



Manga v Lesyiu & 2 others; Mpusia & 3 others (Interested Parties) (Environment and Land Appeal E038 of 2022) [2023] KEELC 21343 (KLR) (2 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21343 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E038 OF 2022
LC KOMINGOI, J
NOVEMBER 2, 2023**

BETWEEN

KETUKEI OLE MANGA APPELLANT

AND

NAITEKU ENE LESYIU 1ST RESPONDENT

DISTRICT LAND REGISTRAR KAJIADO 2ND RESPONDENT

THE HON. ATTORNEY GENERAL 3RD RESPONDENT

AND

NASIRA NDANYARI MPUSIA INTERESTED PARTY

SALAITA NDANYARI MPUSIA INTERESTED PARTY

LIPENTOI NDANYARI MPUSIA INTERESTED PARTY

MUKANA NDANYARI MPUSIA INTERESTED PARTY

(An Appeal against decision of the Kajiado District Land Registrar Mr. B. K. Leitich dated and delivered on 26th day of July at Kajiado Land Registry)

RULING

1. The 1st to 4th Interested Parties in a Notice of Motion application dated 19th October 2022 seeks:
 1. That the 1st to 4th interested Parties be enjoined in this appeal as appellants or interested parties.
 2. That the interested parties be allowed to amend the pleadings filed by the Appellant to reflect the interests of the interested parties.



3. That the cost of this application be provided for.
2. Through the grounds outlined on the application and the in Supporting Affidavit dated 19th October 2022, the Applicants want to be enjoined in the appeal since they are joint registered owners of parcel number Kajiado/Purko/725 measuring approximately 13.3Ha which shares a common boundary with the Appellant's land number Kajiado/Purko/440 and the 1st Respondent's land number Kajiado/Purko/442 which are the subject of this appeal. They averred that they were not privy to the boundary dispute between the Appellant and the 1st Respondent because they were never summoned by 2nd Respondent to appear for the dispute hearing. However, when they learnt of the decision, they sought a review of the Ruling vide a letter dated 2nd August 2022 to the 2nd Respondent but they were advised to apply to be enjoined in this appeal to avoid multiplicity of suits. The Applicants aver that if the Land Registrar's decision dated 26th July 2022 if implemented as it is, will interfere with the size of their parcel of land.
3. Their joinder will thus be in the interest of justice since all the issues will be litigated upon in the appeal without being prejudicial to any party.
4. The Appellant did not oppose the application.
5. The 1st Respondent in his Replying affidavit dated 14th June 2023 opposed the Application stating that his land was not augmented by the 2nd respondent but only rectified the discrepancy between the actual acreage of 23.52Hectares and the registered 16Hectares. This was after a review of the boundaries between Kajiado/Purko/440 and Kajiado/Purko/442 as per the District surveyor's report. The 1st Respondent went on to contest joinder of the Applicants stating that the applicants were contravening the doctrine of exhaustion and should seek recourse at the proper forum; which is the District Land Registrar. The 1st Respondent also pointed out that the Applicants were also not parties to the boundary dispute and made reference to *Communications Commission of Kenya & 5 others vs Royal Media Services Ltd & 7 others [2014] eKLR*.
6. This Application was canvassed orally.

The Applicants' submissions

7. Counsel for the Applicants prayed for joinder submitting that the 2nd Respondent's decision will amount to an encroachment on the Applicants land and the decision was made in the Applicants absence without them being given an opportunity to be heard.

The 1st Respondent's submissions

8. Counsel for the 1st Respondent prayed that the application be dismissed with costs stating that the 2nd Respondent's decision was valid and the Applicants had no interest in the matter. Counsel cited the Supreme Court case of *Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others [2014] eKLR*.

Analysis and Determination

9. I have considered the application, the rival submissions and the authorities cited. The issues for determination are:
 - i. Whether the 1st to 4th interested Parties ought to be enjoined in this appeal as appellants or interested parties as sought in the application.



ii. Who should bear costs of the application?

