International Centre for Research and Agro Forestry (ICRAF) be legalized while the remaining 5.1 hectares the petitioner comprised in Land Reference No 20851 (0.6120 hectare), Land Reference No 20852(0.8160 hectare) and Land Reference No 20853 (3.060 hectares) be revoked contravened the petitioner's right to equal protection of law and freedom from discrimination as protected and guaranteed by Article 27 of the constitution of Kenya 2010'*

*d) The Honourable Court be pleased to find and hold that the acts of the 1<sup>st</sup> respondent in erecting a perimeter fence on the petitioner's three plots known as land Reference no 20851 (0.6120 hectare), land reference no 20852 (0.8160 hectare) and land reference no 20853 (3.060 hectares) Gigiri as illegal, unconstitutional and contravenes the petitioner's right to protection of property guaranteed by Article 40 of the Constitution of Kenya 2010;*

*e) The Honourable Court be pleased to find and hold that the 1<sup>st</sup> respondent contravened the petitioner's right to fair administrative action protected and guaranteed by Article 47 of the constitution of Kenya 2010;*

*f) A Mandatory order of injunction to issue directing the 1<sup>st</sup> respondent to remove the perimeter fence it erected on the petitioner's properties known as Land Reference No 20851 (0.6120 hectare), land reference no 20852 (0.8160 hectare) and Land reference no 20853 (3.060 hectares), Gigiri within 7 days of the order of court at its cost;*

*g) An order of permanent injunction directed at the 1<sup>st</sup> respondent, its agents, officers or any person whosoever or howsoever acting on behalf of the 1<sup>st</sup> respondent from interfering with proprietorship of Land reference No 20851 (0.6120 hectare), land reference no 20852 (0.8160 hectare) and land reference no 20853 (3.060 hectares), Gigiri by the petitioner*

*h) The Honourable Court be pleased to award the petitioner general damages against the respondents for losses and inconveniences suffered by the petitioner*

*i) The Honourable Court be pleased to award the petitioner exemplary damages against the 1<sup>st</sup> respondent for breach of the petitioner's fundamental rights;*

*j) The costs consequent upon this petition be borne by the respondents in any event on indemnity basis*

*k) The Honourable Court do make any such other or further orders as it may deem just and expedient in the circumstances in enforcing violation of fundamental rights of the petitioner.*

14. From the prayers sought by the petitioner, it is apparent that at the core of the petition is the report and recommendations of the **Commission of Inquiry into the Illegal/Irregular Allocation of Land** also known as the “**Ndungu Commission.**” The Commission had in its report issued in 2004 recommended the revocation of the titles to the petitioner's properties, which the petitioner had purchased in 2002 from diverse parties. Its contention is that the Commission made a decision that was grossly discriminative in its tenor and effect, and violated Article 27 of the Constitution. The violation occurred, in the petitioner's view, because the Commission, while purporting to indict the gazettement by the Minister for Environment, recommended the land allocated to the International Centre for Research and Agro Forestry (ICRAF) be legalized while the property held by the petitioner, which had the same history as the land allocated to ICRAF, be revoked.

15. The position of the petitioner is that the interested party has no identifiable stake or interest in the petition which relates to its titles to the three properties. It relies on the definition of an interested party in **Black's Law Dictionary, 7<sup>th</sup> Edition, page 1144**, as “*a party who has a recognized stake (and therefore standing) in a matter*”.

16. The petitioner also relies on the words of the Supreme Court in the case of **Trusted Society of Human Rights vs Mumo Matemu (supra)** in which the Court was considering an application by the Law Society of Kenya to be admitted in the proceedings as an interested party, the Court observed as follows with respect to the distinction between an interested party and a friend of the Court:

*[18] 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. On the other hand, an amicus is only interested in the Court making a decision of professional integrity. An amicus has no interest in the decision being made either way, but seeks that it be legal, well informed, and in the interest of justice and the public expectation. As a 'friend' of the Court, his cause is to ensure that a legal and legitimate decision is achieved.*

*[19] Considering LSK'S declared interest in this instance, it was more tenable it should have sought admission as intervener, and not amicus. What now follows is a consideration of this option and, in particular, whether it is prudent to admit LSK in this matter as an interested party.”*

17. In its ruling, the Court declined to allow the participation of LSK as an interested party, noting that LSK could not pursue the interests of an individual member of the Society against the wider public interest which it was mandated to pursue by section 4 of its establishing Act.

18. The petitioner has also relied on the words of Odunga J in **Judicial Service Commission vs The Speaker of the National Assembly (Supra)** when he stated:

*[4] The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2012, defines an interested party as “a person or entity that has an identifiable*

***stake or legal interest in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation". From the foregoing it is clear that an interested party as opposed to an amicus curiae or a friend of the court may not be wholly indifferent to the outcome of the proceedings in question. He is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to urge the Court to make a determination favourable to his stake in the proceedings."***

19. I fully agree with the Learned Judge on this point. I am also persuaded by his views at paragraph 7 of the said ruling relied on by the petitioner when he stated:

***[7] "Whereas under the current Constitutional dispensation the Court ought not to lock out a person who prima facie shows that he has "an identifiable stake or legal interest in the proceedings before the court" in determining whether or not to join a person to pending proceedings the Court ought to take into account the provisions of Article 159(2)(b) of the Constitution that justice shall not be delayed."***

20. In this case, I am persuaded that there is merit in the application to join the applicant, Friends of Karura Forest, as an interested party. The applicant sought joinder very early on in the proceedings, and there is no danger that its participation will in any material way affect the pace of determination of the proceedings.

21. More importantly, while the petitioner presents its claim as a simple and narrow conflict between it and the respondents over the titles to the properties it claims, which are within the fence erected around the forest, its claim in relation to the Ndung'u Commission report and its recommendations has much wider implications on the general public in relation to public land. In this case, the applicant is involved in the management of Karura forest, a public resource in which the general public has an identifiable stake and interest. As a body involved in the management of the forest for the benefit of its users, who are the general public, which raised funds to support the fencing of the forest as a safeguard against encroachment, it has, in my view, an unidentifiable interest that would justify its participation in the present proceedings.

22. In the circumstances, I find and hold that the application dated 19<sup>th</sup> May 2014 is merited. It is therefore allowed, and the applicant permitted to participate in the proceedings as an interested party.

23. There shall be no order as to costs with respect of the application.

**Dated, Delivered and Signed at Nairobi this 17<sup>th</sup> day of September 2015**

**MUMBI NGUGI**

**JUDGE**

**Mr. James Ochieng Oduol instructed by the firm of Ochieng, Onyango, Kibet & Ohaga & Co. Advocates for the petitioner.**

**Mr. Macharia instructed by the firm of Macharia & Co. Advocates for the 1<sup>st</sup> respondent**

**Mr. Matinda instructed by the State Law Office for the 2<sup>nd</sup> respondent.**

**Mr. Nyaanga instructed by the firm of Mwaniki Gachoka & Co. Advocates for the interested party.**