



**Mesa & 14 others v Board of Governors, Nakuru Agricultural Training Center (ATC) & another; Director of Survey & 2 others (Interested Parties); Ethics and Anti-Corruption Commission (Proposed Interested Party) (Environment & Land Case E014 of 2020) [2022] KEELC 13450 (KLR) (13 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13450 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE E014 OF 2020**

**LA OMOLLO, J  
OCTOBER 13, 2022**

**BETWEEN**

**MAURICE MESA ..... 1<sup>ST</sup> PLAINTIFF  
JOEL KIBOWEN TOROITICH ..... 2<sup>ND</sup> PLAINTIFF  
HENRY KIBUGO AMORO ..... 3<sup>RD</sup> PLAINTIFF  
JOHN MAINA NJOROGE ..... 4<sup>TH</sup> PLAINTIFF  
EDWARD ONDIEKI NYACHIRO ..... 5<sup>TH</sup> PLAINTIFF  
THOMAS TUEI ..... 6<sup>TH</sup> PLAINTIFF  
STANLEY KINYI OLE MPAKANY ..... 7<sup>TH</sup> PLAINTIFF  
PHILIP CHEPTUMO ..... 8<sup>TH</sup> PLAINTIFF  
BENJAMIN ROTICH ..... 9<sup>TH</sup> PLAINTIFF  
MICHAEL K. KARIUKI ..... 10<sup>TH</sup> PLAINTIFF  
EVELINE K KAPTUIYA ..... 11<sup>TH</sup> PLAINTIFF  
JAMES C KIGEN ..... 12<sup>TH</sup> PLAINTIFF  
JOHN KIPNG'ENO LANG'AT ..... 13<sup>TH</sup> PLAINTIFF  
ISAAC KIPCHUMBA ROTICH LELKUTWO ..... 14<sup>TH</sup> PLAINTIFF  
BENARD OMBUI ..... 15<sup>TH</sup> PLAINTIFF**

**AND**

**BOARD OF GOVERNORS, NAKURU AGRICULTURAL TRAINING CENTER (ATC) ..... 1<sup>ST</sup> DEFENDANT**



NAKURU COUNTY GOVERNMENT ..... 2<sup>ND</sup> DEFENDANT

AND

DIRECTOR OF SURVEY ..... INTERESTED PARTY

CHIEF LAND REGISTRAR ..... INTERESTED PARTY

NATIONAL LAND COMMISSION ..... INTERESTED PARTY

AND

ETHICS AND ANTI-CORRUPTION COMMISSION .... PROPOSED  
INTERESTED PARTY

## RULING

### Introduction

1. This ruling is in respect of the Proposed 4<sup>th</sup> Interested Party/Applicant's Notice of Motion application dated March 14, 2022. The application is expressed to be brought under Sections 1A, 1B, 3 and 3A of the *Civil Procedure Act*, Order 1 Rules 10(2) and Order 51 Rule 1 of the *Civil Procedure Rules*.
2. The application seeks the following orders:
  - a. The Honorable Court be pleased to enjoin the Ethics and Anti-Corruption Commission (Applicant herein) as an interested party herein.
  - b. That upon joinder the interested party be granted leave to file its responses and/or pleadings as may be necessary for effectively adjudicating upon the issues in controversy.
  - c. Costs be in the cause.
3. The application is based on the grounds on its face and supported by the affidavit sworn on March 14, 2022 by one Ephrahim Shombe.

