



**Republic v County Land Registrar; Njoka (Exparte Applicant); Njoka (Suing as the Legal Representative of Alice Kahaki Njoka - Deceased) (Interested Party) (Environment and Land Case Judicial Review Application 1 of 2022) [2024] KEELC 3613 (KLR) (2 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3613 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION 1 OF 2022**

**LA OMOLLO, J**

**MAY 2, 2024**

**IN THE MATTER OF AN APPLICATION BY LUCY  
WANJIRU NJOKA FOR AN ORDER OF MANDAMUS**

**AND**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE COUNTY LAND REGISTRAR ..... RESPONDENT**

**AND**

**LUCY WANJIRU NJOKA ..... EXPARTE APPLICANT**

**AND**

**ELIZABETH WANJIKU NJOKA (SUING AS THE LEGAL REPRESENTATIVE  
OF ALICE KAHAKI NJOKA - DECEASED) ..... INTERESTED PARTY**

**RULING**

**Introduction.**

1. This ruling is in respect of the Interested Party/Applicant’s Notice of Motion application dated 2<sup>nd</sup> August, 2023.
2. The said application is expressed to be brought under Order 53 Rule 3(2) of the Civil Procedure Rules and seeks the following prayers;
  - a. That Applicant be granted leave to participate in these proceedings.



- b. That if prayer one above is granted this honorable court be pleased to grant the following consequential orders;
    - i. This honorable court be please to order the ex parte applicant to serve on her all pleadings in this suit as mandated by Order 53 Rule 3(2) of the Civil Procedure Rules.
    - ii. This honorable court be pleased to give directions to facilitate the fair adjudication of the issues in dispute.
  - c. That this honorable court be pleased to order that the ex parte applicant pays the cost.
3. The application is based on the grounds on its face and supported by the affidavit of Elizabeth Wanjiku Njoka. The supporting affidavit is sworn on 2<sup>nd</sup> August, 2023.

### **Factual Background.**

4. The ex parte Applicant/Respondent commenced this suit vide an application dated 11<sup>th</sup> March, 2022 wherein she sought the following prayers;
  - a. That the subject/applicant be granted leave to apply to this honorable court do issue an order of mandamus directed to the respondent herein, by themselves and or their successor in office to implement the decision of National Land Commission dated 28<sup>th</sup> January, 2019 in respect of LR No. Dundori/Lanet Block 5/216 (Kiamunyeki 'A') within such a period as the court may be consider just.
  - b. That costs of this application be in the cause.
5. The said application was heard on 14<sup>th</sup> March, 2022 where the ex parte Applicant/Respondent was granted leave to apply for an order of Mandamus to direct the Respondent to implement the decision of the National Land Commission dated 28<sup>th</sup> January, 2019 in respect of LR No. Dundori/Lanet Block 5/216 (Kiamunyeki 'A').
6. The ex parte Applicant/Respondent was also directed to file a substantive motion within twenty-one days.
7. The ex parte Applicant/Respondent filed the substantive Notice of Motion application on 16<sup>th</sup> March, 2022 which application seeks the following prayers;
  - a. That this honorable court do issue an order of mandamus directed to the respondent herein, by themselves and or their successor in office to implement the decision of National Land Commission dated 28<sup>th</sup> January, 2019 in respect of LR No. Dundori/Lanet Block 5/216 (Kiamunyeki 'A') within such a period as the court may be consider just and in default the court do issue notice to show cause do issue against the respondent why they should not be committed to civil jail for contempt of court. (sic)
  - b. That costs of this application be in the cause.
8. In response to the said application, the Respondent filed Grounds of Opposition dated 28<sup>th</sup> July, 2022 which were as follows;
  - a. The National Lands Commission does not have the power to revoke titles.
  - b. That the decision of the National Land Commission is a mere recommendation as was illustrated in the case of Mwangi Stephen Muriithi v National Land Commission & 3 others [2018] eKLR.



