



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**LAND CASE NO. 176 OF 2016**

NICODEMUS EMURON LOWOTON.....1<sup>ST</sup> PLAINTIFF

NGAMIA CONSULTING COMPANY LIMITED.....2<sup>ND</sup> PLAINTIFF

**VERSUS**

CHARLES EJORO LOROGOI.....1<sup>ST</sup> DEFENDANT

DAVID MERIMUG.....2<sup>ND</sup> DEFENDANT

KANU TURKANA CENTRAL.....3<sup>RD</sup> DEFENDANT

MINISTRY OF LANDS, PHYSICAL PLANNING

& HOUSING AND URBAN AREAS MANAGEMENT,

TURKANA COUNTY.....4<sup>TH</sup> DEFENDANT

KENYA AFRICAN NATIONAL UNION.....5<sup>TH</sup> DEFENDANT

**AND**

ENOCK KAMARIO.....1<sup>ST</sup> INTERESTED PARTY

JOSEPH LONGOLE.....2<sup>ND</sup> INTERESTED PARTY

LOKWATUBWA LOMODEI.....3<sup>RD</sup> INTERESTED PARTY

IMMANUEL LOMUKUNY.....4<sup>TH</sup> INTERESTED PARTY

**RULING**

1. The application dated 23/10/2018 has been brought by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> interested proposed parties seeking to be enjoined as parties in this suit.

2. The application is premised on seven grounds set out in the notice of motion and is supported by a sworn affidavit, also dated 23/10/2018. It is brought under *Section 1A, 1B, 3 and 3A and 63 (E)* of the *Civil Procedure Act and Order 1 Rule (10)* of the *Civil Procedure Rules*.

3. The grounds upon which the application is made are that the applicants are life members of the 5<sup>th</sup> Defendant and want to be enjoined in their own capacity as members and that they are able to table material that brings objectivity to the process of adjudicating the issues in the suit as the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are former officials of the 3<sup>rd</sup> Defendant and may not zealously protect the interests of the 3<sup>rd</sup> Defendant.

4. The 1<sup>st</sup> applicant has sworn an affidavit dated **23/10/2018** in support of the application. He depones that he, second, third and the fourth applicants are life members and current branch officials of the 3<sup>rd</sup> defendant and that they have a stake in the suit property. He has exhibited their membership cards, a letter dated **19/1/2018** addressed to the 4<sup>th</sup> Defendant and an appointment of interim branch officials' document dated **15/1/2018**.

5. In the list attached to the appointment of interim branch officials document, the entry No. 1 reads Enock Kamairo as the Interim Chairman entry No. 5 reads Immanuel Lomukuny as the Organizing Secretary and it goes without saying that entry no 8 reads David Merimug Angechel as the Assistant Secretary.

6. The deponent also alleges in the affidavit that he has vital information about the suit property and that his testimony and that of the other interested parties will aid this court in determining real issues and if this suit is heard and determined without their involvement, it will be a breach of natural justice.

7. The application is opposed.

8. According to the 2<sup>nd</sup> Defendant in the replying affidavit dated **16/11/2018**, membership identification cards of the proposed interested parties are not authentic and that the same should not be relied upon by this court. He further contends that the proposed interested parties are only attempting to bring a political dispute into a land case and that the issues the proposed interested parties intend to raise in this suit are *res judicata* as the same were adjudicated in a competent court of law vide **Lodwar PMCC Misc. Application No. 1 of 2018**.

9. The 1<sup>st</sup> to 3<sup>rd</sup> Defendants further contend that the instant application has been brought in bad faith and with malice and it is meant to delay the hearing and determination of this suit.

10. The 5<sup>th</sup> Defendant vehemently opposed the notice of motion vide its replying affidavit dated **27<sup>th</sup> November 2018**. Although the 5<sup>th</sup> defendant has recognized the proposed interested parties as its lifetime members, it is contended that since the 5<sup>th</sup> defendant has engaged counsel, the proposed interested parties, if they have genuine information that can assist in determination of this suit, may channel the same through the 5<sup>th</sup> defendant's counsel and therefore there is no need for their joinder.

11. In addition, the 5<sup>th</sup> defendant contends that the proposed interested parties have failed to tender evidence which can assist this court determine this suit and they are mere busy bodies aimed at wasting the courts time and in the process of obtaining justice for the 5<sup>th</sup> defendant.

12. In summary the 5<sup>th</sup> defendant contends that the proposed interested parties having interest of the 5<sup>th</sup> defendant at heart, ought to have brought the information they seek to table before court to the 5<sup>th</sup> defendant for the same to be part of its documents before court.