### Factual background.

4. The Plaintiffs/Respondents commenced this suit on November 10, 2020 vide the Complaint dated November 9, 2020 where they pray for judgement as follows:
  - a. A declaration that the Plaintiffs are the lawful proprietors of the parcels of land known as LR No 22611(25); UNS Residential Plot No 29-Nakuru Municipality; UNS Residential UNS residential Plot No 15-nakuru Municipality; LR No 22613; LR No 22616; LR No 22618; LR No 22617; LR No 22629; LR 22620(37), LR 22619; LR No 24422: UNS Residential Plot No 'e'nakuru Municipality; UNS Residential Plot No 35-Nakuru Municipality; UNS Residential Plot No 1i-nakuru Municipality; UNS residential Plot No 10-nakuru Municipality; LR. No 22633.
  - b. A Declaration that the 1<sup>st</sup> Defendant is a trespasser to the parcels of land known as LR No 22611(25); UNS Residential Plot No 29 Nakuru Municipality UNS residential Plot No 15 Nakuru Municipality; LRNo 22613; LR. No 22616; LR No 22618; LR No 22617; LR No 22629; LR 22620(37); LR 22619; LR No 24422; UNS Residential Plot No 'e'nakuru



Municipality; UNS Residential Plot No 35nakuru Municipality; Residential Plot No 11-nakuru Municipality; UNS Residential Plot No 10-Nakuru Municipality; LR. No 22633.

- c. A declaration that the purported resurvey on the Plaintiffs' land parcels LR No 22611(25); UNS residential Plot No 29 Nakuru Municipality, UNS Residential Plot No 15Nakuru Municipality; LR-No 22613; LR No 22616; LR No 22618; LR No 22617; LR No 22629; LR 22620(37); LR 22619; LR No 24422; UNS Residential Plot No 'e'- Nakuru Municipality; UNS Residential Plot No 35-nakuru Municipality; UNS Residential Plot No 11-nakuru Municipality; UNS Residential Plot No 10 Nakuru Municipality; LR No 22633 and the resultant recommendation and actions are in violation of the Plaintiffs' right to own property and have quiet enjoyment of the same and thereby a nullity and illegal ab initio.
  - d. A permanent order of injunction directed at the Defendants to stop/desist from depicting the Plaintiffs as fraudsters and trespassers on their land parcels.
  - e. A declaration that the Survey Plan Map showing the suit plots owned and occupied by the Plaintiffs to be LR No 22611(25); UNS Residential Plot No 29-nakuru Municipality; UNS-Nakuru Municipality; Uns Residential Plot No 15-Nakuru Municipality LR No 22613; LR No 22616; LR No 22617; LR No 22629; LR 22620(37); LR No 22619; LR No 24422; UNS Residential Plot No 'E' Nakuru Municipality; UNS Residential Plot No 35-Nakuru Municipality; UNS Residential Plot No 11-nakuru Municipality; UNS Residential Plot No 10-nakuru Municipality; LR No 22633 is the genuine and valid survey plan map.
  - f. An order that the Plaintiffs land parcels LR No 22611(25); UNS Residential Plot No 29-nakuru Municipality; UNS-Nakuru Municipality; Uns Residential Plot No 15-Nakuru Municipality Lr No 22613; LR No 22616; LR No 22618; LR No 22617; LR No 22629; LR 22620(37); LR No 22619; LR No 24422; UNS Residential Plot No 'e' Nakuru Municipality; UNS Residential Plot No 35-nakuru Municipality; UNS Residential Plot No 11-nakuru Municipality; UNS Residential Plot No 10-nakuru Municipality; LR No 22633 and their attached Deed Plans, their sizes, beacons, boundaries, shape be and are hereby declared as legal and genuine.
  - g. An order of Permanent and temporary injunction against the Defendants herein either by themselves, their agents, employees and/or servants from trespassing, surveying, resurveying, sub-dividing, putting up beacons, transferring beacons, selling, invading, disposing, transferring, creating access roads, blocking access roads, constructing dams, fencing or in any manner whatsoever dealing with the Plaintiffs/Applicant's piece of land known as LR No 22611(25); UNS residential Plot No 29 Nakuru Municipality; UNS residential Plot No 15nakuru Municipality; LR No 22613; LR No 22616; LR No 22618; LR No 22617; LR No 22629; LR 22620(37); LR 22619; LR No 24422; UNS Residential Plot No 'e' Nakuru Municipality; UNS Residential Plot No 35 Nakuru Municipality; UNS RESidential Plot No 11-nakuru Municipality; UNS Residential Plot No 10-nakuru Municipality; LR. No 22633.
  - h. Costs of this suit with interest till payment in full.
5. The 1<sup>st</sup> and 2<sup>nd</sup> Defendant stated that they would not be opposing this application.
  6. The 1<sup>st</sup> and 2<sup>nd</sup> interested party also stated that they would not be taking part in this application.
  7. The 3<sup>rd</sup> interested party was served but did not file any response to the application.
  8. The background is set out to understand the nature of proceedings and appreciate the orders sought.



