



**Flora Impex Limited v Kenya Rural Roads Authority & 4 others; Kensington Limited (Applicant)
(Environment & Land Case 209 of 2018) [2024] KEELC 5053 (KLR) (3 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5053 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 209 OF 2018**

SM KIBUNJA, J

JULY 3, 2024

BETWEEN

FLORA IMPEX LIMITED PLAINTIFF

AND

KENYA RURAL ROADS AUTHORITY 1ST DEFENDANT

KENYA POWER & LIGHTING COMPANY 2ND DEFENDANT

DEVELOPMENT FUND 3RD DEFENDANT

KENYA AIRPORTS AUTHORITY 4TH DEFENDANT

NATIONAL LAND COMMISSION 5TH DEFENDANT

AND

KENSINGTON LIMITED APPLICANT

RULING

1. Vide a notice of motion dated 21st July 2022, the intended interested party moved the court seeking orders that it be joined to the suit, or in the alternative the court to “stay the proceedings in this matter as there exists a suit in the Environment and Land Court, Mombasa, between the Plaintiff and the applicant/ intended interested party, over the subject issue in this particular case to wit Msa Elc 173 Of 2013 Kensington Limited Vs Flora Impex Ltd, Chief Land Registrar And The Attorney General.” The application is predicated on the five (5) grounds on its face marked (a) to (e), and supported by the affidavit of the Mahesh Kawtilal Shanghrajka Shah, sworn on the 20th July 2022, inter alia deposing that a dispute arose over the suit lands in 2013. And the intended interested party filed MSA ELC 173 of 2013 against the plaintiff, the Chief Land Registrar and the Attorney General; that the plaintiff filed its defence and supporting documents, and the suit is still pending in court; that the plaintiff has assumed ownership of the suit property in this suit yet the matter is still live in a court of concurrent



jurisdiction; that the plaintiff has not disclosed material facts and has misrepresented the court on the correct position of facts.

2. The plaintiff opposed the application through the replying affidavit of Ali Kinuthia, property manager, sworn on 13th December 2023 inter alia deposing that only two parties in MSA ELCC 173 of 2013 are involved in this suit; that this suit is about encroachment and misuse of title No. Cr.47417, Mn/vv1/3868 by the defendants', that in the other suit the dispute is on ownership of Cr47229, L.R No. 3868/Vi/mn while in this suit is over ownership of several plots Mn/v1/3863 [cr No. 49419], Mn/v1/3864 [cr. No. 45962], Mn/v1/3866 [cr. No.47228], Mn/v1/3867 [cr. No. 47230] And Mn/v1/3868 [47229]; that from the pleadings, the intended interested party acknowledges the plaintiff as the current registered owner of that suit property, which position will subsist until that suit is determined; that the current suit only aims to safeguard the status of the suit property, and the joinder of the intended interested party will only delay justice; that the intended interested party, in its endeavour to acquire ownership of the suit property, failed to notice the encroachment by the defendants herein and therefore failed to file an application to stop the said encroachment until four (4) years after the encroachment of the suit property, when it filed the instant application; that the intended interested party has an ulterior motive of frustrating this suit as it has failed in prosecuting the other suit for over 10 years; that joining the intended interested party in this suit will serve no evidential purpose as it cannot frame new issues and can only skirt around the issues framed by the current parties.
3. The intended interested party responded to the above vide a supplementary affidavit sworn by Mahesh S.K Shah on 14th January 2024 deposing inter alia that it is the registered owner of Cr 47229 L.r No. 3868/Vi/mn; that the National Land Commission informed them of this suit vide a letter dated 16th January 2023; that on 13th October 2016 the National Land Commission had revoked the grants held by the plaintiff, including that of the suit property; that the intended interested party's participation is necessary as it holds title to the suit property; that there are two (2) grants to wit Cr49417 and Cr 47229 held by the plaintiff and intended interested party, with respect to the suit property; that the grant held by the plaintiff is fake; that one of the claims in the suit is for compensation for a boundary wall erected on the suit property, when in actual fact it is the interested party who constructed the said wall; that the interested party would be prejudiced if it does not participate in the proceedings in this suit; that the plaintiff has never appealed against the above mentioned findings of the National Land Commission.
4. The 4th defendant opposed the application through the two (2) grounds of opposition dated the 9th April 2024, that the intended interested party ought to pursue its own claim and not be joined in this suit and that their application lacks merit and is an abuse of the court process.
5. The learned counsel for the intended interested party, plaintiff and 4th defendant filed their submissions dated 26th January 2024, 16th February 2024 and 9th April 2024 respectively, which the court has considered.
6. The following are the issues for determination by the court:
 - i. Whether the intended interested party is a necessary party to be added in this proceeding in order for the court to effectually and completely adjudicate upon or settle all questions involved in the suit.
 - ii. What orders to issue.
 - iii. Who pays the costs in the application?
7. The court has carefully considered the grounds on the notice of motion and affidavit evidence, submissions by the learned counsel, superior courts decisions cited thereon and come to the following findings:



- a. Joinder of interested parties is governed by Order 1 Rule 10 (2) of the *Civil Procedure Rules* which states as follows:

“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 or settle all questions involved in the suit, be added.”