- c. The Land registrar is therefore not bound by the decision of the National Lands Commission hence a mandatory injunction cannot be issued.
  - d. The decision by the National Lands Commission cannot overturn a court's judgement.
  - e. There exists a court order in Nakuru HCC No. 33 of 1998 directing title number Dundori/Lanet Block 5/216 (Kiamunyeke A) be cancelled.
  - f. The Judicial Review application does not meet the threshold for issuance of the orders sought.
9. The parties were directed to file submissions and the matter reserved for judgement on 23<sup>rd</sup> February, 2023.
  10. Before the said date, the Interested Party/Applicant filed the application dated 16<sup>th</sup> November, 2022 which was struck out on 27<sup>th</sup> July, 2023 and the Interested Party/Applicant directed to move this court to be properly joined in the proceedings.
  11. As a result, the Interested Party/Applicant filed the application under consideration on 3<sup>rd</sup> August, 2023.
  12. The application first came up for directions on 2<sup>nd</sup> October, 2023 and further mentioned on 25<sup>th</sup> October, 2023 when the court directed that it be heard by way of written submissions.
  13. On 21<sup>st</sup> March, 2024, parties confirmed having filed their submissions and the application was reserved for ruling.

**The Interested Party/Applicant's contention.**

14. The Interested Party/Applicant contends that she is the legal representative of the estate of her late mother Alice Kahaki Njoka who died in the year 1983.
15. The Interested Party/Applicant also contends that she was issued with a grant in Nakuru High Court Succession Cause Number 16 of 1984; In the Matter of the Estate of Alice Kahaki Njoka.
16. The Interested Party/Applicant further contends that the court at paragraphs 131-133 of its ruling delivered on 27<sup>th</sup> July, 2023 noted that she was an affected person and was entitled to be heard.
17. It is her contention that she wishes to incorporate her affidavit sworn on 16<sup>th</sup> November, 2022 and that she reiterates its contents.
18. It is also her contention that as she had deposed in her affidavit sworn on 16<sup>th</sup> November, 2022, her late father intermeddled with the estate of her late mother together with the ex parte Applicant/Respondent among other people.
19. The Interested Party/Applicant contends that in September 2016 she filed a suit against the ex parte Applicant/Respondent among other people which suit is part heard.
20. The Interested Party/Applicant also contends that the suit property in the present matter which is land parcel No. Dundori/Lanet Block 5/216 is among the properties in the pending suit.
21. The Interested party/Applicant further contends that her sister Christine Nyagitha Njoka is a trustee of the estate of their late mother and that she had been issued with a grant.
22. It is her contention that the ex parte Applicant/Respondent's title deed was cancelled on 22<sup>nd</sup> January, 2016 through a Kenya Gazette Notice.



23. It is also her contention that she has been advised by her advocates on record that she has a constitutional right to be heard in opposing the Judicial Review application herein.
24. It is further her contention that she has read the ex parte Applicant/Respondent's Notice of Motion dated 16<sup>th</sup> March, 2022, the statement dated 11<sup>th</sup> March, 2022 and the verifying affidavit sworn on 11<sup>th</sup> March, 2022.
25. The Interested Party/Applicant contends that the ex parte Applicant/Respondent has sworn a false affidavit and statutory declaration as she failed to disclose that she had been sued and that the Interested Party/Applicant is affected directly with the proceedings in this matter.
26. The Interested Party/Applicant also contends that the ex parte Applicant/Respondent further failed to disclose that there was another matter pending before the Family Division.
27. The Interested Party/Applicant further contends she wishes to protect all her late mother's assets which include the suit property herein.
28. She contends that she became aware of the present proceedings through a friend who drew her attention to a cause list dated 17<sup>th</sup> October, 2022 wherein the matter was listed.
29. She also contends that she will be greatly prejudiced as she had not been given a chance to present before this court the interests of the estate of her late mother.
30. She ends her deposition by stating that given the reasons in the body of the motion, she is entitled to the orders sought.