### **The Proposed 4<sup>th</sup> interested party/applicant's contention.**

9. the Proposed 4<sup>th</sup> Interested Party/Applicant's supporting affidavit is sworn by Ephrahim Shombe.
10. He contends that he is an employee of the Ethics & Anti-Corruption Commission appointed as an investigator under Section 23 of the [Anti-Corruption and Economic Crimes Act, 2003](#).
11. He further contends that he is the lead investigator in the investigation into allegations of illegal or irregular alienation and acquisition of land parcels LR No 22611(25); UNS Residential Plot No 29-Nakuru Municipality; UNS Residential Plot No 15-Nakuru Municipality; LR No 22613; LR No 22616; LR No 22618; LR No 22617; LR No 22629; LR No 22620(37); LR No 22619; LR No 24422; UNS Residential Plot No 35-Nakuru Municipality; UNS Residential Plot No 11-Nakuru Municipality; UNS Residential Plot No 10-nakuru Municipality; LR No 22633. That he is therefore familiar with the facts giving rise to joinder of the Commission in this matter and duly authorized to swear the affidavit on behalf of the Commission/Applicant.
12. He also contends that the EACC is a statutory body mandated to, inter alia, carry out investigations to establish liability for loss of, or damage to, public property and to institute civil proceedings for compensation or recovery of such public property under the provisions of Section 11(j) of the [Ethics and Anti-Corruption Commission Act, 2011](#).
13. He contends that pursuant to its statutory mandate, the Applicant conducted investigations into allegations of illegal or irregular alienation and acquisition of LR No 22611(25); UNS Residential Plot No 29- Nakuru Municipality; UNS Residential Plot No 15-Nakuru Municipality; LR No 22613; LR No 22616; LR No 22618; LR No 22617; LR No 22629; LR No 22620(37); LR No 22619; LR No 24422; UNS Residential Plot No 35-Nakuru Municipality; UNS Residential Plot No 11-nakuru Municipality; UNS Residential Plot No 10-nakuru Municipality; LR No 22633.
14. He further contends that from the investigations their findings indicated that the subject parcel land numbers LR No 22611(25); UNS Residential Plot No 29- Nakuru Municipality; UNS Residential Plot No 15-Nakuru Municipality; LR No 22613; LR No 22616; LR No 22618; LR No 22617; LR No 22629; LR No 22620(37); LR No 22619; LR No 24422; UNS Residential Plot No 35-Nakuru Municipality; UNS Residential Plot No 11-Nakuru Municipality; UNS Residential Plot No 10-nakuru Municipality; LR No 22633 are part of Government land reserved and set aside for public utility to wit the Nakuru Agricultural Training Center (ATC) and therefore were never available for alienation and thus any dealings thereof was and is irregular, illegal, null and void.
15. He also contends that in the circumstances, the Applicant herein has direct and substantial interest in the matters in controversy in this suit and a just and fair decision should be reached after due consideration of the Applicant's interest in the matter.
16. It is his contention that the Applicant is a proper and/or necessary party to the proceedings whose joinder in the suit would enable the court effectively and completely adjudicate upon and settle all the matters in question given its mandate and statutory obligation to recover public property obtained through corrupt conduct and wishes to participate in the proceedings as an interested party to ventilate pertinent issues in the acquisition of the suit property.
17. He contends that having regard to the nature and the subject matter of this suit, it is evident that the proposed interested party is a necessary and proper party whose joinder in the suit would enable the court effectively adjudicate and settle all the matters in controversy.



