



**Kariuki v Nairobi & 5 others; Parkion & 3 others (Interested Parties);
Leeyio & 2 others (Proposed Interested Parties) (Judicial Review Application
E003 of 2022) [2023] KEELC 16226 (KLR) (9 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16226 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
JUDICIAL REVIEW APPLICATION E003 OF 2022
EK WABWOTO, J
MARCH 9, 2023**

BETWEEN

HEZEKIAH MWANGI KARIUKI APPLICANT

AND

REGISTRAR OF TITLES NAIROBI 1ST RESPONDENT

HON. ATTORNEY GENERAL 2ND RESPONDENT

THE CHIEF LAND REGISTRAR 3RD RESPONDENT

THE DISTRICT LAND REGISTRAR KAJIADO COUNTY .. 4TH RESPONDENT

STEPHEN O. AMBANI (LICENCED SURVEYOR) 5TH RESPONDENT

THE DIRECTOR OF SURVEY KENYA 6TH RESPONDENT

AND

MARTIN OLE PARKION INTERESTED PARTY

STEPHEN KOYIAKI INTERESTED PARTY

FRED YESHO MUZUNGYO INTERESTED PARTY

GIDEON LENANA NAKUO INTERESTED PARTY

AND

ANGELA NKATETO LEEYIO PROPOSED INTERESTED PARTY

NDATANI ENTERPRISES LIMITED PROPOSED INTERESTED PARTY

KENYA RAILWAYS CORPORATION PROPOSED INTERESTED PARTY



RULING

1. This ruling is in respect to three applications. The first application being the application dated August 26, 2022 filed by the 5th proposed interested party which seeks for joinder of the 5th proposed interested party as a party to this proceeding. The application also seeks to stay and or set aside the orders of this court issued on March 2, 2022 and also further seeks to struck out the entire suit as being an abuse of the court process.
2. The second application for determination is the application dated October 24, 2022 filed by the proposed 6th Interested party. The application primarily seeks the joinder of the 6th proposed interested party as a party to this proceedings.
3. The third application is the application dated November 22, 2022 which seeks similar orders for the joinder of the proposed 7th Interested party herein.
4. The applications are opposed by the applicant and the 1st to 4th Interested Parties. The Applicant filed a replying affidavit sworn by himself on November 18, 2022 in opposition to the said application while the 1st -4th Interested parties filed an affidavit sworn by Martini Ole Parkion.
5. Directions were issued by this court for all the applications to be heard together and the same to be canvassed by way of written submissions. The 7th proposed interested party filed written submissions dated February 14, 2023 through Nyaaga & Mugisha Advocates. The proposed 6th Interested party filed written submissions dated 17th January 2022 through Henia Anzala and Associates Advocates while the 5th proposed Interested party filed written submissions dated January 30, 2023 through Kinyanjui Kirimi and Company Advocates.
6. Relying on the cases of *Trusted Society of Human Rights v Mumo Matemo & 5 Others* [2014] eKLR, *Joseph Njau Kingori v Robert Maina Chege & 3 Others* [2002], *Judicial Service Commission vs Speaker of the National Assembly & Another* [2013] eKLR and Rule 2 and 7 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, Legal Notice No 117 of 2013 “Mutunga Rules”, the 5th proposed Interested Party argued that she is a proper party to the suit and has met all the pre-requisites to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. She also stated that she will suffer irreparable loss and damage in her capacity as the administrator of the estate in which the subject matter is registered under if orders are issued in her absence.
7. On striking out of the suit filed herein, she argued that the suit is subjudice in view of Kajiado ELC No. 776 Of 2017 *Angela Nkateto v Stephen Nakuo & Others* and that the Applicant had failed to disclose this material fact to court or the orders issued therein. It was also argued that the issues raised in this suit are similar to the ones raised in the Kajiado matter. It was further submitted that there is a nexus of this suit with the Kajiado matter to the extend that it relates to the same suit properties Kajiado/ Kaputiei North/120 and 121.
8. The Applicant in opposing the application filed by the 5th proposed interested party deposed that he is not a party to the proceedings in Kajiado ELC No 776 of 2017 and that the said matters are totally different. He urged the court to dismiss the said application.
9. I have considered all the applications, the rival affidavits and written submissions filed and the main issues for determination in respect to the said applications are as follows: -



- i. Whether Angela Nkateto Leeyio, Ndatani Enterprises Limited and Kenya Railways Corporation should be joined to these proceedings as interested parties.
 - ii. Whether the suit should be struck out for being subjudice in view of Kajiado ELC No 776 Of 2017.
10. The Supreme Court in *Francis Kariuki Muruatetu & another v Republic & 5 others* [2016] eKLR set out the broad principles to be considered in an application for joinder to proceedings:-

“From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party: 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:

- i. 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.
- ii. 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.
- iii. 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...”

