



Kesendany v County Government of Nakuru & 6 others; Langat & 145 others (Intended Interested Party) (Environment & Land Petition 003 of 2024) [2024] KEELC 3976 (KLR) (3 May 2024) (Ruling)

Neutral citation: [2024] KEELC 3976 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND PETITION 003 OF 2024**

**A OMBWAYO, J
MAY 3, 2024**

BETWEEN

EZEKIEL KOSGEY KESENDANY PETITIONER

AND

COUNTY GOVERNMENT OF NAKURU 1ST RESPONDENT

EGERTON UNIVERSITY 2ND RESPONDENT

NATIONAL LAND COMMISSION 3RD RESPONDENT

THE CHIEF LAND REGISTRAR 4TH RESPONDENT

**THE COUNTY LAND REGISTRAR NAKURU LANDS
REGISTRY 5TH RESPONDENT**

THE COUNTY SURVEYOR NAKURU COUNTY 6TH RESPONDENT

THE HON. ATTORNEY GENERAL 7TH RESPONDENT

AND

**RICHARD KIPNGENO LANGAT & 145 OTHERS INTENDED
INTERESTED PARTY**

RULING

Brief Facts

1 The first application dated December 18, 2023 filed by the proposed interested party Moses Owino Odhiambo t/a Mosem Enterprises sought the following orders:

1. Spent.



2. That the Honourable court be pleased to allow Mosem Enterprises Limited to be joined in the proceedings as interested party and leave be granted to file pleadings, affidavits and such other necessary documents thereof in response to this suit.
 3. That costs of and incidental to the application be provided for.
- 2 The 1st Application was based on grounds set out and supported by the Affidavit of Moses Owino Odhiambo the proposed interested party herein sworn on December 18, 2022.
 - 3 It was stated that he has a stake in the suit property parcel number LR No. 527 and that any orders that the Petitioner and or Respondents will obtain will adversely affect his interests.
 - 4 He stated that he was allocated the suit property in 2012 by the Commissioner of Lands and that he paid the requisite fees at stipulated in the allotment letter.
 - 5 He further stated that he immediately took possession and that due to the vastness of the suit property, he has had running battles with trespassers that is employees of the 2nd Respondent.
 - 6 It was stated that persons laying any claim over the suit parcel is infringing his proprietary rights hence the need to be enjoined as an interested party in the petition.
 - 7 In conclusion he urged the court to have him joined as an interested party so that his interests are safeguarded.
 - 8 The second application dated January 30, 2024 filed by the intended interested parties/Applicants sought the following orders:
 1. Spent.
 2. That the intended interested parties/Applicants be enjoined in the petition.
 3. Spent.
 4. That this honourable court be pleased to issue a temporary injunction against the Petitioner and the Respondents by themselves, their agents, servants and or assigns from selling and or in any manner interfering with the parcel of land known as L.R 527 Njoro measuring 640.63 Hectares within Nakuru County pending the hearing and determination of the Petition herein.
 5. That cost of this application be in the cause.
 - 9 The 2nd application was based on grounds set out and supported by the Affidavit of Richard Kipngeno Langat the 1st Applicant herein sworn on January 30, 2024.
 - 10 It was stated that the 1st Applicant had the authority of the other 145 Applicants. That the Applicants' fathers were employees of Lord Egerton and have since been in actual possession of the suit property L.R 527.
 - 11 He stated that they registered a company Mosem Enterprises Ltd to safeguard their interest in the suit property. He added that they contributed towards the payment of the fees for the approval and survey of the suit property.
 - 12 It was further stated that they took possession of the suit property after payment and they have since developed the same. The Applicant stated that they have since learnt that the Respondent has subdivided the suit property and thus they will be prejudiced.



13 In conclusion, the Applicant urged the court to allow the instant application and protect their interest.

Response

14 The Petitioner filed his grounds of opposition dated January 29, 2024 on the following grounds:

1. That the Applicant is an interloper without any cognizable or sufficient interest in the subject matter of the suit wherefore the same is an abuse of the Court process.
2. That the suit involves public interest litigation and orders arising thereof are for the common interest of the residents of Nakuru County.
3. That the Applicant's interest is predicated on a suit property, L.R No.527, that is alienated and bears a title deed in favour of a public entity whereof the alleged letter of allotment is subservient to the title deed and cannot originate an actionable interest.
4. That the Applicant's interest is best litigated in a different forum considering that the L.R No. 527 is registered in the name of Egerton University.

Submissions

15 None of the parties filed their submissions.

Analysis and Determination

16 This court has considered the applications together with the supporting affidavits and is of the view that the main issue for determination is whether the intended interested parties ought to be joined to this suit

17 This court has looked at the allotment letter issued to the 1st intended interested party as well as the certificate of registration of business name for Mosem Enterprises. It is clear that the letter of allotment dated June 12, 2012 issued to the said business is in reference to the suit property LR No. 527 Njoro. There is also evidence of payment by the 1st intended interested party of the requisite fees.

18 It is this court's view that the 1st intended interested party has an identifiable stake in the suit property. I therefore find and hold that he has an identifiable stake in this suit and is therefore joined to this suit as an interested party.

19 In the second application dated January 30, 2024, I am of the view that the intended interested parties have failed to provide evidence that they have an interest in the suit property.

20 In the end, this court makes the following orders:

- a. The Intended interested party in the application dated December 18, 2023 is joined to this suit as an interested party and granted 14 days to file and serve his pleadings together with witness statements and documents.
- b. Upon service, the Petitioner and Respondents are granted 14 days to file and serve their pleadings, witness statements and documents in response to the interested party's pleadings.
- c. The application dated 30th January, 2024 is hereby dismissed.
- d. Each party to bear its own costs.

It is so ordered.



RULING DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU ON 3RD MAY 2024.

A.O.OMBWAYO

JUDGE

