



Yego & another v Board of Governors Nakuru Agricultural Training Centre (ATC) & another; County Government of Nakuru & another (Applicant) (Environment & Land Case E67 of 2021) [2022] KEELC 12816 (KLR) (4 October 2022) (Ruling)

Neutral citation: [2022] KEELC 12816 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E67 OF 2021
FM NJOROGE, J
OCTOBER 4, 2022

BETWEEN

BENJAMIN CHEBOI YEGO 1ST PLAINTIFF

VINCENT KIPLAGAT ROTICH 2ND PLAINTIFF

AND

BOARD OF GOVERNORS NAKURU AGRICULTURAL TRAINING CENTRE (ATC) 1ST DEFENDANT

ATTORNEY GENERAL 2ND DEFENDANT

AND

COUNTY GOVERNMENT OF NAKURU APPLICANT

ETHICS AND ANTI-CORRUPTION COMMISSION APPLICANT

RULING

1. Before this court are two applications by way of Notice of motion application, one by Ethics and Anti-Corruption Commission (Interested Party) dated March 14, 2022 and the other by the County Government of Nakuru dated July 8, 2022 brought under sections 1A, 1B, 3 and 3A of the *Civil Procedure Act* cap 21, order 1 rules 10(2) and order 51 of the *Civil Procedure Rules, 2010*. Both applicants are seeking joinder in the main suit as interested party and party respectively.
2. The applications are supported by way of supporting affidavits; that of Ephrahim Shombe sworn on March 14, 2022 in the case of the Ethics and anti-Corruption Authority and that of Shelmith Mucoki sworn on July 8, 2022 in the case of the County Government of Nakuru. The proposed interested party avers that it conducted investigations on the suit property LR No 22609-N Nakuru Municipality while



the other applicant being the county Government of Nakuru avers that it is the owner of the suit property with a legal interest.

3. Both applicants aver that they have direct and substantial interest in the matters in controversy and that they are necessary parties in the proceedings whose joinder in the suit would enable the court effectively and completely adjudicate upon and settle the matters in question. They aver that it would be in the public interest and justice that they be enjoined in the proceedings of the suit to avoid any prejudice against any party.

The Response

4. The respondents have not filed their response.

Submissions

5. There are no submissions on record by any of the parties.

Determination

6. It is this court's view that the main issue for determination is whether the applicants should be enjoined to the proceedings of the suit
7. Order 1 rule (10) (2) of the [Civil Procedure Rules](#) empowers the court, at any stage of the proceedings, upon application by either party or *suo motu*, to order the name of a person who ought to have been joined or whose presence before the court is necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit, to be added as a party. The above powers are discretionary, and this court must use its discretion to make a determination while also ensuring that justice is achieved.
8. 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.”
9. In the instant case, the plaintiff's claim is premised on fraud by the 1st defendant with regard to the suit property LR No 22609-N Nakuru Municipality. Normal and established practice has been that for an interested party to be enjoined in a matter, he/she should show what interest he/she has in the case. Both applicants have expressed their interests to be enjoined in the proceedings on the basis that the proposed interested party conducted some investigations on the suit property while the other applicant, Nakuru county Government claim ownership of the suit property. While the County Government's interest is proprietary, the interest of the Ethics and Anti-Corruption Commission may be categorized as public interest in that that body is established under section 3(1) of the [Ethics and Anti-Corruption Commission Act](#) No 22 of 2011. Section 11 of the [Act](#) has the following provisions:
 11. Additional functions of the Commission
 - (1) In addition to the functions of the Commission under article 252 and Chapter Six of the [Constitution](#), the Commission shall—



- (a) in relation to state officers—
 - (i) develop and promote standards and best practices in integrity and anti-corruption;
 - (ii) develop a code of ethics;
- (b) work with other state and public offices in the development and promotion of standards and best practices in integrity and anti-corruption;
- (c) receive complaints on the breach of the code of ethics by public officers;
- (d) investigate and recommend to the Director of Public Prosecutions the prosecution of any acts of corruption, bribery or economic crimes or violation of codes of ethics or other matter prescribed under this Act, the *Anti-Corruption and Economic Crimes Act* or any other law enacted pursuant to Chapter Six of the Constitution;
- (e) recommend appropriate action to be taken against State officers or public officers alleged to have engaged in unethical conduct;
- (f) oversee the enforcement of codes of ethics prescribed for public officers;
- (g) advise, on its own initiative, any person on any matter within its functions;
- (h) raise public awareness on ethical issues and educate the public on the dangers of corruption and enlist and foster public support in combating corruption but with due regard to the requirements of the *Anti-Corruption and Economic Crimes Act*, 2003 (No 3 of 2003), as to confidentiality;
- (i) subject to article 31 of the *Constitution*, monitor the practices and procedures of public bodies to detect corrupt practices and to secure the revision of methods of work or procedures that may be conducive to corrupt practices; and
- (j) institute and conduct proceedings in court for purposes of the recovery or protection of public property, or for the freeze or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures including proceedings for the recovery of property or proceeds of corruption located outside Kenya. (Emphasis mine)

10. The commission's mandate to investigate inter alia economic crimes and to institute litigation in connection therewith has the above cited statutory underpinnings which in turn have been legislated for to further give life to the provisions of article 252 and Chapter 6 of the *Constitution of Kenya 2010*.



11. It is therefore clear that the plaintiff's claim touches on the interests of both applicants herein and this court sees no prejudice that will be suffered by the respondents if the applicants are left to participate in the case.
12. The applicants have also persuaded court that their participation in the suit will assist the court in effectively and efficiently determining the issue of contention as raised in the suit.
13. In the upshot, I am satisfied that the applicants have made out a good case for being enjoined in the suit herein, bearing in mind the provisions of article 157 (11) of the *Constitution of Kenya*.
14. In view of the foregoing, I make the following final orders:
 - a. The application dated March 14, 2022 is allowed in terms of prayers (a) and (b) but the filing and service proposed in (b) shall pend the amendment and service on the interested party of the amended plaint as ordered in order no (c) herein below.
 - b. The application dated July 8, 2022 is allowed in terms of prayer (a) and the County Government of Nakuru is hereby joined as the substantive 3rd defendant in the suit.
 - c. The plaintiffs shall amend the plaint to reflect joinder and plead against the 3rd defendant and shall serve the new parties with plaint and summons and all documents filed to date within 21 days of this order in default of which the suit herein shall stand automatically dismissed.
 - d. The costs of the applications shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 4TH DAY OF OCTOBER, 2022.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

