



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**CONSTITUTIONAL PETITION CASE NO.10 OF 2021**

**ASHISH CHANDRAKANT RAVAT.....1ST PETITIONER**

**VINODKUMAR RAMDATMALL PAL.....2ND PETITIONER**

**AND**

**COUNTY GOVERNMENT OF KISUMU.....1ST RESPONDENT**

**CITY MANAGER KISUMU CITY.....2ND RESPONDENT**

**BOARD OF MANAGEMENT KISUMU BOYS.....PROPOSED 3RD RESPONDENT**

**RULING**

**BACKGROUND**

**Ashish Chandrakant Ravat and vinodkumar Ramdatmall Pal hereinafter referred to as** the Petitioners brought forth this petition seeking various remedies as a result of an invasion and destruction of structures on their alleged pieces of land known as KISUMU L.R NO. KISUMU MUNICIPALITY BLOCKS 6/608, 6/609,6/610,6/611, 6/162, 6/613 within Kisumu County, .The proposed 3rd Defendant has however alleged that these properties were fraudulently subdivided from their piece of land known as KISUMU/MUNICIPALITY BLOCK 6/244. They are therefore seeking to be enjoined in this petition to alleviate the possibility of any adverse orders being made in their absence.

**SUMMARY OF FACTS**

The proposed 3rd Respondent has filed the application seeking the following orders;

1. Spent
2. That they be allowed to join this petition as Respondent
3. That they be allowed to file a cross-petition to protect their interests in the disputed land
4. That the Attorney General be joined as a party to this petition.
5. Costs of the application be provided for.

The application is supported by the sworn affidavit of Peter Ouma Obwogo.

The application is opposed by the Petitioners, vide their grounds of opposition dated 20th January 2022 in which they have generally averred that the application had been made in bad faith. The application is grounded on the fact that it was their plot KISUMU/MUNICIPALITY BLOCK 6/244 that was fraudulently subdivided to form the plots that are the subject of this petition. That the title of KISUMU/MUNICIPALITY BLOCK 6/244 is in the names of the 3rd Proposed Respondent and Kisumu Girls High School. That the land was allocated to them by the government for purposes of putting up staff quarters. That as such the proposed 3rd Respondent's joinder is vital so as to help the court obtain a clearer picture of the situation.

The Application is supported by the affidavit sworn by Peter Ouma Obwogo in which he has attached a copy of the lease title, a copy of the allotment letter, the draft cross-petition and a copy of the ruling delivered on 15th October 2021.

The Petitioners/Respondents responded via grounds of opposition dated 20th January 2022 in which they averred that the application could

not be entertained without first enjoining the Attorney General to this petition. That further there was no authority from Kisumu Girls High school authorizing the Applicant to litigate on their behalf.

That the documents filed in the petition clearly show that the Applicant has no interest in the properties that are the subject of this petition. That the Applicant has acted in bad faith by attempting to join the suit at this point yet they have always been aware of the petition since its inception.

The Applicant filed submissions dated 24th February 2022 in which it outlined the following issues for determination:

1. Whether the Board of Management of Kisumu Boys High School should be allowed to join this matter as a Respondent.
2. Whether the Board of Management Kisumu Boys High School should be allowed to file cross petition to protect its interest in the disputed land.
3. Whether the Attorney General should also be joined as a party to the petition.

On the first issue they submitted that joinder of parties should be permitted for all parties on whom any right to relief arising out of the same act or transaction exists as provided by Order 1 of the Civil Procedure Rules. It was their further contention that the court may even on its own motion add a party to the suit at any stage of the proceedings if it deems it necessary for adjudication and settling of any matter in question. They relied on **Nairobi ELC case No. 119/2014 Habiba W Ramadhan & 7 others vs Mary Njeri Gitiba (2017) eKLR**. And Rule 5 (d) of the Constitutional Petitions Practice Rules which provides that a court may at any stage of the proceedings with or without application of any party order the name of any party improperly joined be struck out or that the name of any person who ought to be joined be joined in order to enable the court adjudicate the matter.

They further contended that it was Parcel their land that was subdivided to form the pieces of land that form the subject of this petition therefore any decision of this court will directly affect them.

On the second issue they submitted that being the rightful owners of the suit property then they should be allowed to protect their interests by filing a cross petition. That further the cross-petition will not in any way prejudice the Petitioners as they are not introducing any new cause of action but are merely responding to issues already in the petition.

They further submitted that every individual is entitled to a fair hearing and they can only be granted a fair hearing by being allowed to file a cross-petition. They relied on Article 258 and 47 of the constitution, rule 4 of the protection of rights and fundamental freedoms practice and procedure rules 2014.

On the third issue they submitted that as per the provisions of Section 12 of the Government Proceedings Act the Board of Management Kisumu Boys being government officials then it was prudent that the Attorney General be enjoined as a party to the suit.

That the suit property being government land then it was only proper that the A.G be joined to protect their interests. They relied on the case of **Nasela and Mukakai ltd vs Urban Roads Authority & 3 Others 2017 eKLR**.

