



**Muambi Properties Limited v Kenya Urban Roads Authority & 2 others;
Mutisya & 4 others (Intended Interested Party) (Environment & Land
Case E078 of 2021) [2022] KEELC 3013 (KLR) (23 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3013 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E078 OF 2021**

CA OCHIENG, J

MAY 23, 2022

BETWEEN

MUAMBI PROPERTIES LIMITED PLAINTIFF

AND

KENYA URBAN ROADS AUTHORITY 1ST DEFENDANT

NATIONAL LAND COMMISSION 2ND DEFENDANT

CADI CARRIERS COMPANY LIMITED 3RD DEFENDANT

AND

BERNARD KIOKO MUTISYA INTENDED INTERESTED PARTY

KALII DANIEL INTENDED INTERESTED PARTY

JOSHUA MULINGE MBITHI INTENDED INTERESTED PARTY

MUEMA MAKAU INTENDED INTERESTED PARTY

PATRICK KIMUYU KIIO INTENDED INTERESTED PARTY

RULING

1. What is before court for determination is the intended interested parties notice of motion application dated the August 11, 2021 where they sought for the following orders:
 - a. Spent
 - b. That the Honourable Court be and is hereby pleased to enjoin of the 1st to 5th intended interested parties as interested parties to this suit.
 - c. That costs of this application be provided for.



2. The application is based on the grounds on the face of it and supported by the affidavit of Kalii Daniels sworn on August 11, 2021. The same is opposed by the plaintiff vide a replying affidavit dated September 15, 2021 and sworn by one Harrison Muambi Kivuvi.
3. The background against which this application is brought is a suit filed by the plaintiff on August 10, 2021. They alleged violation of their constitutional rights to their land by the Defendants who had constructed a road thereon, and sought permanent injunctive orders against the said Defendants, special damages for trespass amounting to Kshs. 52, 632, 888 as well as exemplary damages for breach of the Constitution. They simultaneously filed a notice of motion application seeking temporary injunctive reliefs against the defendants pending the hearing and determination of the suit. They later withdrew their Notice of Motion Application for injunctive orders and amended their plaint to only seek for special including exemplary damages and withdrew the prayers for a permanent injunction.

The Applicants' case

4. The intended interested parties through their supporting affidavit deposed that they were residents of the parcel of land known as L.R NO.353/2, who have used the road between Konza from Mombasa road to Katumani through Vota for over fifty (50) years. They averred that they were aware of the project known as Kathekai-Machakos road project and that they also knew that there existed a public right of way through which cattle would be driven across Mombasa road from Katumani Vota area by the time the Plaintiffs were purchasing the suit property from Katheka-Kai Co-operative Society Limited. They contended that due to the Plaintiff's actions, the 1st Defendant has been unable to construct the road which serves hundreds of families. They cited a petition to the National Assembly through which they sought to have the portion known as L.R No. 355/2 declared as public land, culminating in a recommendation given to the 2nd Defendant to consider facilitating the creation of a public right of way. They reiterated that the Plaintiff had not met the criteria for grant of injunctive orders in line with the principles set out in *Giella vs Cassman Brown*. They sought to be enjoined in this suit since they have an interest in this matter as the road is way overdue and any orders issued may interfere with the construction of the said road to the detriment of the members of the public including residents of the area.

The Plaintiff's case

5. The Plaintiff in its replying affidavit opposed the joinder of the Intended Interested Parties. They contended that the instant Application had been filed by a firm of Advocates who had not filed a notice of appointment of Advocates. They deposed that the Applicants have no *locus standi* as they have no interest in the suit property. They stated that the road that is the subject matter in the application had already been built to completion and the only issue remaining was compensation. They opined that the Applicants would only delay the suit. They challenged the Applicants' claim of having lived on their alleged properties for over fifty (50) years as they never produced any proof to that effect. They reiterated that the Applicants could not argue the Parliamentary petition in this court. Further, they were not opposed to compulsory acquisition but sought for compensation.
6. The Defendants did not participate in this application. The applicants and the plaintiff did file submissions in support of their respective claims.

Analysis and Determination

7. Upon consideration of the instant notice of motion application including the respective affidavits and rivaling submissions, the only issue for determination is whether the intended interested parties should be joined in this suit.



8. *Black's Law Dictionary, 9th Edition*, defines an 'interested party' as "a party who has a recognizable stake (and therefore standing) in a matter."
9. On joinder of a party, order 1 rule 10(2) of the *Civil Procedure Rules* stipulates as follows:

"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 to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added."
10. In the case of *Trusted Society of Human Rights Alliance V Mumo Matemu & 5 Others* (2015) eKLR the court defines an interested party as follows:

"(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."
11. See the Supreme Court's decision in *Francis Kariuki Muruatetu & Another V Republic & 5 Others* (2016) eKLR.
12. On perusal of the pleadings herein, I note the plaintiff filed its plaint on August 10, 2021 contemporaneously with a Notice of Motion of even date seeking various injunctive reliefs. The instant application was filed on August 11, 2021 but the plaintiff proceeded to amend its plaint on August 19, 2021. Further, the Notice of Motion Application dated the August 10, 2021 seeking interim orders of injunction was withdrawn in open court on September 21, 2021. From a cursory look at the pleadings herein, it is evident that the main reason for the Intended Interested Parties' quest to be joined in this suit was to protect their rights as users of the subject road. The main orders that the intended Interested Parties sought to halt were the injunctive orders which could have, in their opinion, slowed down the completion of the subject road to the prejudice of the users. However, as per the Amended Plaint, the Plaintiff is now only seeks for compensation in respect to compulsory acquisition of its land.
13. Based on the facts as presented while associating myself with the decisions I have quoted, it is my considered view that since the fulcrum of the dispute herein, now only revolves around compensation for compulsory acquisition of an easement as the road in dispute has since been completed, the intended interested parties' involvement in these proceedings is not necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. Further, that they will not be affected by the decision emanating from this suit as compensation for compulsory acquisition of land is the preserve of the National Land Commission only.
14. The upshot of this, is that the notice of motion application dated August 11, 2021 filed by the Intended Interested parties has since been overtaken by events and is hence without merit.
15. The same is hence dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 23RD DAY OF MAY, 2022

CHRISTINE OCHIENG



JUDGE

