



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAKURU**

**ELCC NO. 139 OF 2019**

**HARISON WAWERU NGANGA.....1<sup>ST</sup> PLAINTIFF**

**MATIGARI NDUNYU NJERU COMPANY LTD .....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**ANTHONY KAMAU NDONGE..... DEFENDANT**

**RULING**

1. This ruling is in respect of Chamber Summons dated the 26<sup>th</sup> November 2020 through which the following orders are sought:

1. [Spent]

2. The Applicant herein, MATIGARI MA NDUNYU NJERU NYAKINYUA GROUP KIANUGU be enjoined in this suit as an interested party forthwith before the hearing slated for 10<sup>th</sup> December 2020.

3. [Spent]

4. [Spent]

5. That the costs of this application be provided for.

2. The application is supported by an affidavit sworn by Moses Ngatia Gitonga who deposed that he is an official of Matigari Ma Ndunyu Njeru Nyakinyua Group Kianugu, the intended interested party herein. That in the year 2003 a group of victims of post-election violence came together and approached Agricultural and Industrial Holdings Ltd to sell to them the land they were squatting on. Agricultural and Industrial Holdings Ltd agreed to sell to them the land that is situated at Hilly and Rocky area adjacent to Ndunyu Njeru Group Land Kianugu at KShs 50,000 per acre thereby bringing the total cost of 1,200 acres to KShs 10,000,000. He deposed further that they then registered an entity known as Matigari Kianugu Investment on 25<sup>th</sup> May 2010 and an account known as Matigari Kianugu Investment Account No. 1118396278 KCB Gilgil Branch where all monies paid for the purchase of the land would be deposited. That the only signatories of the account were the 1<sup>st</sup> plaintiff herein and Charles Ndoge. He deposed further that on the 11<sup>th</sup> May 2013 the group agreed to sell to the defendant 50 acres of its land at KShs 5,100,000 and the group authorized the 1<sup>st</sup> plaintiff who was their chairman to draw a sale agreement with the defendant.

3. He also deposed that the 1<sup>st</sup> plaintiff failed to indicate in the sale agreement that it was the group that was selling the suit property. He deposed further that by the year 2019, the defendant had paid KShs 4,900,000 and was issued with a receipt by the group. He added that the 1<sup>st</sup> plaintiff began to frustrate the group by changing the signatories to their bank account and changing the group account name from 'Matigari Kianugu Investment' to 'Matigari Nugu Investment' and they therefore later suspended him as their chairman. He also deposed that they were shocked to learn that the 1<sup>st</sup> plaintiff had instituted the present proceedings against the defendant despite the defendant having paid for the land.

4. Mr Gitonga deposed further that they were also shocked to learn that instead of the 1<sup>st</sup> plaintiff registering the group, he registered his own company known as 'Matigari Ndunyu Njeru Company Limited' in September 2018 and that the 1<sup>st</sup> plaintiff took advantage of members of the group by obtaining title to the group's land parcel No. Gilgil/Gilgil Block 1/47955 (Kikopey Ranch) in the name of Matigari Ndunyu Njeru Company Limited on the 23<sup>rd</sup> January 2018.

5. The plaintiffs opposed the application through a replying affidavit sworn by the 1<sup>st</sup> plaintiff. He deposed that Moses Ngatia Gitonga is not an official of Matigari Ma Ndunyu Njeru Nyakinyua Group Kianugu and therefore has no authority to file the present application. He generally denied the matters deposed to by Mr Gitonga and further stated that ‘Matigari Kiamugu Investment’ was a business name he had registered with Charles Koinange Ndoge on the 25<sup>th</sup> May 2010 before they fell out and that he dealt with the defendant as Matigari Investment and that the applicant was not involved in the transaction. He added that the applicant seems to have a claim against him for land or money and that the applicant should file its own suit.