**The ex parte Applicant/Respondent's Response.**

31. The ex parte Applicant/Respondent filed a Replying Affidavit sworn on 6<sup>th</sup> September, 2023.
32. The ex parte Applicant/Respondent contends that as sworn in her affidavit on 28<sup>th</sup> November, 2022, the Interested Party/Applicant herein is a busy body whose aim is to unprocedurally reverse the decision of the National Land Commission of 28<sup>th</sup> January, 2019 that made a finding that land parcel No. Dundori/Lanet Block 5/216 (Kiamunyeki 'A') reverts back to her name as it was fraudulently transferred to Christine Nyagitha Njoka.
33. The ex parte Applicant/Respondent also contends that the Interested Party/Applicant was aware of the proceedings before the National Land Commission but did not seek to be joined as an Interested Party as she expected the judgement to be in favour of her sister Christine Nyagitha Njoka.
34. The ex parte Applicant/Respondent further contends that after the National Land Commission made its decision, neither the Interested Party/Applicant nor Christine Nyagitha Njoka appealed the said decision.
35. It is her contention, therefore, that the Interested Party/Applicant is estopped from making any application to be joined in the present proceedings.
36. It is also her contention that the Interested Party/Applicant has approached this court with dishonesty and unclean hands for if she had any interest in protecting the suit property, she should have informed the Director of Criminal Investigations to investigate the fraudulent transfer of the suit property as recommended by the National Land Commission.



37. It is further her contention that the Interested Party/Applicant is estopped from joining these proceedings as she had not made the application under Section 6 of the Civil Act(sic) to stay these proceedings.
38. She contends that if at all the suit property forms part of the subject matter in Nakuru HC Misc. Application No. 33 of 2006 which is partly heard, the Interested Party/Applicant ought to have applied for stay of proceedings to avoid the issuance of conflicting decisions by two courts in respect of the same subject matter.
39. The ex parte Applicant/Respondent contends that the Interested Party/Applicant has failed to demonstrate the interest of the estate of Alice Kahaki in the present proceedings as the suit property has never been registered in the name of the deceased.
40. The ex parte Applicant/Respondent also contends that the Interested Party/Applicant has not demonstrated any prejudice she is likely to suffer if she is not joined in these proceedings.
41. The ex parte Applicant/Respondent further contends that the person directly affected is Christine Nyagitha Njoka since the suit property was registered in her name.
42. It is her contention that the Interested Party/Applicant is litigating on behalf of Christine and not the estate of Alice Kahaki (deceased).
43. She ends her deposition by stating that the Interested Party/Applicant's Notice of Motion dated 2<sup>nd</sup> August, 2023 should be dismissed with costs as it is an abuse of the court process.  
The Interested Party/Applicant's Response to the ex parte Applicant/Respondent's Replying Affidavit.
44. In response to the ex parte Applicant/Respondent's replying affidavit, the Interested Party/Applicant filed a Further Affidavit sworn on 3<sup>rd</sup> November, 2023.
45. She reiterates the averments in her supporting affidavit and deposes that she has been advised by her advocates on record that within the meaning of Order 53 Rule 3(2) of the Civil Procedure Rules, every person has the right to participate in Judicial Review Proceedings which affect his rights as a property owner.
46. She also deposes that the estate of her late mother is the owner of the suit property and that is why she filed the application for joinder on 3<sup>rd</sup> August, 2023.
47. She further deposes that the court in Nakuru HCC Misc. Suit No. 33 of 2016; Elizabeth Wanjiku Njoka vs Juma Kiplenge & 12 Others ought to be served with (sic) the present judicial review proceedings which the ex parte Applicant/Respondent wants to be determined by the Environment and Land Court instead of the family court.
48. It is her deposition that in 2017, Justice Ndung'u in a ruling delivered in Nakuru HCC Misc. Suit No. 33 of 2016; Elizabeth Wanjiku Njoka vs Juma Kiplenge & 12 Others declined to dismiss the suit after a preliminary objection was raised on jurisdiction.
49. It is also her deposition that the said ruling bars the present proceedings as Nakuru HCC Misc. Suit No. 33 of 2016; Elizabeth Wanjiku Njoka vs Juma Kiplenge & 12 Others is still pending in court and the ex parte Applicant is a Defendant.



