



**Thuo & 160 others v National Land Commission & 4 others; Ngochi & 133 others (Intended Interested Party); Kenya Human Rights Commission (Interested Party) (Environment & Land Petition E004 of 2022) [2023] KEELC 15997 (KLR) (1 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 15997 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND PETITION E004 OF 2022  
BM EBOSO, J  
MARCH 1, 2023**

**BETWEEN**

**GICIRI THUO & 160 OTHERS ..... PETITIONER**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**MAMA NGINA UNIVERSITY COLLEGE ..... 2<sup>ND</sup> RESPONDENT**

**KENYATTA UNIVERSITY ..... 3<sup>RD</sup> RESPONDENT**

**MINISTRY OF EDUCATION ..... 4<sup>TH</sup> RESPONDENT**

**COMMISSION FOR UNIVERSITY EDUCATION ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**HARUN GACHERU NGOCHI & 133 OTHERS .... INTENDED INTERESTED PARTY**

**AND**

**KENYA HUMAN RIGHTS COMMISSION ..... INTERESTED PARTY**

**RULING**

1. This court has in the past rendered various rulings relating to the dispute in which the petitioners challenged the 1st respondent’s exercise of the state’s power of eminent domain [the power of the state to acquire private land without the willing consent of the private land owner] over various parcels of private land located in Gatundu, Kiambu County. The state required the parcels as additional land for Mama Ngina University College. In one of the rulings rendered in a preceding petition, this court



struck out the petition on the ground that the primary jurisdiction to adjudicate the dispute was vested in the Land Acquisition Tribunal established under Section 133A of the [Land Act, 2012](#).

2. The petitioners subsequently brought the present petition, contending that they were unable to access justice in the Tribunal because the Tribunal was not quorate and could therefore not sit to dispense justice. A subsequent application for an order striking out this petition on the ground of non-exhaustion of alternative dispute resolution mechanisms was rejected because there was evidence that the Tribunal was not available to exercise primary jurisdiction over the dispute.
3. Since the filing of the present petition, several petitioners have filed notices to act in person, and have subsequently filed notices withdrawing their claims. Indeed, it would require a painstaking exercise to establish who out of the original petitioners are still pursuing the petition.
4. While the court was still trying to establish the identities of the petitioners who had withdrawn their claims and those who were still pursuing their claims, a group of 134 persons brought an application dated October 24, 2022, seeking to be joined as interested parties in this petition. The said application is the subject of this ruling.
5. The application was supported by an affidavit sworn on October 24, 2022 by Harun Gacheru Ngochi, with alleged authority from the 2nd to the 134th intended interested parties. The application was premised on the grounds set out on the face of the application. The case of the applicants is that they own or have interests in the parcels listed in Gazette Notice Number 10278 dated September 27, 2021; Gazette Notice Number 2081 dated February 25, 2022; and Gazette Notice Number 4431 dated April 14, 2022. They contend that they are directly targeted in these proceedings by the petitioners as any orders issued in the petition directly affect them.
6. The applicants further contend that they are satisfied with the compulsory acquisition process and they have already signed and collected their awards, which is the final step towards payment of the compensation monies. They add that they have commenced the process of resettlement in other areas. They ask to be given a chance to be heard in this petition because they are directly involved in the acquisition process. It is their case that they need to aid this court in reaching a just determination.
7. The petitioners opposed the application through a replying affidavit sworn by Gichiri Thuo on November 14, 2022. The case of the petitioners is that the application for joinder is fatally defective for the reason that Gichiri Thuo was listed as one of the intended interested parties yet he has never authorized Harun Gacheru Ngochi to swear pleadings on his behalf. The petitioners further contend that the applicants listed deceased persons as intended interested parties without grants of representation under the relevant succession law. It is their case that multiple parties have made claims over the same properties. They further contend that the intended interested parties do not stand to suffer any prejudice because they are satisfied with the procedure followed in the compulsory acquisition of their respective properties. They urge the court to reject the plea for joinder.
8. The 2nd and 3rd respondents did not file responses to the application. They, however, associated themselves with the intended interested parties' application and submissions.
9. In a rejoinder, the intended interested parties' filed a further affidavit dated January 17, 2023, sworn by Harun Gacheru Ngochi and contended that they had an identifiable stake in the proceedings before the court. They contended that Thuo Gichiri and Gichiri Thuo were two different persons who bore different identities. They added that the orders sought in the application will not cause any prejudice to the parties.
10. The application was canvassed through written submissions dated January 17, 2023, filed by the firm of Wangoko & Company Advocates. Counsel for the applicants [intended interested parties] submitted



that they have identifiable stakes in these proceedings because they are registered owners of some of the properties targeted for compulsory acquisition. Reliance was placed on the Supreme Court of Kenya decision in *Communication Commission of Kenya & 4 Others v Royal Media Services & 7 Others* (2017) eKLR where the Supreme Court of Kenya defined an interested party as:

“... 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.”

