



REPUBLIC OF KENYA



Igweta & 27 others v District Land Adj. & Settlement Officer Igembe South District & 7 others; Rikiau Adjudication Section thro' it's Officials Isaiah Ntombura M'kairiama (Chairman) & 4 others (Interested Parties) (Petition 9B of 2012) [2022] KEELC 15354 (KLR) (14 December 2022) (Ruling)

Neutral citation: [2022] KEELC 15354 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
PETITION 9B OF 2012
CK NZILI, J
DECEMBER 14, 2022**

BETWEEN

PHILIP MWITI IGWETA 1ST APPLICANT
PHILIP MWITI IGWETA 2ND APPLICANT
JACKSON KAUGIRIA KABIRA 3RD APPLICANT
JACKSON KAUGIRIA KABIRA 4TH APPLICANT
MATHIAS KAMENCU 5TH APPLICANT
MATHIAS KAMENCU 6TH APPLICANT
TIMOTHY MUTHURI MUTUA 7TH APPLICANT
TIMOTHY MUTHURI MUTUA 8TH APPLICANT
MORRIS MWORIA MUTUA 9TH APPLICANT
MORRIS MWORIA MUTUA 10TH APPLICANT
JOSEPH ARIMI 11TH APPLICANT
JOSEPH ARIMI 12TH APPLICANT
JACKSON MUTHAMIA 13TH APPLICANT
JACKSON MUTHAMIA 14TH APPLICANT
JOHN MUTEA KIUNGA 15TH APPLICANT
JOHN MUTEA KIUNGA 16TH APPLICANT
FREDRICK GATOBU 17TH APPLICANT
FREDRICK GATOBU 18TH APPLICANT



MERCY NABEA KANINI 19TH APPLICANT
MERCY NABEA KANINI 20TH APPLICANT

AND

ANDREW KALUMA 1ST PETITIONER
ANDREW KALUMA 2ND PETITIONER
NGOLUA MWAINE 3RD PETITIONER
NGOLUA MWAINE 4TH PETITIONER
TOM TUARUCHIU 5TH PETITIONER
TOM TUARUCHIU 6TH PETITIONER
SAMMY MUTIA 7TH PETITIONER
SAMMY MUTIA 8TH PETITIONER

AND

THE DISTRICT LAND ADJ. & SETTLEMENT OFFICER IGEMBE SOUTH
DISTRICT 1ST RESPONDENT
THE DISTRICT LAND ADJ. & SETTLEMENT OFFICER IGEMBE SOUTH
DISTRICT 2ND RESPONDENT
THE DISTRICT LAND ADJ. & SETTLEMENT OFFICER TIGANIA EAST
DISTRICT 3RD RESPONDENT
THE DISTRICT LAND ADJ. & SETTLEMENT OFFICER TIGANIA EAST
DISTRICT 4TH RESPONDENT
P.S MINISTRY OF LANDS 5TH RESPONDENT
P.S MINISTRY OF LANDS 6TH RESPONDENT
ATTORNEY GENERAL 7TH RESPONDENT
ATTORNEY GENERAL 8TH RESPONDENT

AND

RIKIAU ADJUDICATION SECTION THRO' IT'S OFFICIALS ISALAH
NTOMBURA M'KAIRIAMA (CHAIRMAN) INTERESTED PARTY
ANDREW NKAYURA THAIMUTA (COMMITTEE MEMBER) INTERESTED
PARTY
TIMOTHY MBAABU GICHUNGE (COMMITTEE MEMBER) INTERESTED
PARTY
M'MWIRICHIA M'KAUMBUTHU (MEMBER) INTERESTED PARTY
THANGICHIA M'MUNYA (MEMBER) INTERESTED PARTY