The Respondents/Petitioners filed their submissions dated 21st February 2022 in which they submitted that the infringements in respect of which they seek the reliefs were not committed by the Proposed 3rd Respondent. That as such they don't meet the threshold of a Respondent as provided for by Rule 2 of the Constitutional Petitions Practice and Procedure Rules 2013. It was their further contention that the issues raised in the petition do not revolve around ownership but are centered around demolitions on the property. Therefore, the orders sought in the petition could be granted regardless of who owned the property, as such since the 3rd Proposed Respondent wasn't involved in the demolitions, then there was no need for them to be enjoined.

Further that as per the provisions of Rule 5 the Applicant can only join the petition as an interested party. They highlighted the provisions of Rule 2 of the Practice Rules which defines an interested party as ***"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"***

It was there further submission that the subject matter of this Petition is L.R NO. KISUMU MUNICIPALITY/BLOCK 6/608, 609, 610, 611, 612, and 613 not L.R NO. KISUMU MUNICIPALITY/BLOCK 6/244 as claimed by the Applicant. That there was no evidence to show that L.R NO. KISUMU MUNICIPALITY/BLOCK 6/244 was subdivided to form the parcels of land that are the subject of this suit, and if at all it was subdivided then it wouldn't have been in existence. They also contended that the cross-petition doesn't contest what the Respondent did but seeks to protect its illegal dealings with the Respondents.

The Petitioner/Respondent further submitted that the prayer seeking to enjoin the Attorney General was bizarre to say the least given that the A.G is just a lawyer for the Government, and it is usually after government agencies have been sued that they instruct the A.G to represent them.

In support of this it was their contention that it was not within the province of an applicant who is not a party to apply that others be made parties. They relied on the case of **KISUMU ELC PET NO.005 OF 2020 NAVICHANDRA LAJI SHAH & SANDIP LALJI SHAH VS COUNTY GOVT OF KISUMU** in which it was stated that a person seeking to be enjoined as a party must do the application personally by explaining the nature of his interest in the matter.

On the strength of the foregoing the Petitioners/Respondents' submitted that the Application was misconceived and called for its dismissal with costs.

## **ISSUES FOR DETERMINATION**

1. Whether the Applicant has met the threshold for joinder to this petition.
2. Whether the Applicant may be allowed to file a cross-petition.
3. Whether the Applicants have the right to call for joinder of the Attorney General to this Petition.

## **WHETHER THE APPLICANT HAS MET THE THRESHOLD FOR JOINING THE PETITION**

Rule 5 (d) of the Constitution Petition Rules 2013 provides that

The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear just—

- (i) order that the name of any party improperly joined, be struck out; and
- (ii) that the name of any person who ought to have been joined, or whose presence before the court may be necessary in order to enable the court adjudicate upon and settle the matter, be added.

The principles of joinder of a party were well enumerated in the decision of **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.**

The Applicant has argued that their Parcel of land known as KISUMU MUNICIPALITY/BLOCK 6/244 was the one that was fraudulently subdivided to form the parcels which are the subject of the Petition herein. However it is not clear from the documents provided how the parcel was subdivided if at all the same was done. The Applicant has provided a copy of the lease which would not have been available had the land been subdivided.

As stated above in **Meme vs Republic [2004]1 124**, joinder of a party is vital if it will result in complete settlement of all questions in the proceedings. The applicants interest herein revolves around ownership of the suit properties.

This court had earlier dealt comprehensively with the issue of ownership via its ruling of the 15th of October 2021, in which it found that the Petitioners had demonstrated on a prima facie basis how they acquired the suit property while the Applicants had not.

I find little reason to depart from this reasoning. The Applicant herein has also done very little to dissuade me from that reasoning. The documents they have attached to the application have not established any connection between the Applicant and the suit property.

The Applicant has not supplied the court with sufficient information to warrant joinder in the suit. The affidavit is sketchy to say the least as there are no documents from the land registry to show that the plots that are the subject of this suit were subdivided from the Applicant's piece of land.

A Respondent has been described in Rule 2 of the Constitutional Petition Practice and Procedure Rules 2013 as "a person who is alleged to have denied, violated or infringed, or threatened to deny, violate or infringe a right or fundamental freedom. The Applicant herein has not demonstrated how he fits into that description. Even though the court has discretion to join parties to a suit to ensure it is seized with all the facts the Applicant herein has not demonstrated how their presence in the suit will help the court achieve this.

I rely on the Supreme Court case of **Francis Kariuki Muruatetu and Another v Republic & 5 Others[2016] e KLR** where the scope for joinder was delineated as follows;

***" Enjoinment is not as a 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 participation, 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."***

In view of the foregoing it is my finding that the Applicant has not met the threshold for joinder.

Having failed to secure joinder in the suit then the subsequent prayers have no legs to stand on and must equally fail. No order as to costs as the applicant is a school.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 18<sup>th</sup> DAY OF MARCH, 2022**

**ANTONY OMBWAYO**

**JUDGE**

*This Judgment 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 15<sup>th</sup> March 2020.*