



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 289 OF 2012

NANCY BOMET.....1ST PLAINTIFF

*(Suing on behalf of Jamhuri East Residents Association in her
Capacity as the Chairlady thereof)*

JOHN EVANS AREK.....2ND PLAINTIFF

*(Suing on behalf of Jamhuri East Residents Association in his
capacity as the Secretary thereof)*

FRED KINUTIHA.....3RD PLAINTIFF

*(Suing on behalf of jamhuri East Residents Association in his
capacity as the Treasurer thereof)*

=VERSUS=

JAMALDIN YAHYA.....1ST DEFENDANT

BARNABA AGAR NYANDIERO.....2ND DEFENDANT

ALI BULLS.....3RD DEFENDANT

KHADIJA RRII.....4TH DEFENDANT

KHALFAN JUMA SULEIMAN.....5TH DEFENDANT

SAMUEL KETAI.....6TH DEFENDANT

JENIFER KISURU MUSIWA.....7TH DEFENDANT

HELLEN CHEPKEMBOI.....8TH DEFENDANT

PAMELA CHEPKEMBOI.....9TH DEFENDANT

MWANGI KAWAYA T/A THINKER'S PUB.....10TH DEFENANT

EZEKIEL REMA.....11TH DEFENDANT

LUCY MUTHONI T/A LUCY'S HOTEL.....12TH DEFENDANT

JOSEPH MUNGAI KIMANI.....13TH DEFENDANT

REBECCA SAMBEKI T/A SAMBEKI PUB.....14TH DEFENDANT

JAIRUS SAWE T/A WOTE BUTCHERY.....15TH DEFENDANT

AND

DENIS OOKO OPIYO.....APPLICANT/INTERESTED PARTY

(joinder to the suit on behalf of Toi Open Air Market Society in his capacity as the Secretary thereof)

RULING

1. This is the Notice of Motion dated 6th October 2020 brought under all enabling provisions of the law.
2. It seeks orders:-
 1. *Spent.*
 2. *That leave be hereby given to the Applicant herein to join the suit herein as interested party on behalf of Toi Open Air Market Society in his capacity as the secretary thereof.*
 3. *That costs of this application be provided for.*
3. The application is supported by the affidavit of Denis Ooko Opiyo, the official secretary of the applicant sworn on the 6th October 2020.
4. The application is opposed. There are grounds of opposition dated 8th October 2020 filed by the 1st, 2nd and 3rd plaintiffs/respondents.
5. The court with the consent of the parties directed that the application be canvassed by way of written submissions.
6. I have considered the notice of motion and the affidavit in support. I have also considered the grounds of opposition, the submissions filed on behalf of the respective parties and the authorities cited. The issue for determination is whether this application is merited.
7. It is the applicant's case that the suit properties over the years from time immemorial were ear marked for and fell within and had been in operation of the society. This has not been disputed by the plaintiffs/applicants in their grounds of opposition.
8. **Order 1 rule 8** provides that:-
 1. *Where numerous persons have the same interest in any proceedings, the proceedings may be commenced, and unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.*
 2. *The parties shall in such case give notice of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct.*
 3. *Any person on whose behalf or for whose benefit a suit is instituted or defended under subrule (1) may apply to the court to be made a party to such suit.*
9. In the case of **Mai Mahiu Kijabe/Longonot Co. Ltd vs Ayub Mugo Njoroge & 5 Others Civil Suit No 1672 of 2001**, it was held that:

“It is a cardinal rule of procedure that any party who stands to be directly affected by any orders that may be made in any suit and whose participation is necessary in a suit for effective adjudication of the matters in issue ought to be made a party in the suit or at least be notified about the existence of the suit”.
10. I find that the applicant has demonstrated sufficient interest in the suit properties. I find merit in this application and the same is allowed in terms of prayer No 2 of the application. That costs be borne by the applicant.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 30TH DAY OF SEPTEMBER 2021.

.....

L. KOMINGOI

JUDGE

In the presence of:-

Mr. Jaoko for the Plaintiffs

Ms Wanyonyi for Mr. Arika for the Interested Party

Ms Chetalam for 1st, 2nd, 6th -12th Defendants

Steve – Court Assistant