RULING

1. Before the court is an application dated September 15, 2022 by the intended interested parties seeking for several prayers namely: to be enjoined as parties to the suit temporary injunction to issue restraining the 1st & 2nd respondents from publishing the adjudication register; an order to issue for the petitioners, the respondents and committee members of the Rikiau Adjudication Section to comply with the consent judgement dated August 19, 2018 and the rules made under the [Land Adjudication Act](#) and lastly, for the court to quash all the parcel numbers issued without the committees participation and or visit to the suit land.
2. The application is supported by grounds on its face and a supporting affidavit sworn by Philip Mwitwi Igweta on August 20, 2022.
3. The gist of the application is that the joint adjudication committee has not carried out the adjudication process as directed in the consent judgement, that it has failed to visit the suit land to do fresh adjudication and the demarcation process has been opaque. The applicants have stated that despite the foregoing new parcel numbers have been demarcated and issued without their knowledge or involvement.
4. The respondents have opposed the notice of motion through a preliminary objection dated October 11, 2022, on the grounds that the court is functus officio, the application is brought by strangers to the suit who are using a backdoor route to re-open an otherwise concluded suit, the notice of motion is vexatious, frivolous, non-suited and an abuse of the court process.
5. With leave of court parties were directed to file written submissions to the preliminary objection and the application by October 25, 2022. The applicants filed submissions dated October 31, 2022. none were received from the respondents.
6. The applicants take the view that the court is not *functus officio*. Relying on [Raila Odinga & 2 others v IEBC & 3 others](#) (2013) eKLR, [John Gilbert Ouma v Kenya Ferry Services Ltd](#) (2021) eKLR, the proposed interested parties urged the court to find it has a mandate to implement the judgment.
7. On the issue of being strangers, the interested parties have relied on Order 1 Rule 9 of the [Civil Procedure Rules](#), [Republic v Hon C J & others exparte Moise Ole Keiwua](#) (2004) eKLR. They submit that they were privy to the consent judgment had legitimate expectation on the full implementation of the consent judgment. Reliance was placed on Professor Flotop on [Principles of Administrative Law 16th Edition \(1985\)](#) at page 180.
8. The applicants therefore urged the court to find that this was the appropriate forum to redress their case since they are not seeking different orders from the consent judgment.
9. The issues for my determination are: -
 - i. Whether the court is functus officio.
 - ii. Whether a court can allow for joinder of parties' post judgment.
 - iii. If the court has powers to supervise the implementation of the consent judgment.



- iv. If the applicants have legitimate expectation for the lawful implementation of the consent judgment.
10. The concept of *functus officio* was pronounced by the Supreme Court of Kenya in [Raila Odinga and 2 others vs IEBC](#) (supra) as a general rule in which a court after exercising its adjudicative or decision-making powers in relation to a matter, such a decision cannot be revoked or varied by the decision maker. In [Telkom Kenya Ltd v John Ochanda](#) (2014) eKLR the Court of Appeal held that the doctrine prevents the re-opening of a matter before a court that rendered the final decision thereon. In [John Gilbert Ouma v Kenya Ferry Services Ltd](#) (2021) eKLR, the court took the view that the doctrine only prevents a court from revisiting the matter on a merit-based re-engagement once the final judgment and a decree has been issued.
11. As to joinder of the interested parties, in [CCK and 4 others v Royal Media Services Ltd](#) (2014) eKLR, the Supreme Court of Kenya held that an interested party is one who has a stake in proceedings and that though he may not have been a party *ab initio*, so long as he was likely to be affected by the decision of the court either way it was going to be made, he should be joined to the suit.
12. Order 1 rule (10) (2) of the [Civil Procedure Rules](#) provides that the court may at any stage of the proceedings order the name of any party whose presence before the court may be necessary in order for it to effectually and completely adjudicate upon and settle all questions involved in the suit to be added. In [David Kiptugen v Commissioner of Lands Nairobi and 4 others](#) (2016) eKLR the court held that an interested party may even be allowed to join the case at an appeal stage.
13. In exercising the discretion, the Supreme Court of Kenya in [CCK v Royal Media Services Ltd](#) supra held that a party must demonstrate how the ends of justice would be better served by joining him to the suit or appeal otherwise if a party was disguising himself as an interested party while the actual fact is that he was merely seeking to institute a fresh cause, such a party should not be allowed in.
14. In [EG v AG David Kuria Mbote & 10 others](#) (IP) (2021) eKLR, the court cited with approval [Hamisi Yawa & 36000 others v Tsagwa Ngala Chome & 19 others](#) (2018) eKLR where it was held that joinder of a party was not an automatic right and must be exercised on defined parameters including the personal interest or stake which must be clearly identifiable and proximate enough and not merely peripheral; must demonstrate the prejudice to be suffered for non-inclusion; the value to add to the court and whether it would vex or convolute the proceedings. See also [Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others](#) (2014) eKLR, [Kenya Medical Laboratory Technicians & Technologists Board v AG and another](#) (2017) eKLR.
15. In my view, a joinder of a party's post judgment, does not fall under Order 1 rule 10 (3) of the [Civil Procedure Rules](#). This rule envisages a situation where the suit is yet to be concluded on merits. See [Opini Mekenye v James Obegi](#) (2018) eKLR and [JMK v MWM & another](#) (2015) eKLR. In [JMN v SWM & 2 others](#) (2021) KEELC 4736 (KLR) (19th May, 2021) judgment, the court was faced with application to join a party post judgment without any specific prayers to set aside or vary the consent judgement. The court held that the reopening of the suit was not only moot but also unnecessary.
16. Applying the foregoing caselaw, the consent judgment dated September 20, 2018 was recorded by the principal parties. The proposed interested parties' major complaint herein is that the principle parties have refused to fully comply with the said consent judgment and the law on adjudication which has prejudiced them as owners of land in the adjudication section.
17. The proposed interested parties are making a significant prayer for mandamus to compel the principal parties to follow the law and for certiorari to quash all the new parcel numbers issued without the



