



**Baker Street Investment Limited v National Land Commission; Njau  
(Interested Party) (Environment and Land Judicial Review Case  
37 of 2018) [2023] KEELC 20501 (KLR) (2 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20501 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 37 OF 2018  
J OMANGE, J  
OCTOBER 2, 2023**

**BETWEEN**

**BAKER STREET INVESTMENT LIMITED ..... APPLICANT**

**AND**

**NATIONAL LAND COMMISSION ..... RESPONDENT**

**AND**

**BERNARD NJAU ..... INTERESTED PARTY**

**RULING**

1. The application dated 15<sup>th</sup> December, 2022 prays for the following orders;
  - a. That the application be certified as urgent and be heard on a priority basis.
  - b. That this Honourable Court be pleased to grant the applicant leave to amend the application dated 16<sup>th</sup> August, 2022 as per the attached draft.
  - c. That the costs of the application be provided for.
2. The application is brought on grounds inter alia that the applicant has come across information that was not available at the time of filing the application dated 16<sup>th</sup> August, 2022 which seeks to review this courts decision delivered on 2<sup>nd</sup> December, 2021. The application is supported by the affidavit of Vittorio Vienesiani in which he depones that the applicant is the registered owner of LR 209/7383/356. That following a complaint lodged by one Bernard Njau on behalf of Kimathi Welfare Association the National Land Commission revoked the applicants grant.
3. Consequently, the applicant filed an application for Judicial Review seeking to quash the impugned decision. In a Judgement delivered on 2<sup>nd</sup> December, 2021, Hon Lady Justice Komingoi dismissed the



application for Judicial Review. In an application dated 27<sup>th</sup> January, 2022 the applicant sought to review the Judgement.

4. Before the application for review could be heard, the applicant filed an application dated 16<sup>th</sup> August, 2022 seeking to strike out Bernard K Njau as a interested party. It is this application which the applicant now seeks to amend on the basis that new information has been unearthed that reveals that Bernard Njau is not the chairman of Kimathi Estate Welfare Association and has previously been convicted of forging documents that he is the Chairperson. The affidavit by the 1<sup>st</sup> Respondent appears to address the application dated 16<sup>th</sup> August, 2022 as it addresses the issue of whether the interested party should be struck out or not. In court counsel for the 1<sup>st</sup> Respondent did on 9<sup>th</sup> March, 2023 indicate through their counsel that the present application is between the applicant and interested party.
5. The interested party's counsel filed a Replying Affidavit dated 23<sup>rd</sup> May, 2023 and deponed that the application is misconceived and frivolous and further averred that the interested party is unwell and has authorized him to swear the affidavit on his behalf.
6. Counsel for the applicant submitted that the new issues that had come to light needed to be brought before the court by way of amendment of the application so that the court could determine the application to strike out. Counsel referred the court to Order 8 Rule 1 which grants the court general powers to amend pleadings according to the tenure of the provision and the Judgement of Lord Justice Brown in the case of *Cropper V Smith* (1884) 26 CHD 700 and the court of appeal case of *Wareham t/a AF Wareham & 2 others Vs Kenya Post Office Savings Bank* Civil Appeal No 5 and 48 of the 2002.
7. Counsel submitted that the application satisfied the principles for grant of an application for amendment namely;
  - i. That the application had been brought in good time and as so it merited approval.
  - ii. Discovery of new information that was not privy to them at the time of filing. The applicant stressed that the new information was vital as it touched on administration of justice which information has been highlighted above.
  - iii. It was submitted that neither the respondents nor the interested party will be prejudiced in a way that cannot be compensated by way of damages.
  - iv. The applicant submitted that the replying affidavit by the interested party's advocate had no probative value as it deponed on matters that were not well within the advocate's knowledge and that the advocate was not the rightfully placed legal person to depone on his behalf.
8. As I had earlier indicated counsel for the Respondent addressed the issue of whether the Interested Party should be struck out or not. This was not in issue at this stage as the court was only considering whether the amendment should be allowed.
9. The Interested Party through his advocate the interested party insisted that application had been made in bad faith as it was malicious, self-serving and defamatory. He contended that the interested party was competent to participate in the proceedings as he was a resident of Kimathi Estate affected by the application.
10. Order 8, rule 5 gives the court the general power to amend thus;
  - 5(1) For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and, on such terms, as to costs or otherwise as are just.



11. In the case of *Institute For Social Accountability & another v Parliament of Kenya & 3 others* [2014] eKLR the court held:-

“The object of amendment of pleadings is to enable the parties to alter their pleadings so as to ensure that the litigation between them is conducted, not on the false hypothesis of the facts already pleaded or the relief or remedy already claimed, but rather on the basis of the true state of the facts which the parties really and finally intend to rely on. The power of amendment makes the function of the court more effective in determining the substantive merits of the case rather than holding it captive to form of the action or proceedings....The court will normally allow parties to make such amendments as may be necessary for determining the real questions in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, no new or inconsistent cause of action is introduced, and no vested interest or accrued legal right is affected and that the amendment can be allowed without an injustice to the other side.”

12. The applicant’s case is that after it had filed its application seeking to strike out the interested party, it came across new information that necessitates the amendment of the application and will be helpful to the court in coming up with its decision. The issues being raised is that the interested party has been misrepresenting himself as the chairman of the welfare association representing the estate that is on the land which is the subject matter. It was on the basis of this representation that the applicant claims the 1<sup>st</sup> respondent revoked the applicant’s title to the land parcel subject of this matter. The 1<sup>st</sup> respondent refuted the claims stating that the interested party by virtue of being a resident in the estate has legal interest and therefore a duty in the proceedings.
13. I find that the interested party will not be prejudiced if the amendment is allowed as he will have an opportunity to give his story and respond to the allegations raised by the proposed amendments. Allowing the amendments does not in any way indicate the outcome of the application to strike out rather as amplified in Order 8 rule 5 makes it possible to determine the real question in controversy.
14. The application is therefore allowed in the following terms;
- a. The Applicant is hereby granted leave to amend the application dated 16<sup>th</sup> August 2022 which amended application should be filed and served within 15 days from the date of the ruling.
  - b. The respondent and Interested Party to file a response within 15 days of service.
  - c. Costs of the application be in the cause.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 2<sup>ND</sup> DAY OF OCTOBER 2023.**

**JUDY OMANGE**

**JUDGE**