50. It is further her deposition that the ex parte Applicant/Respondent has not denied that the suit property forms part of the subject matter in the case pending before the High Court and therefore there is a possibility of two conflicting decisions being given with regard to the suit property.
51. The Interested Party/Applicant deposes that the National Land Commission did not have jurisdiction to make a determination on the suit property given that Nakuru HCC Misc. Suit No. 33 of 2016; Elizabeth Wanjiku Njoka vs Juma Kiplenge & 12 Others is pending before court.
52. The Interested Party/Applicant also deposes that the ex parte Applicant/Respondent is guilty of forum shopping which is not allowed in law.
53. The Interested Party/Applicant further deposes that the ex parte Applicant/Respondent is guilty of material non-disclosure of facts and she is therefore not entitled to be granted any relief sought.
54. She deposes that under Article 50 of *the Constitution* of Kenya she has a right to a fair hearing and under Order 53 Rule (3)(2) of the Civil Procedure Rules, she has a right to participate in the present proceedings and she therefore ought to have been served with the pleadings in this matter.
55. She contends that the Court of Appeal in James N. Wa Wambu vs Republic & 7 others [1995] eKLR held that a property owner has a right to participate in Judicial Review proceedings and where the property owner is not served, he is entitled to have the Judicial Review order set aside.
56. She also contends that disclosure is important in Judicial Review proceedings as was held in Nairobi High Court Miscellaneous Number 128 of 2003; Kenya African National Union vs Mwai Kibaki & 6 Others [2005]eKLR and since the ex parte Applicant/Respondent failed to disclose some matters, the application ought to be dismissed.
57. She ends her deposition by stating that it is in the interest of justice that she is joined to the present proceedings.

**Issues for determination.**

58. The Interested Party/Applicant filed her submissions on 8<sup>th</sup> November, 2023 while the ex parte Applicant/Respondent filed her submissions on 27<sup>th</sup> November, 2023.
59. The Interested Party/Applicant in her submissions reiterates her averments in the supporting affidavit, further affidavit and relies on Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others [2014]eKLR and Meme vs Republic [2004] 1 EA 124.
60. The Interested Party/Applicant also relies on Order 53 Rule 3(2) of the Civil Procedure Rules and submits that she is a necessary party to the present proceedings as any orders issued herein could adversely affect her late mother's estate.
61. The Interested Party/Applicant also relies on the judicial decisions of S.N.K v M.S.N.K Civil Appeal No. 277 of 2005 and James N. Wa Wambu vs Republic & 7 Others [1995] eKLR.
62. The Interested Party/Applicant relies on Republic v Communication Authority of Kenya and another ex parte Legal Advice Center aka Kituo Cha Sheria [2015] eKLR and seeks that her application be allowed as prayed.
63. The ex parte Applicant/Respondent submits that she concedes to the Interested Party/Applicant's application and seeks that the present suit be stayed pending the hearing and determination of Nakuru HCC Misc Suit No. 33 of 2016.



64. The ex parte Applicant admits that she is a party in Nakuru HCC Misc Suit No. 33 of 2016 and if both cases are allowed to proceed, there is a likelihood of two conflicting decisions arising.
65. She seeks that the costs of the application be in the cause.

### **Analysis and Determination.**

66. After considering the application, the response thereto, the further affidavit and the rival submissions filed herein, the issues that arise for determination are (a) whether the Interested Party/Applicant should be allowed to participate in the present proceedings and (b) who should bear the costs of this application.
67. 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.”
68. The Supreme Court in *Communications Commission of Kenya and 4 Others v Royal Media Services Limited & 7 Others* [2014] eKLR defines an interested party 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 Matemu* 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 mine)

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.