In the case of *Lucy Nungari Ngigi & 128 others v National Bank of Kenya Limited & another* [2015] eKLR the court stated that;

“joinder of parties may be refused where such joinder: will lead into practical problems of handling the existing cause of action together with the one of the party being joined; is unnecessary; or will just occasion unnecessary delay or costs on the parties in the suit. In other word, joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible to or totally different from existing cause of action or the relief. The determining factor in joinder of parties is that a common question of fact or law would arise between the existing and the intended parties.”

It behooves this court to therefore, weigh the effectiveness of joining the intended interested party in this suit, considering that it reportedly, has a case of its own in another suit. It is important for the court to consider what the claims in both suits are, to enable it to determine the above question. From the plaint filed in ELC No. 173 of 2013, it is clear the plaintiff, who is the intended interested party herein, seeks for inter alia, declaration that it is the bona fide owner of Cr. 47229 L.R No. 3868/Section Vi/mn, while in this suit the plaintiff seeks inter alia a declaration that it is the bonafide owner of Cr. 49417 L.R No. 3868/Section Vi/mn.

- b. The contention by the plaintiff that the intended interested party will be by-standers in this suit, do not hold much water, as it has exhibited some title documents to the suit land, and the plaintiff also claim title to the said property. Furthermore, the intended interested party has alleged that the title to the suit property held by the plaintiff was revoked on 13th October 2016 by the National Land Commission, and that no appeal had been preferred by the plaintiff. The intended interested party has also alleged that it is the one that had constructed the section of the boundary wall, which is subject matter of one of the prayers in this suit, and that was allegedly demolished by the defendants. The above allegations by the intended interested party amounts to a challenge on the validity of the plaintiff’s claim, and the grant held by the plaintiff over the suit property, which goes to the substratum of this suit. It is therefore important that the intended interested party be allowed to participate in this suit through being joined as prayed in its application.
- c. The plaintiff and 4th defendant have contended that the intended interested party has its own suit being ELC No. 173 of 2013, that it has not prosecuted for years, and that joining it in this suit will lead to delaying of the proceeding. The court appreciates that one of the pillars of the Chief Justice’s blueprint of Social Transformation through Access to Justice is that of accessibility of justice. The courts, and parties for that matter, are now able to access details of cases from the e-filed documents, even where they have not been physically presented to the



courts, or served upon the other party. Gone are the days when the court was at the mercy of advocates/litigants, when it comes to information of suits that are pending in other courts. From the Case Tracking System, the court has noted that the ELC No. 173 of 2013 was coming up for mention before ELC 2 on the 25th June 2024, and was dismissed for non- attendance/ want of prosecution. That as I prepare this ruling, that suit is no longer in existence or pending. The possibility that the decision in ELC No. 173 of 2013 and this suit may be contradictory no longer exists.

- d. That even if ELC No. 173 of 2013 was to eventually be revived and proceeds to hearing and determination, the court still has recourse to consider consolidation or staying one suit pending determination of the other, upon application by the parties or on its own motion. In [*Kenya Wildlife Service Vs James Mutembei*](#) (2019) eKLR, the court held that:

“Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent”.

In the case of *Global Tours & Travels Limited*; Nairobi HC Winding up Cause No. 43 of 2000 the court stated that:

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously”.

And, in the case of [*Kenya Wildlife*](#) Case (*Supra*), the court quoted [*Halsbury's Law of England*](#), 4th Edition. Vol. 37 page 330 and 332, that:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”

- e. The superior courts have severally emphasized that the power to stay proceedings ought to be exercised sparingly, and only in exceptional cases, like where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. An applicant for a stay application on this ground, must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.



- f. Costs under section 27 of *Civil Procedure Rules* follow the event unless where there is good reason for the court to depart from the rule. In this instant, I am of the view that justice will be served better by an order that costs abide the outcome of the main suit.
8. In view of the above conclusions, the court find and order as follows: -
- a. That the intended interested party be joined as the interested party in this suit.
 - b. The interested party be at liberty to obtain copies of the pleadings so far filed from the court record, through the Deputy Registrar, and to file and serve their documents within the next thirty (30) days from today.
 - c. All Parties are at liberty to file and serve amended pleadings, supplementary list of witnesses and documents in sixty days from today.
 - d. Costs to abide the outcome of the suit.

Orders accordingly.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 3RD DAY OF JULY 2024.

S. M. KIBUNJA, J.

ELC MOMBASA.

IN THE PRESENCE OF:

PLAINTIFF : No appearance.

DEFENDANTS : M/s Ngei for 3rd Defendant, Mr. Wafula for 4th Defendant and M/s Kabole for 2nd Defendant.

Interested Party : Mr. Anangwe.

LEAKEY – COURT ASSISTANT.

S. M. KIBUNJA, J.

ELC MOMBASA.

