



Telkom Kenya Limited & another v Ministry of Sports,Culture and Heritage & 2 others; Ministry of Public Service Youth and Gender Affairs & 4 others (Interested Parties) (Environment & Land Petition 11 of 2021) [2022] KEELC 15577 (KLR) (10 November 2022) (Ruling)

Neutral citation: [2022] KEELC 15577 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION 11 OF 2021
JO MBOYA, J
NOVEMBER 10, 2022**

BETWEEN

TELKOM KENYA LIMITED 1ST PETITIONER

AFTRACO LIMITED 2ND PETITIONER

AND

MINISTRY OF SPORTS,CULTURE AND HERITAGE 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

THE NATIONAL LAND COMMISSION 3RD RESPONDENT

AND

**MINISTRY OF PUBLIC SERVICE YOUTH AND GENDER
AFFAIRS INTERESTED PARTY**

**MINISTRY OF INFORMATION, COMMUNICATIONS AND
TECHNOLOGY INTERESTED PARTY**

DALLO HOLDINGS LIMITED INTERESTED PARTY

EXCLUSIVE ESTATES LIMITED INTERESTED PARTY

**POSTEL HOUSING CO-OPERATIVE SOCIETY LIMITED INTERESTED
PARTY**

RULING

1. The Ruling herein relates to two applications; one filed by the 4th Interested Party, whereas the other application has been filed by and on behalf of the 5th Interested Party.



2. The Application by the 4th Interested Party is dated the 25th July 2022, and same seeks the following reliefs;
 - i. This Honorable Court be pleased to certify this matter as urgent.
 - ii. Leave be granted to remove Exclusive Estates Limited as the 4th Interested Party and added as the 4th Respondent in the Amended Petition.
 - iii. Upon being added as the 4th Respondent, Exclusive Estates Limited do file its Cross-Petition and Supporting Affidavit within 7 days of the grant of Leave.
 - iv. Costs be in the cause.
3. On the other hand, the said application is premised on the grounds which have been enumerated at the foot thereof and same is supported by the affidavit of Francis Mburu sworn on even date.
4. The second application is the one dated the July 29, 2022, filed by the 5th Interested Party and same seeks the following reliefs;
 - a. That this Application be certified as urgent.
 - b. That leave be granted to remove Postel Housing Co-operative Society Limited as the 5th Interested Party.
 - c. That Postel Housing Co-operative Society Limited be added in this suit as the 5th Respondent.
 - d. That upon adding Postel Housing Co-operative Society Limited as the 5th Respondent, the 5th Respondent be granted leave to file its Cross-Petition.
 - e. That costs be in the cause.
5. For completeness, the subject application is premised and anchored on the various grounds which have been enumerated in the body thereof and same is further supported by the affidavit of Henry Belsoi sworn on the July 29, 2022.
6. Additionally, the application dated the July 29, 2022 is also supported by the supplementary affidavit sworn on the October 13, 2022 by the said Henry Belsoi.
7. Upon being served with the named applications, the Petitioners filed a Replying Affidavit sworn on September 16, 2022, as well as Grounds of opposition dated October 3, 2022. For clarity, the Petitioners herein raised various grounds inter-alia, that the 4th and 5th Interested Parties cannot choose for the Petitioners the persons against whom the Petitioners should impleads or sue as pertains to the subject dispute.
8. Subsequently, the two named applications came up for hearing on the October 17, 2022, whereupon same were canvassed vide oral submissions.

Submissions By The Parties:

a. 4th Interested Party/Applicant's Submissions:

9. Counsel for the 4th Interested Party/Applicant canvassed the application dated July 25, 2022, and reiterated the grounds contained at the foot thereof.



