



Kisai & 2 others (Suing on their behalf and on behalf of 443 members of the Olongonot Community) v Kiambu Nyakinyua Farmers Co Limited & 2 others; Kiwaka General Merchants Limited & 3 others (Interested Parties); Gathoni alias Lucy Francis Gathoni Mwituria & 24 others (Proposed Interested Parties) (Environment and Land Case 11 of 2024) [2024] KEELC 5220 (KLR) (Environment and Land) (11 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5220 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND CASE 11 OF 2024
MC OUNDO, J
JULY 11, 2024
FORMERLY NAKURU ELC 199 OF 2012

BETWEEN

DANIEL LEMASHISHA KISAI 1ST PLAINTIFF
MURE PARSITAU SAYO 2ND PLAINTIFF
MOSES JONGA OLE KIPISHIAN 3RD PLAINTIFF
SUING ON THEIR BEHALF AND ON BEHALF OF 443 MEMBERS OF THE
OLONGONOT COMMUNITY

AND

KIAMBU NYAKINYUA FARMERS CO LIMITED 1ST DEFENDANT
LAND REGISTRAR NAIVASHA 2ND DEFENDANT
NATIONAL LAND COMMISSION 3RD DEFENDANT

AND

KIWAKA GENERAL MERCHANTS LIMITED INTERESTED PARTY
VALLERIE ZOLA ANYANGO INTERESTED PARTY
CHRISTOPHER KANAI KAMAU INTERESTED PARTY
TRACY YVONNE AKOTH RADO INTERESTED PARTY

