



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC PETITION NO. E003 OF 2020

IN THE MATTER OF ARTICLES 22 AND 23 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 40, 43 & 47 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF ARTICLES 2(1), 2(4), 10 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS), PRACTICE AND PROCEDURE RULES, 2013

BETWEEN

RADO DEVELOPMENT COMPANY LIMITED.....PETITIONER

AND

THE COUNTY GOVERNMENT OF KISUMU.....1ST RESPONDENT

ABALA WANGA, KISUMU CITY MANAGER.....2ND RESPONDENT

RULING ON APPLICATION DATED 1ST JULY 2021

The 2nd Respondent herein filed a Notice of Motion Application dated 1st July 2021 under Section 1A,1B,3A and 95 of the Civil Procedure Act, Order 1 Rule 10(20) and Order 51 Rule 1 and 15 of the Civil Procedure Rules seeking to enjoin the National Land Commission and the Ethics and Anti-Corruption Commission as interested parties. The Application was supported by the Affidavit of Michael Abala Wanga who states that the Petition before this Honourable Court relates to public land that was illegally, irregularly and/or acquired through a corrupt scheme. That the 1st Intended Interested Party is the custodian of Public Land in Kenya knowledge of disposal of public land, present or historical is within its province. That the 1st Intended Interested Party has a constitutional duty to monitor the registration of all rights and interests in land and therefore has a duty to help the court effectively and completely adjudicate on all the issues in this petition in relation to the suit property. That the court will benefit immensely from the information and records adduced before it by the intended interested parties should they be allowed to participate in these proceedings. That he is aware that the 1st Intended Interested Party's constitutional obligation to administer public land on behalf of the county governments, including Kisumu County and to ensure that Public Land under the management of Kisumu County Government is sustainably managed for the intended public purposes. Consequently, the 1st Intended Interested Party has an identifiable stake which is public interest by virtue of being the custodian of public land in these proceedings.

The applicant states that his Advocates on record have advised him that the Supreme Court of Kenya has been clear on the role of the 1st Intended Interested Party which is to provide for the management and administration of public land which include allocation of land, disposing of public land and leasing.

The applicant further states that the orders sought in the petition will affect the 1st Intended Interested Party directly and adversely if granted in the manner and form sought by the Petitioner herein.

That the 2nd Intended Interested Party is a Constitutional Commission established pursuant to Article 79 of the Constitution whose functions among others, include to undertake preventive measures against unethical and corrupt practices and conduct investigations on with respect to any corrupt practices.

The applicant believes that the suit property was acquired illegally, irregularly and/or through a corrupt scheme and consequently, this Honourable Court would benefit from the 2nd Intended Interested Party's response to the Petition.

That the 2nd Intended Interested Party has a statutory obligation to institute and conduct proceedings in court for purposes of the recovery or protection of public property. That it is in the interest of justice that the 1st and 2nd Intended Interested Parties to be joined in the proceedings.

That it necessary for the 1st and 2nd Intended Interested Parties to participate in these proceedings as interested parties to avoid a multiplicity of suits which may arise out of fears that their rights may be infringed or threatened.

Order **1 Rule 10 (2)** of the **Civil Procedure Rules** provides as follows: -

" The court may at any stage of the proceedings either upon or without the application for either party and on such terms as may appear to the court to be just order that the name of any party whose presence before the court may be necessary in order to enable the court to effectually and completely to adjudicate upon and settle all questions involved in the suit (Emphasis added).

Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others [2015] eKLR:

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

The principles set out in paragraph 37 of **Francis Kariuki Muruatetu & Another v Republic & 5 others Petition 15 as consolidated with 16 of 2013 [2016] eKLR** demonstrate elements applicable where a party seeks to be enjoined in proceedings as an interested party, they are:

One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

(i) The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.

(ii) The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.

(iii) Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.

I have considered the application and do find the application by the 2nd respondent not merited because the Intended Interested parties that the 2nd Respondent seeks to enjoin in this suit are the ones to make the formal Application to this Honourable Court and not the 2nd Respondent. The two intended interested parties have the capacity to investigate and commence proceedings and it would not be prudent to enjoin them without the intended interested parties moving the court. Moreover, there is no evidence that the 2nd respondent has brought to the attention of the intended interested party the existence of this suit and the alleged irregularly obtained title. In the circumstances herein, I dismiss the Notice of Motion Application dated 1st July 2021.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 19TH DAY OF NOVEMBER, 2021

ANTONY OMBWAYO

JUDGE

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2020.

ANTONY OMBWAYO

JUDGE