10. Additionally, counsel for the 4th Interested Party submitted that the 4th Interested Party/Applicant had entered into an arrangement/agreement with the 5th Interested Party over and in respect of a portion of the suit property measuring sixty (60) acres.
11. Arising from the arrangement between the 4th Interested Party and the 5th Interested Parties, counsel submitted that the 4th Interested Party/Applicant acquired lawful and legitimate interests and rights pertaining to and concerning a portion of the suit property.
12. At any rate, learned counsel for the 4th Interested Party/Applicant added that there are various pending proceedings between the 4th interested Party and the 1st Petitioner pertaining to and concerning ownership rights over a portion of the suit property measuring 60 acres. In this regard, counsel pointed out the existence of Nairobi HCC Commercial Case No 1158 of 2001.
13. Secondly, counsel for the 4th Interested Party also submitted that although the 1st Petitioner has been aware and knowledgeable of the rights and interests of the 4th Interested Party, same has chosen to disregard the interests of the 4th Interested Party.
14. Thirdly, counsel has further added that given the known and established interests that the 4th Interested Party/Applicant has in the suit property, a failure to join same as a Respondent would deprive and deny same an opportunity to raise a cross-Petition and to seek precipitate reliefs against the Petitioners herein.
15. Premised on the foregoing, counsel for the 4th Interested Party has contended and submitted that it would be appropriate and in the interest of justice that the 4th Interested Party be allowed to join the suit as a substantive Party, in lieu of being an Interested Party.
16. In any event, counsel has added that if the 4th Interested Party is not allowed to join as a Respondent, then same may be compelled and obliged to file a separate and distinct suit, which would only operate to muddle the process and thereby affect the necessity to hear and determine all the issues in controversy once and for all.
17. Finally, counsel for the 4th Interested Party has invited the Honourable court to take cognizance of the various decisions cited and highlighted at the foot of the List of authorities and the digest of authorities dated September 23, 2022.
18. Essentially, counsel for the 4th Interested Party has invited the court to take cognizance of the decision in the case of *Meme v Republic* [2004] 1KLR at page 124, wherein the court enumerated and underscored the principles necessary before joinder of a party as a Respondent.

b. 5th Interested Party/Applicant's Submissions:

19. The counsel for the 5th Interested Party/Applicant canvassed the Application dated July 29, 2022, and invited the court to take cognizance of the supporting affidavit attached thereto as well as the supplementary affidavit sworn on October 13, 2022.
20. On his behalf, counsel contended that the 5th Interested Party herein entered into a sale agreement with Kenya Post & Telecommunication Corporation, which is the predecessor of the 1st Petitioner herein over and in respect of a portion measuring 60 acres out of the suit property.
21. It was further submitted that upon the execution of the sale Agreement, the 5th Interested Party proceeded to and remitted payments to and in favor of the vendor and which payments were deducted vide check-off system from the various members of the 5th Interested Party/Applicant.



22. Further, counsel added that having entered into and executed a lawful land sale agreement, the 5th Interested Party acquired lawful and legitimate rights over a portion measuring 60 acres out of the suit property.
23. In the premises, counsel added that the 5th Interested Party herein therefore has a legitimate claim to the suit property and hence any transaction that affects the suit property will indeed affect and have an impact on the 5th Interested Party.
24. At any rate, counsel also submitted that the 5th Interested Party is keen to file and mount a cross-Petition and that such a cross-petition can only be mounted and or filed by a Respondent and not otherwise.
25. Finally, counsel for the 5th Interested Party has submitted that the intended joinder of the 5th Interested Party will enable the court to entertain and adjudicate upon all the issues in dispute pertaining to and concerning the suit property, once and for all.
26. Based on the foregoing, counsel invited and implored the court to find and hold that the 5th Interested Party has established and demonstrated an identifiable and legitimate stake in the suit property and by extension the subject suit, to warrant her joinder as a Respondent.

c. Petitioners' Submissions:

