



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 450 OF 2008

BROADLANDS KENYA LTD.....PLAINTIFF/RESPONDENT

VERSUS

CITY COUNCIL OF NAIROBI.....1ST DEFENDANT

MOSES MULEHI.....2ND DEFENDANT

OSCAR BETTAH.....3RD DEFENDANT

MR. N. NJERU.....4TH DEFENDANT

MR. OKALLA.....5TH DEFENDANT

MR. OMONDI T/A NGEI II SECURITY.....6TH DEFENDANT

MRS MUHORO C/O LANGATA JUNIOR SCHOOL.....7TH DEFENDANT

AND

TRUSTEES OF NGEI II RESIDENTS

ASSOCIATION.....INTERESTED PARTY/APPLICANT

RULING

1. This is the Notice of Motion dated 3rd May 2021 brought under Section 1A, 1B, 3A of the Civil Procedure Act, Cap 21, Order 1, Rule 10(2), Order 10, Rule 11, Order 51 Rule (1) of the Civil Procedure Rules, Article 50 of the Constitution of Kenya 2010 and all other enabling provisions of law.

2. It seeks orders:-

1. Spent.

2. Spent.

3. That the Honourable court be pleased to set aside the ex-parte proceedings taken in this suit, and re-open both the plaintiff's and defendant's case for hearing afresh and determination on merit.

4. That the honourable court be pleased to grant leave to the 2nd, 3rd, 4th, 5th, 6th and 7th Defendants to enjoin and/or include the proposed interested party to the suit and proceedings, and strike out the 2nd, 3rd, 4th, 6th and 7th Defendants from the suit.

5. That the honourable court be pleased to grant leave to the proposed interested party to be enjoined to the suit to file and/or amend the statement of defence in readiness for a fresh hearing of the suit interparties.

3. The grounds are on the face of the application and are set out in paragraphs (a) to (L).
4. The application is supported by the affidavit of Mauleed Majeed Kipkoech Jasho the chairperson of the proposed Interested Party sworn on the 3rd May 2021.
5. The application is opposed. There is a replying affidavit sworn by the plaintiff/respondent.
6. The Notice of Motion was canvassed orally on the 27th July 2021.
7. I have considered the notice of motion and the affidavit in support. I have also considered the affidavit in response, the oral submissions by counsel and the authorities cited. The issue for determination is whether this application is merited.
8. It should be noted that Judgment on this matter was delivered on 20th February 2020. This application is dated 3rd May 2021. There is no explanation for the delay. I find that the delay is inordinate.
9. I note that prayer no 5 of the notice of motion seeks that the Interested party be enjoined to the suit herein.
10. I have gone through the court record. This matter proceeded to hearing with the participation of the 1st defendant. The 2nd to the 7th defendants neglected to attend court despite being served.
11. The current application is not by the 2nd to the 7th Defendants but by a new party seeking to be enjoined on these proceedings.
12. **Order 1 rule 10** of the Civil Procedure Rules provides that:-

10. (1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.

(2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent in writing thereto.

(4) Where a defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants”.

13. It should be noted that this matter was in court for over 13 years before its conclusion.
14. I agree with the plaintiff’s counsel submissions that this court is *functus officio* upon delivery of judgement on 3rd May 2021.
15. All in all, a new party to be enjoined in a matter that is already concluded amounts on abuse of the court process.
16. I find no merit in this application and the same is dismissed. I make no orders as to costs

It is so ordered.

Dated, signed and delivered in Nairobi on this 21st day of October 2021.

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Mwangi for the Plaintiff

Mr. Ochieng for the 1st Defendant

Mrs. Sichangi for the Interested Party

Steve - Court Assistant