10. The Applicants herein claim that their property Kajiado/Purko/725 borders the 1st Respondent's property Kajiado/Purko/782 and the Land Registrar's decision has an adverse effect on their property's acreage. They claimed that when the boundary dispute was being determined/ heard by the Land Registrar they were neither aware nor were they summoned for the hearing.
11. The 1st Respondent contested the joinder and made reference to the Supreme Court case of Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others [2014] eKLR which declined joinder of an interested party stating: "...We cannot exercise our discretion to enjoin a party that disguises itself as an Interested Party, while in actual fact merely seeking to institute fresh cause..."
12. Will joinder of the Applicants affect their interests in the parcel of land?
13. Order 1 Rule 1 of the *Civil procedure Rules* provides:

“All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise.”
14. In the Supreme Court case of Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others [2014] eKLR referenced to by the 1st Respondent, it was stated:

“(22) In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court's Ruling in the Mumo Matemo case where the Court (at paragraphs 14 and 18) held:

“[An] interested party is 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...”

(23) Similarly, in the case of Meme v. Republic,[2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons 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 for the rights of a party who would otherwise be adversely affected in law;
 - (iii) joinder to prevent a likely course of proliferated litigation.”



(24) We ask ourselves the following questions: (a) what is the intended interested party's stake and relevance in the proceedings? and (b) will the intended interested party suffer any prejudice if denied joinder?"

15. From the Perusal of the Land Registrar's ruling dated 25th July 2022 which has been appealed against, the court notes that the Appellant, 1st Respondent and owners of properties Kajiado/Purko/782, Kajiado/Purko/438, Kajiado/Purko/439 and Kajiado/Purko/441 were at the hearing but the Applicants were conspicuously missing. As per the Kajiado District Purko location Enkaroni Group Ranch Sub Division map annexed in the Applicants' Affidavit and marked as NNM1(b) the court notes that the Applicants property Kajiado/Purko/725 equally borders the 1st Respondent's property whose amended acreage is subject to the Appeal.

16. The Land Registrar's Ruling dated 25th July 2022 reads:

- “ 1. That the complainant's parcel of land Kajiado/Purko/440 should be defined between beacons A, B, F, J, K, M and N. By this the dispute between the complainant and his neighbours would be addressed.
2. A 9m road of access between parcel number 438 and 440 should be opened up. By this, the dispute between parcels number 438 and 440 would be addressed.
3. That all parties should be contented with the acreages they are currently holding.
4. That the Registry Index map should be amended to conform with the ground layout.”

17. The Appellant in the Memorandum of Appeal dated 12th August 2022 prays for: “Setting aside of the Land Registrar's decision, an order to the Land Registrar to revisit the dispute and the area maps which reflect the correct acreage/ size of each parcel be determined and maintained and the boundary on the ground be marked to confirm with the maps among other prayers.”

18. In the Memorandum of Appeal, the Appellant argue that the Land Registrar's ruling affected the size of his land which is the same argument raised by the Applicants. The court therefore finds that as pronounced by the Supreme Court, the applicants have a stake in these proceedings, though they were not party to the cause ab initio. If they are not enjoined they will be deprived of an opportunity to be heard on their claim to the ownership of property which is unconstitutional and against the rules of natural justice.

19. I hereby allow the application to the extent that Applicants are hereby joined in this appeal as interested parties and the appeal be set down for hearing on priority basis.

20. Costs shall abide the outcome of the Appeal.

DATED, SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 2ND DAY OF NOVEMBER 2023.

L. KOMINGOI

JUDGE.

In The Presence Of:

Ms. Waithera for Ms. Mwae for the 1st Respondent.



Mr. Kibet Korir for the Interested Parties/Applicants also holding brief for Mr. Nairi for the Appellant.
Court Assistant – Mutisya.

