



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELCA NO. 1 OF 2017

(Formerly Nairobi ELCA NO. 99 OF 2015)

EPHRAIM KARIUKI WAMBUGU.....APPELLANT

-VERSUS-

NATIONAL LAND COMMISSION.....RESPONDENT

PETER WACHIRA MAINA.....PROPOSED APPELLANT

NJERU WACHIRA WILLIAM.....PROPOSED INTERESTED PARTY

RULING

A. INTRODUCTION

1. This is an appeal against the decision of the then Commissioner of Lands to award the owners and beneficiaries of *Title No. Aguthi/Gatitu/3347 Kshs.145.6 million* as compensation for the compulsory acquisition of their property under the **Land Acquisition Act** (now repealed). It would appear that upon inquiry being undertaken under the said statute some of the beneficiaries were dissatisfied with the proposed award as compensation and they consequently asked the Appellant to lodge the instant appeal. It would further appear that some of them such as the intended Interested Party accepted the award and were ready to receive their share of the award.

B. THE 1ST APPLICANT'S APPLICATION

2. By a chamber summons dated 21st March, 2019 expressed to be brought under **Order 1 Rule 14** of the **Civil Procedure Rules (the Rules)** and **Sections 3 and 3A of the Civil Procedure Act (Cap. 21) Peter Wachira Maina (the 1st Applicant)** sought leave of court to be joined as an Appellant in the appeal. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by him on 21st March, 2019. It was contended that he was one of the registered trustees of the suit property and that the current sole Appellant was growing too old to prosecute the appeal with the required energy. It was further contended that during a family meeting held on 19th January, 2019 it was resolved that he should join the appeal.

C. THE 2ND APPLICANT'S APPLICATION

3. By a chamber summons dated 29th August, 2019 expressed to be based upon **Sections 1A, 1B & 3A of the Civil Procedure Act (Cap 21), Order 1 Rule 8(3) of the Civil Procedure Rules** and **all other enabling provisions of the law** Njeru Wachira William (*the 2nd Applicant*) sought leave of court to be joined as an Interested Party in the appeal and an order for service upon him of all pleadings filed in the appeal. The said application was based upon the grounds set out on the face of the application and the contents of the supporting affidavit sworn by Duncan Waweru Macharia on 29th August, 2019. It was contended that the 2nd Applicant was the administrator of the estate of the late Njeri Wambugu who was a beneficiary of the suit property the subject of compulsory acquisition by the Respondent. It was further contended that he merely intended to support the current Appellant in the prosecution of the appeal and to protect the interest of all the beneficiaries of the late Njeru Wambugu.

C. THE APPELLANT'S RESPONSE

4. The Appellant filed grounds of opposition dated 18th September, 2019 in opposition to the 1st Applicant's chamber summons dated 21st March, 2019 to be joined as a second appellant in the appeal. It was contended that the pending appeal was about the quantum of compensation in which the 1st Applicant had no legitimate interest since he had accepted the Respondent's award in writing on 7th January,

2008 before the filing of the appeal. It was further contended that the Appellant was the chairman of the trustees of the registered owners of the suit property and has been representing them all along.

5. The Appellant also filed grounds of opposition dated 13th September, 2019 in opposition to the 2nd Applicant's chamber summons dated 29th August, 2019. It was contended that the 2nd Applicant had not disclosed the nature of the assistance he wanted offer to the Appellant or the court. It was further contended that the 2nd Applicant was never heard during the inquiry stage hence he could not be joined in the appellate stage. It was further contended that, in any event, his interest as an administrator of the estate of his late father ought to have been determined in *Nyeri Miscellaneous Civil Application No. 9 of 2019 (O.S.)* where the beneficiaries of the suit properties were determined.

D. DIRECTIONS ON SUBMISSIONS

6. When the matter was mentioned for directions on 8th February, 2021 it was directed that the two applications shall be canvassed through written submissions and determined simultaneously. The parties were given timelines within which to file and exchange their written submissions. The record shows that the 1st Applicant filed his submissions on 4th March, 2021, the 2nd Applicant on 22nd February, 2021, whereas the Appellant filed his on 1st March, 2021. There is no indication of the 1st Applicant having filed a further affidavit even though he sought and obtained leave for that purpose on 8th February, 2021.

E. THE ISSUES FOR DETERMINATION

7. The court has considered the two applications on record, the two sets of grounds of opposition, the parties written submissions and the material on record. The court is of the opinion that the following issues arise for determination herein:

- (a) Whether the 1st Applicant has made out a case for joinder as a second appellant in the appeal.
- (b) Whether the 2nd Applicant has made out a case for his joinder as an interested party.
- (c) Who shall bear costs of the two applications.