6. Parties elected not to make any oral submissions or file any written submissions.

7. I have considered the application and the affidavits. **Order 1 Rule 10 (2)** of the **Civil Procedure Rules** provides:

**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.**

8. The Supreme Court distilled the following guidelines for determining whether an applicant qualifies for admission as an interested party in **Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 others** [2014] eKLR:

**[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...”**

**[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?**

9. The applicant herein is Matigari Ma Ndunyu Njeru Nyakinyua Group Kianugu. It has repeatedly referred to itself as a group. It has however not been demonstrated what kind of a group it is or that a legal entity known as “Matigari Ma Ndunyu Njeru Nyakinyua Group Kianugu” with power to sue and to be sued in its own name exists. No registration certificate has been exhibited. Whereas Moses Ngatia Gitonga, the deponent of the supporting affidavit, claims to be an official of the applicant, no material has been placed before the court to demonstrate so. Even assuming that he is an official, it has not been shown that he has the capacity to bind the entity or to initiate the joinder proceedings.

10. The issue of the applicant’s identity is crucial particularly in this matter where there appears to have been many variants of entities with the words **Matigari, Ndunyu** or **Kianugu** in their names. By way of examples, the 2<sup>nd</sup> plaintiff herein is Matigari Ndunyu Njeru Company Limited, a company that the applicant acknowledges was incorporated by the 1<sup>st</sup> plaintiff. The applicant further claims that there have been such group names and account names as ‘Matigari Kianugu Investment’ and ‘Matigari Nugu Investment’. The 1<sup>st</sup> plaintiff claims that ‘Matigari Kianugu Investment’ is a business name that he registered jointly with another person.

11. I note that the name “Matigari Ma Ndunyu Njeru Nyakinyua Kianugu” can be seen in copies of several receipts exhibited by the applicant but there is no telling whether “Matigari Ma Ndunyu Njeru Nyakinyua Group Kianugu” is the same as “Matigari Ma Ndunyu Njeru Nyakinyua Kianugu”. Even if such an explanation was offered it would not be adequate in the absence of proof of existence as a legal entity. It is important that prior to allowing joinder of the applicant as an interested party, the court is satisfied as to the legal identity of the applicant and its officials whose actions will bind the applicant in the proceedings.

12. The applicant has not sufficiently demonstrated its identity so as to be able by extension to demonstrate its stake in the proceedings. Considering the different permutations in the names of the group as the applicant has itself alleged, it was incumbent upon the applicant to demonstrate its own legal capacity. Just as a plaintiff must show capacity to sue, a party seeking to join as an interested party must show capacity to sue and to be sued. Without proof of capacity, I do not see how the applicant’s presence before the court will assist the court to effectually and completely to adjudicate upon and settle all questions involved in this suit. Joining an amorphous group with no known officials to a suit as an interested party has the potential of causing more heat than light thus clouding issues in the proceedings with the result that administration of justice will itself be at stake.

13. Further a perusal of paragraphs 39 to 57 of the supporting affidavit shows that the applicant is intent on raising issues concerning past general management of “Matigari Ma Ndunyu Njeru Nyakinyua Group Kianugu” and seeking judgment against the plaintiff for such things as fraud relating to land, fraud relating to finances, cancellation of title and even loss said to amount to KShs 10 million. If the applicant has any useful evidence to offer in the matter, it can appear as a witness for one of the parties. If on the other hand it is keen on proceeding with its claims against any of the plaintiffs, it can file its own suit. In sum, I am not persuaded that the applicant has met the criteria for joinder as an interested party.

14. In the result, I find no merit in Chamber Summons dated 26<sup>th</sup> November 2020. I dismiss it with costs to the plaintiffs.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 11<sup>TH</sup> DAY OF MARCH 2021.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Ms Wangari holding brief for Mr Waiganjo for the plaintiffs

Mr Biko for the defendant

Mr Biko for the proposed interested party/applicant

Court Assistants: B. Jelimo & J. Lotkomoi