



**Mbogho & another v Kazungu (Environment & Land Case
164 of 2018) [2022] KEELC 13684 (KLR) (26 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13684 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 164 OF 2018
NA MATHEKA, J
OCTOBER 26, 2022**

BETWEEN

MIRIAM CHARI MBOGHO 1ST PLAINTIFF

DONALD MJOMBA MBOGHO 2ND PLAINTIFF

AND

ASHA SIDI KAZUNGU DEFENDANT

RULING

1. The application is dated July 5, 2022 and is brought under order 1 rule 10 (2) and rule 14 of the [Civil Procedure Rules 2010](#) seeking the following orders;
 1. That the County Government of Mombasa be enjoined herein as the defendants and/or interested party.
 2. That the costs of this application be provided for.
2. It is based on the grounds that:
 - (a) The respondents instituted this suit against the applicant for ownership of plot No 11/31 Chaani.
 - (b) That the applicant's late husband, Kazungu Dena, was allotted a parcel of land in 1980's being plot No 11/30 Chaani.
 - (c) That in around the year 1990, the deceased Kazungu Dena was shocked that his plot was subdivided and the newly created plot No 11/31 Chaani was registered under Kilonzo Kiema.
 - (d) That there is correspondence between the said Municipal Council of Mombasa and the deceased over the 2 parcels of land.



- (e) That upon the promulgation of the 2010 Constitution, the Municipal Council of Mombasa was defunct and the County Government of Mombasa came into operation.
 - (f) That the applicant through her advocate upon requesting for the documents in respect of the two plots was informed that there is a separate suit filed by another party with respect to the same parcels of land but declined to disclose the particulars.
 - (g) That County Government of Mombasa is in possession of the files and documents with the records of both plots No 11/30 and 11/31 Chaani inclusive of the correspondence of the parties but has declined to avail the same to the applicant.
 - (h) That it is imperative to have the County Government of Mombasa enjoined in this suit for the ends of justice to be administered efficiently.
 - (i) That it is thus in the interest of justice that the County Government of Mombasa be enjoined so that all particulars and details in respect of the two plots be availed for just determination of this matter.
 - (j) That it is in the interest of justice that the orders sought herein are granted as prayed.
 - (k) That respondents will not suffer any prejudice if this application is allowed as prayed.
3. This court has considered the application and the supporting affidavit. Order 1 rule 10 (2) of the [Civil Procedure Rules](#), states:
- “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.”
4. The provisions of order 1 rule 10 (2) refer to a party being enjoined at any stage of the proceedings. The grounds of the application are that County Government of Mombasa is in possession of the files and documents with the records of both plots No 11/30 and 11/31 Chaani inclusive of the correspondence of the parties but has declined to avail the same to the applicant. That it is imperative to have the County Government of Mombasa enjoined in this suit for the ends of justice to be administered efficiently. The application is not opposed. I find that the application has merit and I grant the following orders;
1. That the County Government of Mombasa be enjoined herein as the defendants and/or interested party.
 2. That the costs of this application be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 26TH DAY OF OCTOBER 2022.

N A MATHEKA

JUDGE

