



**Ethics and Anti Corruption Commission v Irungu & 3 others;
National Land Commission (Interested Party) (Environment & Land
Case 43 of 2015) [2022] KEELC 2317 (KLR) (28 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2317 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 43 OF 2015**

NA MATHEKA, J

JUNE 28, 2022

BETWEEN

ETHICS AND ANTI CORRUPTION COMMISSION PLAINTIFF

AND

EDWARD MWANGI IRUNGU 1ST DEFENDANT

MINALOVE HOTEL AND RESTAURANT LTD 2ND DEFENDANT

EQUITY BANK 3RD DEFENDANT

WILSON GICANJA 4TH DEFENDANT

AND

NATIONAL LAND COMMISSION INTERESTED PARTY

RULING

1. The application is dated 8th February 2021 and is brought under Order I Rule 10 & 15 of the [Civil Procedure Rules](#) 2010 and Section 3 'A' of the [Civil Procedure Act](#) seeking the following orders;
 - a) That this Honourable Court be pleased to grant leave to the 1st and 2nd defendants to issue third party notices against the Land Registrar (c/o Attorney General)
 - b) That the costs of the application be in the cause.
2. It is premised upon the following grounds that the suit involves the disputed ownership of all that parcel of land known as Title No. MI/XXVI/1010 situate along Serani Ras, Kizingo within Mombasa. That 2nd Defendant currently holds the title to the suit property which was transferred to it by the 1st Defendant. That the 1st Defendant maintains that he acquired the property through a legal process involving the Third Party. That the Plaintiff disputes the propriety of the process of acquisition of



the suit property and has implicated the 1st and 2nd Defendants of fraudulently acquiring, transferring, developing, charging and generally occupying and using the suit property. That the Third Party being the mandated party dealing with the transfer and registration of land and being the custodian of land records, it is paramount that he be enjoined in the instant suit. That his enjoiner will shed more light to the history and process of acquisition, transfer and registration of the suit property since the Third Party is the best placed party to probe, verify, ratify or dispute the authenticity of the title documents and the process leading up to the issuance of the said documents. That unless the Third Party is notified before the matter proceeds to trial, the Honourable Court will proceed to determine the suit without the opportunity of listening to the evidence of the Land Registrar which is extremely instrumental to the fair determination of the underlying dispute.

3. The Plaintiff/Respondent submitted that the Defendants have not demonstrated that the Intended Third Party's Office was extensively involved in acquisition of the suit property and particularly in the issuance of letter of allocation, the payment of Standard premiums, annual rent and or miscellaneous charges of Kshs.92,797/= by the 1st Defendant vide Receipt no. 005861 dated 8th January 1998 and or requisite survey charges of Kshs.2,450/= vide receipt number E029035 and or confirmation of the same by the Director of Survey vide a letter dated 18th February 1998 to warrant the enjoinment in this suit. That the Defendants did not conduct proper due diligence when applying for the allocation of the suit property and or irregularly, fraudulently and illegally applied for the allocation of the said property while knowing that the property belonged to the government and or was never available for allocation to private individuals. That the Defendants acknowledges that the Intended Third Party was only forwarded the duly executed and stamped lease for registration and custody. That the Plaintiff/Respondent further avers that the Intended Third Party herein was at all material times the custodian of the instruments of the transaction involving the suit property and acted under the instructions of the Office of the Commissioner of Lands and the Defendants it would therefore be improper now for the Defendants to claim indemnity against the Intended Interested Party.
4. That that the Defendants/Applicants are aware that the Intended Third is a witness of the Plaintiff and this Honourable Court has special jurisdiction to summon Intended Third Party herein under Section 63(1) of the *Registration of Titles Act* (Cap 281) to attend Court for purposes of verified, clarified and or demystified any questions relating to performance of duties or exercise of any functions conferred upon the Registrar on any question arising to the true construction or validity of effect of any instrument or entry without necessarily enjoining the Intended Third Party as a Defendant in this suit.
5. This court has considered the application and submissions therein. Order 15 Rule 1 (a) (b) and (c) states as follows:

15 (1) Where a defendant claims as against any other person not already a party to the suit (hereinafter called the third party) –

- a. That he is entitled to contribution or indemnity; or
- b. That he is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or
- c. That any question or issue relating to or connected with the said subject matter is substantially the same question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant and the third party or between any or either of them Shall apply to the court within fourteen days after the close of pleadings for leave of



the court to issue a notice (hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers ex parte supported by affidavit.

6. Order 1 Rule 15 of the *Civil Procedure Rules* provides for the procedure on how to enjoin third parties. It is trite law that a third party is enjoined in a suit at the instance of the Defendant and through the set procedure under Order 1 Rule 15 – 22 of the Civil Procedure Rules. The liability between the Defendant and the third party is determined between the Defendant and the third party after the court is satisfied that there is a proper question to be tried as to liability of the third party and the Defendant. The procedure also provides that the Defendant shall apply to Court within fourteen days after the close of pleadings for leave to issue a notice (hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers ex parte supported by affidavit."

The procedure further provides under rule 16 that:

“Notwithstanding anything in rule 15, leave to issue a third party notice for service on the Government shall not be granted unless the Court is satisfied that the Government is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the Government has arisen and as to the departments and officers of the Government concerned. ”

7. The applicant intends to enjoin the Land Registrar through the Attorney General on account that they deal with acquisition, transfer and registration of land and are the custodians of the land records. I find that they do not need to be enjoined as third parties and they are other options of getting information from the named government officer. I find this application is not merited and I dismiss it with costs to the Respondents.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 28TH DAY OF JUNE 2022.

N.A. MATHEKA

JUDGE