13. I have carefully considered the application by the proposed interested parties, the opposition thereto and the rival submissions by Counsels. The main issue is that the interested parties are the current branch officials of the 3<sup>rd</sup> Defendant and allege that they are better placed to give the correct picture on the ground as regards the suit land.

14. **Rule 2 of The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013** defines an interested party as follows:-

**“Interested party” means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation;”**

15. **Order 1 Rule 10 (2)** of the Civil Procedure Rules provides that:-

**“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”.**

16. It is clear from the above provision that the court can, upon satisfying itself that the person whose presence before the court may be necessary in order to enable or assist it effectually and completely determine all questions involved in a dispute, add such person as a party. The rules do not define who this person whose presence before the court is necessary is.

17. In the case of **Judicial Service Commission -vs- Speaker of the National Assembly & Another (2013) eKLR**, the court commented as follows as it delved into the definition of an interested party:

**“From the foregoing it is clear that an interested party as opposed to an *amicus curiae* or a friend of the court may not be wholly indifferent to the outcome of the proceedings in question. He is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to urge the court to make a determination favourable to his stake in the proceedings.”**

18. Having said that, the issue is as to whether the interested parties have an identifiable stake or legal interest in this case.

19. It is not in dispute that the proposed interested parties are members of the 5<sup>th</sup> defendant. Further no evidence has been tendered by the 1<sup>st</sup> to 3<sup>rd</sup> defendants to corroborate their assertions that the membership documents produced by the interested parties are fake.

20. It is not lost on this court the holdings of the court in **Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others [2017] eKLR** where the court held that:-

**“In determining whether or not an applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party the true test lies not so much in an analysis of what are the constituents of the applicant's rights, but rather in what would be the result on the subject-matter of the action if those rights could be established”.**

21. Consequently, a party claiming right to be enjoined in proceedings must have an interest in the pending litigation, and the interest must be legal and identifiable; he must demonstrate a duty in the proceedings directly identifiable by examining the questions involved in the suit.

22. The 1<sup>st</sup> and 2<sup>nd</sup> defendants have been enjoined in this matter as the official agents of the 3<sup>rd</sup> defendant, a branch of the 5<sup>th</sup> defendant, who allegedly agreed to sell and later sold the suit land to the plaintiffs.

23. In my view there has been established a sufficient connection between the 1<sup>st</sup> to 3<sup>rd</sup> defendants and the 5<sup>th</sup> defendant. The 1<sup>st</sup> and the 4<sup>th</sup> proposed interested parties are, according to the letter copy of which is annexed as **EK-3** among the current National Executive Council members of the 5<sup>th</sup> defendant. They are said to be life members of the 5<sup>th</sup> defendant. They have an interest in defending the property of the 5<sup>th</sup> defendant. This court finds nothing that bars them from joinder into these proceedings.

24. From the analysis above, it is not in doubt that the proposed interested parties herein satisfy the first two ambits of the joinder as interested parties.

25. The 1<sup>st</sup> and 2<sup>nd</sup> defendants have denied acting as agents of the 3<sup>rd</sup> defendant in the sale of the suit land. The 1<sup>st</sup> to 3<sup>rd</sup> defendants classify the funds received from the plaintiffs as “rent” for the suit premises and intimate that the 1<sup>st</sup> plaintiff was evicted from the suit land while he still owed rent arrears. They allege that the plaintiffs fraudulently and in collusion with unnamed persons described only as former Municipal Council of Lodwar staff, attempted to secure ownership of the suit land by using forged documents.

26. I am convinced that there is no merit in the allegation that the applicants are attempting to further a political dispute by seeking joinder in this suit. The subject matter herein is land and this court must shut its ears to all other political cacophony in favour of determining the substantive rights of the parties.

27. If the interested parties can shed light on the matters raised by the plaintiffs and the defendants in this suit, I find that it would be better to enjoin them for the reason that their participation may assist in this court’s determination of the suit before it.

28. The upshot of the above is that the application by the proposed interested parties has merit and I grant it in terms of **prayer 2** thereof. The interested parties shall file and serve their consolidated defence to the suit and all other necessary documents within **15 days** hereof.

29. The costs of this application shall be in the cause.

Dated, signed and delivered at Kitale on this **21<sup>st</sup>** day of **February, 2019**.

**MWANGI NJOROGE**

**JUDGE**

**21/2/2019**

Coram:

Before: Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Ondabu for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents

Mr. Bungei holding brief for Omboto for Plaintiffs

N/A for Interested Parties

N/A for the 5<sup>th</sup> Respondent

1<sup>st</sup> Proposed Interested Party present

N/A for 2<sup>nd</sup> - 3<sup>rd</sup> Proposed Interested Parties

**COURT**

Ruling read in open court.

**MWANGI NJORGE**

**JUDGE**

**21/2/2019**