18. He further contends that neither the Plaintiffs nor the Defendants and the Interested Parties stand to be prejudiced if the application is allowed and that on the other hand, it is the proposed Interested Party who stands to be gravely prejudiced by being denied a chance to be heard.
19. He also contends that it is therefore in the interest of justice that the proposed Interested Party be granted a chance to participate in this matter in order to determine the questions and issues and uphold the rule of law and public interest.
20. He ends his deposition by stating that it is the proposed Interested Party's primary role to assist the court to make a just determination on the issues and uphold the rule of law and public interest and sought that the application be allowed.
21. Upon perusal of the Court Record, there is no response filed with respect to the Proposed Interested Party/Applicant's application.

**Issues for determination.**

22. The Proposed Interested Party/Applicant filed its submissions dated May 23, 2022 on the same date while the Plaintiffs filed their submissions dated May 27, 2022 on May 31, 2022.
23. The Proposed Interested Party/Applicant identified only one issue for determination which is whether its application for joinder is merited.
24. The Proposed Interested Party/Applicant relied on the Supreme Court case of Communication Commission of Kenya & 4 Others v Royal Media Services Limited & 7 Others [2014] eKLR and the High Court case of Kenya Medical Laboratory Technicians and Technologists Board & 6 Others v Attorney General & 4 Others [2017] eKLR and submitted that it has an identifiable stake in the subject matter herein and that it is only appropriate that the court allows its joinder application.
25. The Proposed Interested Party/Applicant also submitted that its admission to the proceedings would enable the court to deal with all the matters in controversy and sought that its application be allowed.
26. The Plaintiffs/Respondents in their submissions submitted on whether the Ethics and Anti-Corruption Commission should be enjoined as the 4<sup>th</sup> Interested Party.
27. The Plaintiffs/Respondents relied on the cases of Carol Construction Engineers Ltd v Naomi Chepkorir Langat [2019] eKLR and submitted that the Proposed Interested Party/Applicant should institute its own proceedings distinct from the current proceedings which are in respect to the ownership of the subject properties and not corruption proceedings.
28. The Plaintiffs/Respondents also relied on the cases of Technomati Limited TIA Promopack Company Limited v Kenya Wine Agencies Limited & another [2014] eKLR, Skoy Estate Limited & 5 Others v Agricultural Development Corporation & another [2015] and Awadh Swaleh Batheif v Hassan Said Rashi & 2 Others; Ahmed Abdulrahman Abdalla & 3 Others (Third Parties); Ethics and Anti-Corruption Commission (Applicant/Proposed interested party) [2020] eKLR.
29. The Plaintiffs/Respondents concluded their submissions and sought that the Proposed Interested Party/Applicant's application be dismissed with costs.
30. Upon perusal of the Application, Supporting Affidavit, the rival submissions and judicial decisions cited, it is my view that the twin issue for determination are:
  - a. Whether the Applicant should be joined in this matter as an interested Party.



- b. Who should bear the cost of the application.

### **Analysis and determination.**

#### **A. Whether the applicant should be joined in this matter as an interested Party.**

31. Order 1 Rule 10(2) of the *Civil Procedure Rules* provides as follows:

- (2) 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.

32. The *Black's Law Dictionary* defines an Interested Party as;

“a party who has a recognizable stake (and therefore standing) in the matter.”

33. The Supreme Court set out the guidelines for determining whether an applicant qualifies for admission as an Interested Party in the case of *Communication Commission of Kenya & 4 Others v Royal Media Services Limited & 7 Others* [2014] eKLR as follows:

- [22] In determining whether the Applicant should be admitted into these proceedings as an Interested Party we are guided by this Court's Ruling in the Mumo Matemo case where the Court (at paragraphs 14 and 18) held:

“[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...” (Emphasis is mine).

