



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

HCC NO. 12 OF 2008

RIFT VALLEY WATER SERVICES BOARD.....1ST PLAINTIFF

NAKURU WATER AND SANITATION SERVICES

LIMITED2ND PLAINTIFF

VERSUS

PRAKASH SHAH.....1ST DEFENDANT

COMMISSIONER OF LANDS.....2ND DEFENDANT

AND

COUNTY GOVERNMENT OF NAKURU.....APPLICANT

RULING

(Application for joinder as interested party; applicant being the entity that granted the leasehold tile in dispute; application allowed)

1. The application before me is that dated 27 March 2019 filed by the County Government of Nakuru who wish to be enjoined as an interested party in this case.

2. To put matters into context, this suit is consolidated with the cases Nakuru HCCC No. 18 of 2008, Prakash Shantilal Shah vs Nakuru Water & Sanitation Services Company Limited, and Nakuru ELC No. 348 of 2013, Prakash Shah vs Attorney General & 2 Others. The suits brought about common questions of law and fact and were thus consolidated. The issue in the cases revolve around the ownership of the land parcel Nakuru Municipality/Block 11/672. Whereas Mr. Shah has a title to the suit land, this title is challenged by the Rift Valley Water Services Board and the Nakuru Water & Sanitation Services Company Limited, who claim that the suit land was reserved for the construction of a water treatment plant and could not therefore be allocated to an individual. The head owner of the said land was the defunct Municipal Council of Nakuru and the applicant is thus the successor of the same. What Mr. Shah holds is a leasehold title from the defunct Municipal Council of Nakuru. The matter has proceeded and is at the stage of defence hearing.

3. In this application, the applicant avers that being the successor in title of the defunct Municipal Council of Nakuru and being the head owner of the suit land, it has an interest in the subject matter of the case thus ought to be enjoined. It is deposed in the supporting affidavit that the applicant only recently came to be aware of the matter and it is further averred that the applicant stands to be greatly prejudiced if it is not enjoined in the suit.

4. All other parties, save for Mr. Shah, did not oppose the application. Mr. Shah, in his replying affidavit, has inter alia deposed that there is no scope for joining the applicant as interested party and is of the view that the applicant can file a separate suit. It is further his position that enjoining the applicant will derail the proceedings which are on the verge of closure. He has stated that there is no map or other material annexed to show the interest of the applicant.

5. I have considered the application alongside the written submissions of counsel. I do note that in his submissions, Mr. Kisilah, learned counsel on record for Mr. Shah, inter alia submitted that the Civil Procedure Rules have no provision for a party to be enjoined as interested party and that a party in civil proceedings must either be plaintiff or defendant. Interestingly, Mr. Kisilah did refer me to the Supreme Court decision in the case of **Francis Kariuki Muruatetu & Another vs Republic & 4 Others** where the Supreme Court laid down the principles governing joinder of a person as interested party. I think it is now settled that the court has discretion whether or not to enjoin a person as

interested party, and my own view of the matter is that where the court is satisfied that the presence of such party is necessary in order to fully adjudicate the matter, and such party has a clear interest in the matter for which it may not be prudent for him to file a separate suit, such party needs to be enjoined in the suit unless there are other surrounding circumstances that militate against such joinder.

6. In this case, the applicant is the head lessor of the suit land. Mr. Shah himself derives his title from the applicant. I do not see how it can be argued that the applicant has no interest in the suit, as in essence, we are litigating over land whose principal owner is the applicant. The applicant certainly has a stake in the suit land and I think that she may have valuable information that may assist this court in arriving at a fair decision. I am thus persuaded that the applicant fits the bill of an interested party and given that position, I do allow this application. I will give further participation on the participation of the applicant after delivery of this ruling.

7. I make no orders as to costs.

8. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 3rd day of July 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of :-

Mr. Odundo present for 1st plaintiff in case no 12/2008.

Mr. Okiro holding brief for Mr. Langat for 2nd plaintiff in No.12/08.

Ms. Sambu holding brief for Mr. Kisila for plaintiff in No. 18/2008 and No.348/2013

Ms. Kabalika holding brief for Mr. Kinuthia for applicant.

No appearance for the State Law Office for Commissioner of Lands.

Court Assistants: Janepher Nelima/Patrick Kemboi.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU