



**Kinyua & 16 others v Nairobi City County & 2 others; Otieno (Proposed Interested Party)  
(Environment & Land Petition E057 of 2021) [2022] KEELC 2776 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2776 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND PETITION E057 OF 2021  
EK WABWOTO, J  
JUNE 30, 2022**

**BETWEEN**

**AMOS KAREITHI KINYUA & 16 OTHERS ..... PETITIONER**

**AND**

**NAIROBI CITY COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**NOMAD RESORT LIMITED COMPANY ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**EZEKIEL OTIENO ..... PROPOSED INTERESTED PARTY**

**RULING**

1. This ruling is in respect of the Application dated 2<sup>nd</sup> February 2022 seeking for various reliefs including the joinder of Ezekiel Otieno as an interested party to the Petition and also for injunctive orders restraining the Respondents from any way interfering with L.R No. 209/7260/184 & 209/7260/203 pending the hearing and determination of the main Petition.
2. The grounds advanced in support of the Application are as set out on the face of the Application. The Application was also supported by the Affidavit sworn by the Ezekiel Otieno on 2<sup>nd</sup> February 2022.
3. Pursuant to the directions of this Court issued on 7<sup>th</sup> March 2022, it was directed that the said application be served upon the parties for hearing on 12<sup>th</sup> May 2022. Parties were also at liberty to file their skeleton submissions in respect to the said application.
4. The Respondents and the Petitioners did not file any response nor any written submissions in respect to the said Application.



5. The proposed interested party's filed written submissions dated 2<sup>nd</sup> February 2022 by Lehmann Associates.
6. Upon considering the application and the written submissions of the interested party, I note that the main issue for determination is whether the proposed interested party has sufficiently demonstrated that there is need to enjoin him to these proceedings.
7. On the issue of joinder of parties to Constitutional Petitions, Rule 7 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 (The Mutunga Rules) provides as follows:
 

“Interested party

  - i) A person with leave of the court make an oral or written application to be joined as an interested party.
  - ii. A court may on its own motion join any interested party to the proceedings before it.”
8. In the case of *Trusted Society of Human Rights Alliance v Mumo Matemu* [2014] eKLR, the Supreme Court held that:
 

“An interested party is one who has a stake in the proceedings, though he or she was not a 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 herself appears in the proceedings, and champions his or her cause....
10. In *Esther Awuor Adero Ang'awa v Cabinet Secretary Responsible for Matters Relating to Basic Education & 7 others; John Diro & 6 others (Intended Interested Parties)* [2021] eKLR, the Court highlighted that enjoinder is not simply a right but subject to the discretion of the Court based on the grounds laid before the Court. The Court further relied on the Supreme Court's guiding principles in *Francis Kariuki Muruatetu & Another v Republic & 5 others* Petition 15 as consolidated with 16 of 2013 [2016] eKLR that include: -
  - (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 application, 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.
11. In the instant case, the proposed interested party maintained that the petition touches on public properties within Nairobi County being L.R No. 209/7260/184 & 209/7260/203 which were earmarked and allotted to Nairobi City Water and Sewerage Company and the proposed interested



party being a resident of Nairobi County and having a wide experience in matters of public interest has a great stake in the Petition.

12. Joinder of a party to proceedings as an interested party is at the discretion of the court and in the instant case, I find that the applicant has demonstrated the stake of the proposed interested party to these proceedings.
13. It is the Court's finding that having perused the Petition, the supporting affidavits as well as the other affidavits on record and further considering that the application was not opposed by either party, there is a compelling need to grant the order of joinder of the proposed interested party as this will lead the court in effectively adjudicating on the issues raised in the Petition. However as regards to the other reliefs sought by the proposed interested party, from the perusal of the court record, it is evident that there exist temporary injunctive orders against the Respondents and the same are still in existence. In respect to the other reliefs sought against the chief land registrar and director of survey, the same cannot be granted since they are not parties to the current petition and court orders cannot be issued in vain.
14. In the circumstances, the Application dated 2<sup>nd</sup> February 2022 is hereby disposed of in the following terms: -
  - i. Ezekiel Otieno is hereby joined to this Petition as the Interested Party.
  - ii. The Interested Party shall file his responses in respect to the Petition within 21 days from today.
  - iii. All the other orders sought in the Application are declined.
  - iv. Each party to bear its own costs of the Application.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30<sup>TH</sup> DAY OF JUNE 2022.**

**E. K. WABWOTO**

**JUDGE**

**In the presence of: -**

N/A for the Petitioner.

Ms. Koome for the 1<sup>st</sup> Respondents.

Ms. Shikali holding brief for Mr.Kiprop for 2<sup>nd</sup> Respondent.

N/A for the for the Interested Party.

Court Assistant; Caroline Nafuna.

**E. K. WABWOTO**

**JUDGE**