- [23] Similarly, in the case of *Meme v Republic*, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- (i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
- (ii) joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) joinder to prevent a likely course of proliferated litigation.”

- [24] We ask ourselves the following questions: (a) what is the intended interested party's stake and relevance in the proceedings? and (b) will the intended interested party suffer any prejudice if denied joinder?

34. The Applicant herein has sought to be joined as an Interested Party in the present proceedings for the reason that it is mandated under Section 11(j) of the *Ethics and Anti-Corruption Commission Act, 2011* to conduct investigations of illegal alienation of public property.

35. The Applicant contends that it is on the basis of this mandate that it undertook investigations on the allegations that the suit properties in this matter were irregularly alienated.



36. The Applicant also contends that upon conclusion of its investigations, it found that the suit properties are part of government land that was set aside for the Agricultural Training Center and was therefore not available for alienation.
37. It is also the Applicant's claim that it has a direct and substantial interest in the matters in controversy and should be enjoined.
38. The Plaintiffs in their submissions state that they filed a Replying Affidavit opposing the Applicant's application but upon perusal of the court record the said Replying Affidavit is not on record.
39. The Plaintiffs/Respondents in this matters allege that they are the registered owners of the suit properties upon allocation by the Commissioner of Lands.
40. It is the Plaintiffs/Respondents case that the 2<sup>nd</sup> Defendant is threatening to evict them from their properties after the 1<sup>st</sup> Defendant claimed that the suit properties had allegedly been illegally allocated.
41. The Court in the case of *Skov Estate Limited & 5 others v Agricultural Development Corporation & another* [2015] eKLR held as follows in dealing with the issue of an Interested Party seeking to be joined in a suit:

“In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party.

In other words, there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another.(Emphasis is mine). A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent Plaintiff and Defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.”

42. In *Civicon Limited v Kivuwatt Limited and 2 Others* [2015] eKLR the court observed as follows:

“Again the power given under the Rules is discretionary which discretion must be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings (Emphasis is mine). Thus, any party reasonably affected by the pending



litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the Plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”

43. It is my considered view therefore that given the nature of the Plaintiffs/Respondents case, the Applicant has demonstrated that it is necessary that it be enjoined in the suit, so that the court may settle all questions involved in this matter.
44. It is also my view that the Applicant’s presence in this matter will enable the court to effectually and completely answer the questions on the process of acquisition and ownership of the suit properties among other issues.
45. I am find that no prejudice will be occasioned to the Plaintiff

#### **B. Who shall bear the costs of this suit?**

46. The general rule is that costs shall follow the event in accordance with the provisions of Section 27 of the Civil Procedure Act (cap. 21).
47. In the case of Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others SC. Petition No 4 of 2012: [2014] eKLR. The Supreme Court held that costs follow the event and that the Court has the discretion in awarding such costs.

#### **Disposition.**

48. In view of the foregoing, I find that the application dated March 14, 2022 is merited. The same is allowed in the following terms:
  - a. The Ethics and Anti-Corruption Commission is hereby joined as the 4<sup>th</sup> interested party in this suit.
  - b. Leave is hereby granted to the Ethics and Anti-Corruption Commission to file and serve its responses and/or pleadings on all parties within 14 days of this ruling.
  - c. The costs of this application shall abide the outcome of the suit.
49. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 13<sup>TH</sup> DAY OF OCTOBER, 2022**

**L. A. OMOLLO**

**JUDGE**

**In the presence of: -**

Miss Maina for the 4<sup>th</sup> Interested Party/Applicant

Miss Chepkurui for the Plaintiffs/Respondents



No appearance for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties

Court clerk; Miss. Monicah Wanjohi