F. ANALYSIS AND DETERMINATION

(a) Whether the 1st Applicant has made out a case for joinder as a second appellant in the appeal

8. The court has considered the submissions and material on record on this issue. There is no doubt from the material on record that the current sole Appellant has been representing all the trustees and beneficiaries of the suit property in their bid to obtain adequate and just compensation arising from the compulsory acquisition of the suit property by the Respondent. There is no allegation that the Appellant has failed in that duty on account of bad health, lack of integrity, conflict of interest, breach of trust or upon any other ground. The Appellant is represented by an advocate of the High Court who appears to be a member of the extended family of the late Senior Chief Wambugu who was the original proprietor of the suit property.

9. The court is not satisfied from the material on record that it is necessary to admit additional appellants to "assist" him in the prosecution of the appeal. The mere fact that he might be aged is neither here nor there. There is no evidence on record to suggest that he is senile, or of unsound mind, or incapable of managing his affairs by reason of mental infirmity or unsoundness of mind.

10. It must be remembered that the pending appeal is all about the adequacy of the award offered as compensation. It is not about determination of beneficiaries. The issue of the identities of the beneficiaries was determined in *Nyeri Misc. Civil Application No. 9 of 2009 (O.S.) Re the Heirs of Wambugu Mathangari*. That being the nature of the appeal, there is no risk that any of the heirs of Wambugu Mathangari shall suffer any prejudice unless they are all individually joined as co-appellants in the appeal. The court is of the opinion that they are not necessary parties for purposes of the instant appeal.

11. In the case of **Pizza Harvest Limited v Felix Midigo [2012] eKLR Havelock J.** considered who is a necessary party thus:

"...I have also been taken cognizance of the case of Amon v Raphael Tuck and Sons Limited (1956) 1 All ER 273 in which Devlin J held at page 286 -287:

"What makes a person a necessary party? It is not, of course, merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance and is afraid that the existing parties may not advance them adequately ...the Court might often think it convenient or desirable that some of such persons should be heard so that the court could be sure that it had found the complete answer, but no one would suggest that it would be necessary to hear them for that purpose. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action, and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party." (Emphasis added)

(b) Whether the 2nd Applicant has made out a case for joinder as an interested party

12. The court has considered the material and submissions on record on this issue. The 2nd Applicant contended in his application that he

simply wanted to support the current Appellant in prosecuting the appeal and also to protect the interest of the other beneficiaries of the estate of his late father. There was no allegation that the current Appellant was incapable of continuing to represent him and the rest of the beneficiaries. There was no allegation that he was not adequately representing them.

13. It was not disclosed what kind of assistance or support he intended to offer the Appellant which cannot be offered without his joinder as a party. The court is aware that the appeal is on adequacy of compensation and that it has been pending for about 12 years. One is therefore left wondering why the 2nd Applicant did not apply for joinder as an interested party within a reasonable period if he thought his interest and that of the rest of his late father's beneficiaries were at risk. The material on record shows that the Appellant as chairman of the trustees of the suit property has always represented all the 25 or so beneficiaries of the suit property. It has not been demonstrated what special interest or stake the 2nd Applicant has in the appeal which is different from the interest of the rest of the beneficiaries and which can only be taken care of if he is joined as an interested party.

14. In the case of Trusted Society of Human Rights v. Mumo Matemo and 5 Others [2014] eKLR it was held, *inter alia*, that:

“...an interested party is one who has a stake in the proceedings though he or she was not a party in 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 at the proceedings, and champions his or her cause”.

15. The court is not satisfied from the material on record that there is any legitimate apprehension that the interest of the 2nd Applicant on the quantum of compensation will not be adequately articulated. There is really no other interest to be championed by the 2nd Applicant except the interest which is common to all the beneficiaries of the suit property and which interest is being championed by the Appellant on their behalf.

C. Who shall bear costs of the two applications

16. Although costs of an action and proceedings are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to **Section 27 of the Civil Procedure Act (Cap. 21)**. A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See **Hussein Janmohamed & Sons Vs Twentsche Overseas Trading Co. Ltd [1967] EA 287**. However, the court has noted that the Appellant and the 1st and 2nd Applicants are close relatives. The court is thus of the opinion that all the concerned parties should bear their own costs of the application.

G. CONCLUSION AND DISPOSAL

17. The upshot of the foregoing is that the court find no merit in the 1st and 2nd Applicants' applications and consequently make the following orders for disposal thereof:

- (a) The 1st Applicant's chamber summons dated 21st March, 2019 be and is hereby dismissed.
- (b) The 2nd Applicant chamber summons dated 29th August, 2019 be and is hereby dismissed.
- (c) Each of the parties shall bear their own costs.

18. It is so decided.

RULING DATED AND SIGNED IN CHAMBERS AT NYERI AND DELIVERED VIA MICROSOFT TEAMS PLATFORM THIS 5TH DAY OF MAY, 2021

In the presence of:

Mr. Kinyanjui for intended Appellant

Mr. Waweru Macharia for intended Interested Party

Mr. Wanyiri Kihoro for the Appellant

Court assistant - Wario

.....

Y. M. ANGIMA

JUDGE

05.05.2021