AND



LUCY GATHONI ALIAS LUCY FRANCIS GATHONI MWITURIA . PROPOSED INTERESTED PARTY

MARGARET WANJIRU MWANGI ALIAS MARGARET MWANGI . PROPOSED INTERESTED PARTY

MUTHONI MIIRI ALIAS PAULINE MUTHONI KATAMPOI PROPOSED INTERESTED PARTY

NJERI KIRUMBA ALIAS LUCY NJERUI KIRUMBA ALIAS LUCY NJERI MWAURA PROPOSED INTERESTED PARTY

MARY WANDIA KARIUKI PROPOSED INTERESTED PARTY

LUCY WAMBUI NG'ANG'A PROPOSED INTERESTED PARTY

NJOKI NDURIMU ALIAS JOSPHINE NJOKI NGURIMU PROPOSED INTERESTED PARTY

WANGUI KAMAU ALIAS ALICE WANGOI MAHIHU PROPOSED INTERESTED PARTY

WANGUI NDUNGU ALIAS JOYCE WANGUI KIMOTHO PROPOSED INTERESTED PARTY

WAITHIRA PETER ALIAS BENADETTE WAITHIRA PETER PROPOSED INTERESTED PARTY

WAITHIRA MUIGAI ALIAS JESCAH WAITHIRA MUIGAI PROPOSED INTERESTED PARTY

NDUTA NGUGI ALIAS LOISE NDUTA NGUGI REPRESENTED BY NGUGI KAHURA PROPOSED INTERESTED PARTY

WANJIRU NJOROGE ALIAS BENADETTE WANJIRU MWITURIA PROPOSED INTERESTED PARTY

WAMBUI NGURIMU ALIAS DAMARIS WAMBUI NGURIMU ALIAS DAMARIS WAMBUI KABE PROPOSED INTERESTED PARTY

WAMBUI KAMAU ALIAS LUCY WAMBUI KAMAU PROPOSED INTERESTED PARTY

PATRICIA JONAH KAMAU PROPOSED INTERESTED PARTY

NYAMBURA LUCU ALIAS IDA CARALINE NYAMBURA PROPOSED INTERESTED PARTY

WANJITU KIMANI ALIAS GRACE WANJIRU KIMANI PROPOSED INTERESTED PARTY

WAMBUI KABIRU ALIAS SUSAN WANJIRU NDEKEI PROPOSED INTERESTED PARTY

WANJIKU KARIMA ALIAS HANNAH WANJIKU KARIMU PROPOSED INTERESTED PARTY

WACHEKE NJOROGE ALIAS MARTHA WACHEKE NJOROGE PROPOSED INTERESTED PARTY



NJERI NJOROGI ALIAS MARGARET NJETI NJOROGI PROPOSED INTERESTED PARTY

LUCY WANGUI NJERU PROPOSED INTERESTED PARTY

RAHAB NJERI ALIAS HELLEN NJERI MATA PROPOSED INTERESTED PARTY

MARIA KARIMI ALIAS MARIA KARIMI GATHU PROPOSED INTERESTED PARTY

RULING

1. Coming up for determination is a Notice of Motion dated 15th January, 2024 brought pursuant to the provisions of Sections 1A, 1B, 3, 3A of the *Civil Procedure Act* cap 21 and under Order 1 Rule 10 of the *Civil Procedure Rules, 2010* and Section 25 and 26 of the *Land Registration Act*, No. 3 of 2012 and all enabling provisions of the law in which the Proposed Interested Parties/Applicants sought for orders that they be joined in the instant suit.
2. The Application was supported by the grounds therein and the Supporting Affidavit of an even date sworn by Njeri Kirumba alias Lucy Njeri Kirumba alias Lucy Njeri Mwaura, one of the proposed Interested Parties/Applicants on behalf of the other Interested Parties/Applicants who deponed that they had an interest in the suit property owing to the fact that they had individually and collectively acquired portions of land that comprised part or whole of the suit property, the subject matter of the instant suit. That they had acquired the said portions from the 1st Defendant by way of sale transactions made on diverse dates. That subsequently, they had inherent interest in the outcome of the present suit for which they should be heard as interested parties.
3. That the Applicants had discovered that the 1st Defendant's directors were parties in criminal cases No. CR 764/278/2022 and CR E614/2022 which were pending hearing and determination. That the said directors had not acted in the best interest of the 1st Defendant thus the Applicants' concerns about their ability to pursue their best interest in the suit property.
4. That unless the orders sought herein were granted, the Applicants stood to lose the monies that they had invested in the purchase of their respective portions of the suit property coupled with the loss of individual and collective interests in the said portions of land that comprises the suit property in part or in whole.
5. That they intended to demonstrate that they were bona fide purchasers for value of the said portions of land hence their legitimate interest in the suit herein which was meant to present to the court a full and accurate picture that would enable it make a justiciable decision that would protect the interest of all parties involved in the instant matter and afford the Applicants a chance for a fair hearing.
6. In reply and in opposition to the Proposed Interested Parties/Applicants Application, the Plaintiffs/ Respondents via their Replying Affidavit dated 15th March, 2024 sworn by Saitoti Ole Suwakei, the Chairman of the elders of the Maasai Olongonot Community deponed that he had been chairman of the elders since the beginning of the year 2019. That his predecessor, one Daniel Lemashisha Kisai (deceased) was the 1st Plaintiff in the instant suit that had been filed on behalf of the community but that he had since obtained authority of the Co-Plaintiffs herein as well as the Maasai Olongonot Community to represent them in the present proceedings.