Lenaola J. (as he then was) in *David Nyekorach Matsanga and Another v Philip Waki and 3 Others* [2015] eKLR, said as follows:-

“The issue of enjoining a party as an Interested Party was addressed by the Supreme Court in *Communications Commission of Kenya & 4 Others v Royal Media Services Ltd. & 7 Others* (2014) eKLR in the following words;

“An Interested Party is one who has a stake in the proceedings, though he or she was not a party to the cause ab initio. He or she is the 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 interests will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. A party could be enjoined in a matter for the reason 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 of the rights of a party who would otherwise be adversely affected in law;
- iii. Joinder to prevent a likely course of proliferated litigation.

....As was stated in *Communication Commission of Kenya & Others* (supra), a party adversely affected,



would need to join proceedings filed by another to protect its interests and also to avoid proliferated litigation.”

11. On the ground that joinder can be permitted to allow a party to protect its right which would otherwise be adversely affected in law if absent, Mativo J. in *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others* [2017] eKLR states:-

“The test is not whether the joinder of the person proposed to be added as an interested party would be according to or against the wishes of the petitioner or whether the joinder would involve an investigation into a question not arising on the cause of action averred by the petitioner. It is whether the intended interested party has an identifiable stake, or a legal interest or duty in the proceedings.

A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights ...”

12. On the threshold to be reached by a party seeking joinder, the holding by Muriithi J. in *Benjamin K Kipkulei v County Government of Mombasa & Another* [2015] eKLR is useful:-

“...The test for joinder of a party as an interested party is not that the applicant must show a stake or interest that must prevail in the suit, as that is not possible before the full hearing of the matter; the applicant should demonstrate a legal interest that calls for hearing before a decision on the dispute before the court is adjudicated. In common judicial parlance, I would say that the applicant ought to show on ‘an arguable case’ basis that he has an interest recognized in the law and capable of protection. As a registered proprietor of the suit property upon public auction which is subject of challenge in these proceedings, the proposed party has an identifiable stake and legal interest in the property the subject of, and therefore an interest in, the proceedings before the Court.”

13. Essentially therefore, any person who, though not a party to proceedings pending in court, has an interest in the subject matter of such proceedings to the extent that they will be affected by the decision of the court whichever way the decision goes, then such person qualifies to be termed as an interested party and ought to be allowed to join such proceedings to protect his or her interests.

14. In the instant case, I have considered the averments made in respect to the proposed 5th - 7th Interested Parties who have an interest in the suit properties and in view of the foregoing analysis, I am satisfied that it is necessary to join the said parties to this suit as this will aid the Court in effectively determining the issues raised herein. The presence in this suit of the said interested parties is necessary to enable the court to effectually and completely adjudicate upon and settle all issues arising herein.

15. On the issue of striking out the matter as being subjudice in respect of Kajiado ELC No 776 OF 2017, I have considered the Applicant’s contention in relation to the same and have also considered the fact that the 5th -7th Interested parties who have been joined to these proceedings are yet to filed their response to the motion and further the draconian nature of striking out the matter and being guided by the wise words of Madan. J.A in the case of *DT Dobie and Company (K) Ltd v Joseph Mbaria Muchina & Another* (1982) KLR 1 wherein he stated that-;

“The power to strike out should be exercised only after the court has considered all the facts, but it must not embark on the merits of the case itself as this is solely reserved for the trial judge. On an application to strike out pleadings, no opinion should be expressed as this



would prejudice fair trial and would restrict the freedom of the trial judge in disposing the case.”

16. In view of the foregoing, I will decline to strike out the matter at this stage. I will refrain from discussing the issue further since the court may still pronounce itself on the same at the final determination of the suit.
17. Consequently, the applications dated August 26, 2022, October 24, 2022 and November 22, 2022 are hereby disposed in the following terms:-
 - i. That the following parties are hereby joined to this suit as follows; Angela Nkateto Leeyio as 5th Interested party, Ndatani Enterprises Limited as 6th Interested party and Kenya Railways Corporation as 7th Interested party.
 - ii. The 5th to 7th Interested parties are hereby granted 14 days to file their responses to the motion.
 - iii. Each party to bear own costs of the applications.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9TH MARCH 2023

E.K. WABWOTO

JUDGE

In the presence of:

Mr. Kalwa for the Applicant.

Mr. Kiriimi for the 5th Interested party.

Ms. Kaele h/b for Mr. Daachi for the 7th Interested party.

N/A for the 1st to 6th Respondents.

N/A for 1st to 4th and 6th Interested parties.