27. On behalf of the Petitioners, the submissions were ventilated and canvassed by Senior Counsel Ahmednassir Abdullahi. For clarity, senior counsel raised and highlighted two issues for consideration.
28. First and foremost, learned counsel submitted that the 4th and 5th Interested Parties had filed previous Applications wherein same sought to be joined in the subject proceedings as interested parties and not otherwise.
29. It was further stated that pursuant to the Application by the 4th and 5th Interested Parties, the Honorable Court proceeded to and made an order on February 13, 2022, wherein the 4th and 5th Interested Parties were admitted as such.
30. It was further submitted that having been admitted as Interested Parties, the 4th and 5th Interested Parties cannot now purport to seek and change their status to become Respondents in the subject matter.
31. Secondly, Senior Counsel added that insofar as the orders of the court issued on February 13, 2022 have not been reviewed, varied and rescinded, this court cannot make any further albeit contradictory orders in the manner sought by the 4th and 5th Interested Parties.
32. In view of the foregoing, it was submitted that the subject Applications by and on behalf of the 4th and 5th Interested Parties therefore constitute a classic abuse of the due process of the court.
33. In the premises, counsel invited the court to find and hold that the two Applications are misconceived, bad in law and otherwise legally untenable.
34. It is appropriate to add that the submissions by Senior Counsel were supported by learned counsel Mr Kamara who appeared for the 1st Petitioner. Nevertheless, counsel for the 1st Petitioner added that the Petitioners are the ones to discern and chose whom to sue.
35. For clarity, it was submitted that the 4th and 5th Interested Parties cannot choose for the Petitioners whom to implead and sue.



36. Finally, counsel for the 1st Petitioner submitted that the impugned Applications constitute an abuse of the due process and the intended joinder is unnecessary.
37. For coherence, counsel submitted that the Petitioners have not sought for any relief against the 4th and 5th Interested Parties and hence same have no legal basis to insist on becoming Respondents.

d. Respondents' Submissions:

38. Learned counsel Mr Benson Njagi associated himself with the submissions rendered and made on behalf of the Petitioners.
39. Additionally, counsel added that the 4th and 5th Interested Parties have neither established nor satisfied the requisite conditions to warrant their joinder in the subject matter as Respondents.
40. In the premises, counsel therefore implored the Honourable court to find and hold that the two Applications are therefore devoid and bereft of merits. In this regard, the Counsel contended that the Applications, ought to be Dismissed.

Issues For Determination:

41. Having reviewed the Applications dated July 25, 2022 and July 29, 2022, together with the supporting affidavits thereto and having considered the responses filed thereto; and having similarly taken into account the oral submissions rendered on behalf of the Parties, the following issues are pertinent and worthy of determination:
 - i. Whether the 4th and 5th Interested Parties/Applicants have an identifiable stake or interests in the suit property?
 - ii. Whether the 4th and 5th Interested Parties have established and satisfied the requisite conditions to warrant their Joinder as Respondents?

Analysis And Determination

Issue Number 1; Whether the 4th and 5th Interested Parties/Applicants Have an Identifiable Stake or Interest in the Suit Property

42. The 4th Interested Party herein has sworn an elaborate supporting affidavit and enumerated the relevant facts underpinning her interests and claim over and in respect of the suit property.
43. On the other hand, the 4th Interested Party has also alluded to the fact that upon acquiring lawful rights and interests over a substantial portion of the suit property, the 1st Petitioner was obliged to effect transfer to and in her favor of the designated portion of the suit property.
44. Nevertheless, the 4th Interested party has added that despite being aware and knowledgeable of the 4th Interested Party/Applicant's rights, the 1st Petitioner has failed and neglected to comply with or adhere to the said rights.
45. Owing to the failure and neglect by the 1st Petitioner, it has been contended that the 4th Interested Party was compelled and indeed constrained to mount civil proceedings as against the 1st Petitioner, with a view to procuring her rights and entitlement over the suit property.
46. Suffice it to point out that the said civil proceedings are still pending before the various court and the determination of the said proceedings may affect the rights and interests of the 4th Interested Party as pertains to and concerns the suit property.