11. Counsel for the applicants added that the orders sought in the application were well-intended and will not cause prejudice to any party. In conclusion, counsel stated that joinder of the applicants would further the course of justice.
12. The petitioners filed their written submissions dated January 18, 2023 through the firm of Chemei & Company Advocates. Counsel for the petitioners submitted that the key issue falling for determination in the application was the question as to whether the applicants ought to be joined as interested parties in the petition. Counsel placed reliance on the Supreme Court of Kenya decision in the *Trusted Society of Human Rights v Mumo Matemu & 5 others* (2014) eKLR, *Francis Muruatetu & Another v R & 5 others* (2016) eKLR on the criteria for joinder as an interested party.
13. Counsel submitted that the applicants had not clearly identified personal interests or stakes in the petition. Counsel argued that the applicants will not suffer any prejudice in case of non-joinder. Counsel added that the applicants had not set out their case nor demonstrated the relevance of their case. Counsel finally submitted that the applicants’ intention was to derail the completion of the suit by burdening the proceedings with frivolous applications and allegations. He urged the court to dismiss the application.
14. The court has considered the application together with the rival affidavits and the parties’ respective submissions. The court has also considered the relevant legal frameworks and jurisprudence. The single question that falls for determination in this application is whether the applicants have satisfied the criteria upon which our courts exercises jurisdiction to grant orders of joinder in a petition.
15. The Constitution of Kenya [Protection of Rights and Fundamental Freedoms] Practice and Procedure Rules, 2013 contains the following sketchy framework on joinder of an interested party in a petition:

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- (1) A person, with leave of the court, may make an oral or written application to be joined as an interested party.
- (2) A court may on its own motion join any interested party to the proceedings before it.”

16. In the absence of a codified criteria on joinder to a petition, our courts largely rely on principles that have been developed by superior courts. The following principles were outlined by the Supreme Court of Kenya in *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others* (2013) eKLR and affirmed by the same Court in *Francis Kariuki Muruatetu & another v Republic & 5 others*:

“.... 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”
17. The petitioners in the application under consideration express themselves as a group of land owners ventilating their constitutional rights over some of the parcels of land that the state has targeted for compulsory acquisition. They are aggrieved with the process of compulsory acquisition. They are opposed to the acquisition process and have raised various grievances. The court hopes to hear them and render a pronouncement on their claims.
18. On the other hand, the applicants have come to court seeking to be joined as interested parties in this petition. In their evidence, they contend that their parcels were among those that were targeted for compulsory acquisition. It is their case that they have consented to the compulsory acquisition and they have been awarded compensation. They are categorical that they are satisfied with the compulsory acquisition process. They stated as follows at paragraph 7 of the supporting affidavit:
- “That having been satisfied with the acquisition process, the intended interested parties have already signed and collected their awards which is the final step culminating to the release of the payment to them by the government.”
19. If indeed this is the scenario, do the applicants have an interest or a stake that would warrant their joinder in this petition? My answer to the above question is in the negative. I say so because the applicants having consented to the compulsory acquisition of their respective parcels and having been satisfactorily awarded compensation, they have no stake in the present petition. The present petition relates to land owners who are aggrieved by the compulsory acquisition process. It does not in any way prejudice those who have acceded to the acquisition process or those who are not in any way aggrieved with the compulsory acquisition.
20. Not too long ago, the Supreme Court of Kenya in the case of *Attorney General v David Ndiu & 73 others* (Petition 12 (EO16) of 2020) [2021] KESC 17 (KLR) made the following guiding observation about the obligation of an applicant seeking an order of joinder in a petition:
- “The applicant had not met the threshold for admission as an interested party as it had failed to establish a personal interest or stake that was proximate enough to occasion any prejudice to it if not enjoined in the proceedings.”
21. For the above reasons, it is my finding that the applicants in the notice of motion dated October 24, 2022 have failed to satisfy the criteria for joinder as a party to a petition. Consequently, the application dated October 24, 2022 is dismissed for lack of merit. The applicants shall bear costs of the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 1ST DAY OF MARCH 2023**



**B M EBOSO**

**JUDGE**

In the Presence of: -

Mr Malenya for the Petitioners and also holding brief for Mr Sore for the Kenya Human Rights Commission

Ms Masinde for the 1st Respondent

Mr Thuo for the 2nd and 3rd Respondents

Mr Kariuki holding brief for Ms Wangoko for the 134 Applicants/ Intended Interested Parties