7. That the 1st Defendant and its members had been aware of the instant suit when it had been filed in the year 2001 at the High Court in Nairobi. That via a Ruling dated 23rd February, 2023 that the court had allowed four (4), out of the 22 intended interested parties, to be joined in the instant suit as they had demonstrated that they had an interest in the suit property hence had a stake in the proceedings.
8. That further via the ruling of 16th May, 2023, the court, taking cognizance of the fact that the matter had directly touched on the leadership squabbles among the 1st Defendant's factions, granted leave of 60 days to the said members to file a competent application seeking to represent the 1st Defendant. The Applicants did not comply but instead filed the instant Application seeking to be joined as interested parties.
9. That subsequently, the instant Application was yet another calculated attempt to delay the Plaintiff's claim over the suit property for which they had been in peaceful occupation for over 60 years. That if however there had been any transaction on the suit land as alleged, then the same had been done without the Plaintiffs' knowledge and during their continued undisturbed possession of the suit property. He thus prayed that the instant Application be dismissed with costs and the matter proceed to full hearing as had been previously scheduled.
10. The Defendants and the Interested Parties did not participate in the Instant Application.
11. The Application was disposed of by way of written submissions wherein the Applicants (Proposed Interested Parties) via their submissions dated 6th May, 2024 framed one issue for determination to wit; whether they had met the criteria for granting the prayers as sought.
12. They placed reliance on the provisions of Order 1 Rule 10 of the *Civil Procedure Rules* and on the decided case of *Gladys Nduku Nthuki v Letshego Kenya Limited; Mueni Charles Maingi (Intended Party)* [2022] eKLR where the court had cited the case of *Kingori v Chege & 3 Others* [2002] 2 KLR to submit that the court had power to grant the prayers sought herein. That it was evident that they were a proper and necessary party whose presence was necessary to enable the court have a fuller picture of the facts of the case since they had acquired property that had been sold to them by the 1st Defendant and therefore the court's decision was likely to affect them.
13. They thus submitted that their joinder to the instant suit was relevant to have the court arrive at a just decision that was relevant to the interest of all the parties to the suit.
14. The Plaintiffs (Respondents) on the other hand via their submissions dated 14th May, 2024 summarized the factual background of the matter in question before also placing reliance on the provisions of Order 1 Rule 10(2) of the *Civil Procedure Rules* and the decided case of *Communication Commission of Kenya & 4 Others v Royal Media Services Limited & 7 Others* [2014] eKLR that elaborated on the guidelines for determining whether a party was qualified for admission as an interested party. They also submitted that the Interested Party had been indolent and sought that the court takes cognizance at the numerous opportunities that the proposed interested parties individually and as represented by the 1st Defendant had been given to pursue their alleged claim but had failed to do so. That indeed it had taken close to 443 families to get their day in court and pursue their rightful claim over the suit property. Reliance was placed on the case of *John Ongeru Mariaria & 2 others v Paul Matundura* [2004] 2 EA 163.
15. That despite the fact that the court had given leave of 60 days to any person seeking to join the instant proceedings, yet the present application had been brought 8 months after the said directions had been issued thus demonstrating the indolence and impunity of the Applicants which was reflective and consistent with their previous actions in that regard.



16. That they would suffer prejudice were the instant Application allowed, because the matter had been court for close to 22 years after it had been held in abeyance pursuant to an application that had sought that the court give priority to a suit by the 1st Defendant and its constituent members who had failed to and/or misused the said priority wherein the suit had been dismissed with costs. That the continued accommodation of numerous applications had denied the Plaintiffs/Respondents an opportunity to be heard in court for the last 22 years.
17. That previous applications had been dismissed for lack of proof of ownership to the alleged parcels of within the suit property wherein the Applicants' alleged share certificates, which had not been authenticated or certified, did not meet the threshold required to demonstrate interest. That the proposed interested parties were underserving of being joined to the instant proceedings as they had been indolent and had no demonstrable stake in the present proceedings and the suit property.