47. On the other hand, the 5th Interested Party has also stated that same entered into and executed a lawful sale agreement with Kenya Post & Telecommunication Corporations, over and in respect of a portion of the suit property.
48. Other than the foregoing, it has been averred that upon the execution of the sale agreement, the 5th Interested party made various payments on account of the purchase price, which payments are known to and within the knowledge of the 1st Petitioner.
49. Essentially, the 5th Interested Party is contending that same is the lawful and legitimate owner of a portion measuring 60 acres out of the suit property.
50. Premised on the contention that same is the lawful and legitimate owner of a portion measuring 60 acres out of the suit property, the 5th Interested Party now contends that any dealing with the suit property without her involvement will unduly prejudice and gravely affect her ownership rights.
51. From the foregoing, there is no gainsaying that both the 4th and 5th Interested Parties are staking a claim to ownership over and in respect of a substantial portion of the suit property.
52. On the other hand, it is also common ground that the 4th and 5th Interested Parties had hitherto applied and sought to be constituted as Interested parties. For clarity, the Applications to be constituted as interested parties were allowed and same were duly admitted as such.
53. To my mind, having been admitted as Interested Parties, it then means that indeed the 4th and 5th Interested parties had established and proved the existence of an identifiable legal interest or claim over and in respect of the suit property.
54. To this end, it is appropriate to take cognizance of the dictum of the Supreme Court in the case of *Francis Kariuki Muruatetu & another versus Republic & 5 others* [2016] eKLR, where the court stated as hereunder;
 - (41) Having carefully considered all arguments, we are of the opinion that any party seeking to join proceedings in any capacity, must come to terms with the fact that the overriding interest or stake in any matter is that of the primary/principal parties' before the Court. The determination of any matter will always have a direct effect on the primary/principal parties. Third parties admitted as interested parties may only be remotely or indirectly affected, but the primary impact is on the parties that first moved the Court. This is true, more so, in proceedings that were not commenced as Public Interest Litigation (PIL), like the proceedings now before us.
 - (42) Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed by the Court from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues, or introduce new issues for determination by the Court. One of the principles for admission of an interested party is that such a party must demonstrate that he/she has a stake in the matter before the Court. That stake cannot take the form of an altogether a new issue to be introduced before the Court.
55. Granted, the Supreme Court was considering circumstances for joinder of a Party as an Interested party but nevertheless the critical observation discernable from the decision of the court, is that a Joinder of a Party into the proceedings in whatever capacity can only be made or be granted if the requesting party has established a stake in the suit property or by extension the proceedings in question.



56. To my mind, the 4th and 5th Interested Parties have established and proved that same have some semblance of claim and stake over the suit property.
57. However, as to whether or not their claim or stake would succeed, is another matter that shall only be gone into and addressed during the plenary hearing.
58. Simply put, it is not the duty of this Honourable court and particularly, at this moment to concern itself with the success or otherwise of the claims to be placed before the court by the 4th and 5th Interested Parties, once same are Joined in the manner sought.
59. Suffice it to point out that it is enough to show, demonstrate and establish that the claimant has some semblance of a cause of action. For clarity, once same is established, the claimant ought to be joined as a Party.

Issue Number 2; Whether the 4th and 5th Interested Parties have Established and Satisfied the Requisite Conditions to Warrant their Joinder as Respondents

60. It is common ground that the 4th and 5th interested Parties had previously applied to be admitted as interested parties and same were indeed admitted as such.
61. Nevertheless, it is imperative to recall that a person who is admitted as an interested party has a limited scope and role to play in the subject proceedings.
62. Suffice it to point out that an interested party cannot by law raise, generate and ventilate any precipitate issue that is contrary to and at variance with the issues ventilated by the principal parties.
63. On the other hand, there is also no gainsaying that an interested party cannot seek and procure any relief from the suit where same has been joined, merely as an Interested Party.
64. To vindicate the foregoing observation, it is appropriate to take note of the holding of the Supreme Court in the case of *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others*, Supreme Court Petition No 12 of 2013, [2014] eKLR (an application by the Law Society of Kenya), where the court observed that [paragraphs 13-15]:
 - (13) While the Rules have a definition of who an *amicus* is, there is no definition attributed to ‘Intervener’ or ‘Interested Party’. However, from Rule 25 above, one is allowed to apply to be enjoined any time in the course of the proceedings.
 - (14) “Black’s Law Dictionary, 9th Edition, defines “intervener” (at page 897) thus:

“One who voluntarily enters a pending lawsuit because of a personal stake in it” and defines ‘Interested Party’ (at p 1232) thus:

“A party who has a recognizable stake (and therefore standing) in a matter”.
 - (15) “On the other hand, an amicus defined in Black’s Law Dictionary thus:

‘A person who is not a party to a lawsuit but who petitions the court or is requested by the court to file a brief in the action because that person has a strong interest in the subject matter’.”