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?” (Emphasis mine)



69. The Interested Party/Applicant seeks leave to participate in the present proceedings on the ground that the estate of her late mother has an interest in land parcel No. Dundori/Lanet Block 5/216 which is the suit property.
70. The Interested Party/Applicant contends that she is the legal representative of the estate of her late mother Alice Kahaki Njoka who died in the year 1983 adding that she was issued with a grant in Nakuru High Court Succession Cause Number 16 of 1984; In the Matter of the Estate of Alice Kahaki Njoka.
71. The Interested Party/Applicant alleges that the suit property is subject to other proceedings in the High Court in Nakuru High Court Miscellaneous Application No. 33 of 2016 which she argues the ex parte Applicant/Respondent failed to disclose. She explains that the proceeding before the High Court relate to intermeddling with the estate of Alice Kahaki Njoka and the suit property is in the list of properties that the ex parte applicant is accused of intermeddling with.
72. This court vide a ruling delivered on 27<sup>th</sup> July, 2023, at paragraphs 131-133 noted that the Applicant was an affected person and therefore entitled to be heard. The court further directed that the Applicant files an application for joinder. The application under consideration was filed on account of this direction.
73. The ex parte Applicant/Respondent opposes the said application on the ground that the Interested Party/Applicant was not a party to the proceedings before the National Land Commission and she should therefore not be joined to the present proceedings.
74. The ex parte Applicant/Respondent also argues that the Interested Party/Applicant has failed to demonstrate the interest of the estate of the late Alice Kahaki in the present proceedings.
75. It is important to note that the ex parte Applicant/Respondent, in her submissions, concedes that Interested Party/Applicant's application be allowed and that this suit be stayed pending the hearing and determination of Nakuru HCC Misc Suit No. 33 of 2016.
76. The Supreme Court in Francis K. Muruatetu and another v. Republic & 5 others (2016) eKLR set out the following requirements to be taken into consideration in an application for joinder as interested party;
  - a. The Personal interest or stake that the party has in the matter must be set out in the application. The Interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
  - b. The prejudice to be suffered by the intended Interested Party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
  - c. Lastly, a party must, in its application, set out the case and/or submission it intends to make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the court."
77. Taking into consideration the Applicants deposition and further the directions issued in the ruling delivered by this court on 27<sup>th</sup> July, 2023, I find that the applicant has demonstrated that she has a stake in this suit as the suit property is claimed to form part of the estate of her deceased mother. The



applicant is the legal representative of the estate of her deceased mother and has produced a copy of the grant issued to her.

78. Secondly, the applicant has expressly stated that she will be greatly prejudiced if she is not given a chance to present before this court the interests of the estate of her late mother. I agree that if the applicant is not joined to this suit, she will suffer prejudice as the orders sought relate to the suit property which is alleged to form part of the estate of her deceased mother.
79. Lastly, the applicant stated in her previous affidavits sworn in support of the application giving rise to the ruling delivered by this court on 27/7/2024, which she has urged the court to rely on in determining this application, that she intends to demonstrate that the suit property was erroneously registered in the name of the ex parte applicant as it belonged to her mother and not her deceased father through whom the ex parte applicant lays claim to it.
80. My view, therefore, is that the Interested Party/Applicant has met the requirements for grant of an order for joinder.

### **Disposition.**

81. Consequently, the Notice of Motion application dated 2<sup>nd</sup> August, 2023 is allowed in the following terms:
  - a. The Applicant is hereby granted leave to participate in these proceeding as an Interested Party.
  - b. The ex parte Applicant shall serve upon the interested Party all pleadings and documents.
  - c. The costs of this application shall be in the cause.
82. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 2<sup>ND</sup> DAY OF MAY, 2024.**

**L. A. OMOLLO**

**JUDGE**

In the presence of:

No appearance for the Applicant/Interested Party.

No appearance for the Respondent/ex parte Applicant.

Court Assistant: Mr. Joseph Makori.