Determination

18. I have considered the Application, the affidavits in support and in opposition, the submissions by the rival parties, the law and authorities herein cited. The genesis of the instant matter as alleged by the intended interested parties herein referred to as the Applicants is that having purchased portions of the suit land through share certificates from the 1st Defendant herein which had subsequently disposed portions of the suit land to them on diverse dates, that their joinder to the suit proceedings would demonstrate that they were bona fide purchasers for value of the said portions of land hence had legitimate interest in the suit. That their joinder would also enable them present to the court a full and accurate picture that would enable it make a justiciable decision that would protect the interest of all parties involved in the instant matter and afford them a chance for a fair hearing.
19. I have also considered a ruling delivered by the court on 23rd February 2023 wherein the Applicants therein and sought for similar orders of joinder to the suit stating that they had bought portions of the vast suit land wherein they had acquired tiles to the same. The court having found that some of the interested parties held title deeds to portions of the suit land, had held that they had demonstrated that they had a stake in the proceedings and therefore allowed them to be joined as the 1st to 4th interested parties herein.
20. The issue for determination is whether the Applicants have certified the legal requirement for being joined as parties to proceedings.
21. The gist of the Applicants' argument is that they have a unique perspective and knowledge regarding the suit land and the circumstances surrounding its acquisition. In other words that they would shed light on the issues of their ownership and possession of the suit land.
22. The Legislative framework on the issue of joinder of parties to a suit is spelt out in Order 1 of the [Civil Procedures Rules](#). Order 1 Rule 10 provides a framework for substitution and addition of parties to a suit. Under Order 1 Rule 10(2), the same provides that:

“The court may at any stage of 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 the name of any person who ought to have been joined either as plaintiff or defendant or whose presence before the court may be necessary to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit to be added.(my emphasis)”



23. In *Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae)* (Petition 15 & 16 of 2015 (Consolidated)) [2016] KESC 12 (KLR) (Civ) (28 January 2016) (Ruling) at paragraph 37, the Supreme court outlined the elements applicable to a party seeking to be enjoined as an interested party as follows:
- i. “One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:
 - ii. 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.
 - iii. 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.
 - iv. Lastly, a party must, in its application, set out the case and/or submissions 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.”
24. In *Central Kenya Ltd v Trust Bank Ltd & 5 others* [2000] eKLR, the Court of Appeal held that;
- “The paramount consideration is whether the party concerned is necessary for the effectual and complete adjudication of all the questions involved in the suit.”
25. Having considered all the circumstances in the present case, I find that a party cannot be added to a suit to introduce a new cause of action or to alter the nature of the suit, but must be a party or parties who are necessary to the *constitution* of the suit without whom no decree can be passed. It should be a party or parties against whom a right or some relief is sought or who, although no relief may be claimed against, but whose presence would be necessary to enable the Court effectively and completely adjudicate upon and settle all the questions involved in the suit.
26. Article 50 (1) of the *constitution* of Kenya, states that:
- ‘Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body’.
27. The courts of this land have been consistent on the importance of observing the rules of natural justice and in particular hearing a person who is likely to be adversely affected by a decision before the decision is made. In the case of *Onyango v. Attorney General* (1986-1989) EA 456, Nyarangi, JA asserted at page 459:
- ‘I would say that the principle of natural justice applies where ordinary people who would reasonably expect those making decisions which will affect others to act fairly.’



28. At page 460 the learned judge added:

“A decision in breach of the rules of natural justice is not cured by holding that the decision would otherwise have been right. If the principle of natural justice is violated, it matters not that the same decision would have been arrived at.”

29. And in the case of *Mbaki & Others v. Macharia & Another* (2005) 2 EA 206, at page 210, the Court of Appeal held as follows:

“The right to be heard is a valued right. It would offend all notions of justice if the rights of a party were to be prejudiced or affected without the party being afforded an opportunity to be heard.”

30. From the affidavit and the submission by the Applicants, the decided authorities herein, and further, based on the fact that this court hesitates to place unnecessary hurdles on the access to justice and by extent access to the court. I find that the Applicants have persuaded me to exercise the court’s discretion under the provisions of Order 1 Rule 10 (2) of the [Civil Procedure Rules](#) to join them to these proceedings so that they may be afforded an opportunity to be heard.

31. I do hereby direct the Plaintiffs herein to file and serve their amended Originating summons within the next 14 days from the delivery of this ruling.

32. Further orders are to effect that the intended interested parties now interested parties shall upon service of the pleadings, file and serve their response within 14 days in compliance with pre-trial directions.

33. I make no orders as to costs.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 11TH DAY OF JULY 2024.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