65. Though the 4th and 5th Interested Parties had applied and were admitted as interested parties, same have now realized that they cannot originate precipitate claims for as long as they bear the title ‘Interested parties.’
66. Informed by the foregoing observation, the named interested parties are now keen to be constituted and admitted as substantive Respondents, with a view to filing a cross-petition.
67. To my mind, the current Applications by the named interested parties are merited and well grounded.
68. Suffice it to point out, that it is only substantive Respondents who can file and mount cross-petitions and not otherwise.
69. Indeed, this is the foundation and basis upon which the subject Applications have been made.
70. What shall be the import and implication of a failure or refusal to admit the named interested parties as Respondents?
71. The answer to the foregoing question is obvious, simply put, the named interested parties herein would then be constrained to file and mount separate Petitions against the same parties and concerning the same suit property.
72. In such a scenario, the court will be faced with a multiplicity and proliferations of suits, raising the same issues of facts and law.
73. If that were to happen, then the entire justice system will be crowded and clogged down with similar suits, being ventilated and addressed before various courts, with the net result of wastage of precious Judicial time.
74. Premised on the foregoing, I come to the conclusion that it would be in the interest of justice, fair play and the need to dispose of disputes expeditiously, to grant and allow the subject Applications.
75. At any rate, my decision, as espoused in the preceding paragraphs is inspired by the holding of the court in the case of *Julius Meme v Republic & another* [2004] eKLR, where the court stated as hereunder;

“Joinder of a party is vital if it will result in complete settlement of all questions in the proceedings. The applicants interest herein revolves around ownership of the suit properties.”

Final Disposition:

76. In conclusion, it is apparent and evident that the 4th and 5th Interested Parties are laying a serious claim to ownership of a substantial portion of the suit property.
77. Additionally, the 4th and 5th Interested Parties have contended that upon being admitted as Respondents, same shall be keen to mount the requisite answer to Petition and cross-petition, (sic) with a view to vindicating their rights to the suit property.
78. In the premises, it is in the interest of justice and in furtherance to the right of access to justice to grant the applications dated July 25, 2022 and July 29, 2022.
79. Consequently and in the premises, I am obliged to and Do hereby make the following orders;
 - i. The applications dated July 25, 2022 and July 29, 2022 be and are hereby allowed.
 - ii. The 4th and 5th interested parties be and are hereby admitted and constituted as the 4th and 4th respondents.



- iii. The 4th and 5th respondents be and are hereby granted liberty to file the requisite answer to petition and cross-petitions, if any, and same be filed and served within 14 days from the date hereof.
- iv. The petitioners and the rest of the respondents are granted liberty to file their responses, if any, to the cross-petitions and same be filed and served within 14 days from the date of service of the answer to petition and cross-petitions, where appropriate.
- v. The 4th and 5th respondents shall have liberty to file further/supplementary affidavit, if any, within 14 days from the date of being served with the responses by the Petitioners and the rest of the parties.
- vi. Thereafter, the petition herein shall be mentioned on a named date, to be fixed in due course, to ascertain compliance and essentially the filing and exchange of pleadings/responses.
- vii. Costs of the applications be and are hereby awarded to the petitioners and same are assessed and certified in the sum of Kshs 25,000/- only payable to the 1st and 2nd petitioners each, to be paid by the 4th and 5th interested parties.

80. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 10TH DAY OF NOVEMBER, 2022.

HON JUSTICE OGUTTU MBOYA,

JUDGE.

In the Presence of;

Kevin - Court Assistant

Ms. Paul Kamara and Ms Noella Lubano h/b for Mr. George Oraro, Senior Counsel for the 1st Petitioner

Ms. Hanan h/b for Mr. Ahmednassir Abdullahi, Senior Counsel for the 2nd Petitioner

Mr. Allan Kamau for the 1st and 2nd Respondent and the 1st and 2nd Interested Parties

Mr. Allen W Gichuhi, Senior Counsel for the 4th Interested Party

Mr. Xavier Baraka for the 5th Interested Party

N/A for the 3rd Respondent

N/A for the 3rd Interested Party