committee demarcating the land. The petitioners and the respondents on the other hand have termed the applicants as nonsuited and or out to re-open a concluded matter.

18. The petition, its scope, parameters and the activities leading to the consent judgment related to the land adjudication process in Rikiau Adjudication Section, Tigania East and Igembe Central.
19. The joint committee's mandate as per the decree following the judgment was to ascertain the rights of all the persons claiming the suit land. The petitioners at paragraphs 5, 6 and 7 of the petition had filed the petition on their own behalf and that of all the residents of the subject adjudication section or area.
20. In my considered view, the interested parties herein have established an identifiable stake or legal interests to be entitled to bring the application in line with rule 5, 7 and 11 of the *Mutunga Rules* as held by the Supreme Court of Kenya in *Francis Kariuki Muruatetu & another v Republic & 5 others* (2016) eKLR.
21. As to whether the court is functus the petition before the court was settled through a consent judgment. The prayers being sought by the intended interested parties are based on matters which have arisen after the consent judgment was recorded and in the court of its implementation.
22. The issues of whether or not the adjudication committee has followed consent judgment, the law on adjudication, visited the ground to ascertain the proposed interested parties' interests on the land and whether 2nd respondent has been involved in the process, are matters which did not form part of the consent judgment. They disclose a new cause of action.
23. On the supervision of the implementation of the consent judgment and the legitimate expectation these again are issues which do not fall under section 34 of the *Civil Procedure Act* as read together with Order 22 of the *Civil Procedure Rules*.
24. The proposed interested parties are not seeking to re-open, set aside or vacate the consent judgment. They are seeking for prayers which are beyond the consent judgment and based on a new cause of action. See *Gladys Nduku Nthuki v Letsbego Ltd* (2022) eKLR. The said issues and the prayers were neither heard nor determined by this court on merits and so as to fall under the ambit of res judicata.
25. In the premises I uphold the preliminary objection and find the application incompetent. The same is struck out with no order as to costs.

Orders accordingly. File closed.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS

THIS 14TH DAY OF DECEMBER, 2022

In presence of:

C/A: Kananu

Muriungi for applicant

HON. C.K. NZILI

ELC JUDGE

PET 9B OF 2012 - RULING	0
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