



**Bamboo Twist Limited & another v National Land Commission & 22 others; Embassy of Rwanda & 2 others (Interested Parties); (Dhome Lands Committee) Omari Hamisi Mgandi & 2 others (Intended Interested Party) (Environment and Land Petition 3 of 2020 & Environment and Land Case 178 of 2014 (Consolidated)) [2025] KEELC 5619 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5619 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND PETITION 3 OF 2020 &  
ENVIRONMENT AND LAND CASE 178 OF 2014 (CONSOLIDATED)**

**SM KIBUNJA, J**

**JULY 30, 2025**

**BETWEEN**

**BAMBOO TWIST LIMITED ..... PETITIONER**

**AND**

**NATIONAL LAND COMMISSION & 7 OTHERS & 7 OTHERS & 7 OTHERS ..... RESPONDENT**

**AND**

**EMBASSY OF RWANDA ..... INTERESTED PARTY**

**AWALE TRANSPORTERS ..... INTERESTED PARTY**

**AND**

**(DHOME LANDS COMMITTEE) OMARI HAMISI MGANDI .... INTENDED INTERESTED PARTY**

**MNYANZI JOSEPH KALELI ..... INTENDED INTERESTED PARTY**

**GLADSTONE AJUMA KAGASI ..... INTENDED INTERESTED PARTY**

**AS CONSOLIDATED WITH  
ENVIRONMENT AND LAND CASE 178 OF 2014**

**BETWEEN**

**BAMBOO TWIST LIMITED ..... PLAINTIFF**

**AND**



**JUMA SALIM TEMBER & 14 OTHERS & 14 OTHERS & 14 OTHERS ..... DEFENDANT**

**AND**

**NATIONAL LAND COMMISSION ..... INTERESTED PARTY**

## **RULING**

[Notice of Motion Dated 11th July 2024]

1. The intended interested parties, hereinafter referred to as the applicants, filed the notice of motion dated the 11<sup>th</sup> July 2024, seeking for inter alia being joined in the petition as interested parties. The application is premised on the eleven (11) grounds on its face and supported by the affidavits of Omar Hamisi Mgandi, sworn on the 11<sup>th</sup> July 2024 and 2<sup>nd</sup> April 2025, deposing among others that they have been appointed by the over 2000 community members living at Dhome on parcels MN/VI/1128 to 1132, suit properties, to represent them in this proceedings, and the two other applicants have given him authority to act on their behalf; that they have been farming and lived on the suit properties for over 50 years; that in 2012, the brokers from the petitioner went around asking residents to agree to be compensated and they vacate from the land, but most of them declined as they had permanent structures there; that however, the petitioner deployed heavy machinery to level the area and forcefully evicted the people and destroyed their crops; that they have tried to stop the petitioner from developing the land unsuccessfully; that the deponent wrote to County Director, Physical Planning and Architecture on the illegal excavations and the petitioner was addressed and asked to stop the excavation works and remove its machines and labourers from the site; that on 1<sup>st</sup> June 2018, he wrote to the County Executive Lands, Housing, Planning for adjudication of the Dhome plots; that the County Government of Mombasa had proposed the Dhome Informal Settlement Scheme, which was stopped due to the Covid-19 pandemic; that in 2022, the surveyors were deployed to the site of the Dhome Informal Settlement Scheme, to establish the beacons that covered only MN/VI/1129 and 1130 before the exercise was stopped in unclear circumstances; that it was a relief for them to see the petitioner's title revoked through Kenya Gazette Notice Vol. CXIX No. 97 of 17<sup>th</sup> July 2017, and the suit properties reverted to the County Government of Mombasa; that as occupants on the said lands, they recommend that the proposed Dhome Informal Settlement Scheme be initiated, surveying done, allotment letters and title for the suit properties be issued, so as to settle this old problem permanently; that the deponent was among the Dhome Community team that had filed a historical injustice claim with the National Land Commission that delivered a decision in their favour and their joinder application should be granted.
2. The application is opposed by the petitioner through the replying affidavit of Harji Govind Ruda, director, sworn on the 30<sup>th</sup> April 2025, inter alia deposing that the application does not meet the threshold for joinder, as they have not shown any identifiable legal interest on the suit properties; that the individuals who had encroached onto the suit properties had agreed to vacate upon payment of some compensation; that the applicants are complete strangers and were not involved in its discussion with the County Government of Mombasa to resettle a limited number of identifiable group of squatters on a specific portion of the suit property, and their attempts to be included more than ten years after the conclusion of the discussion did not materialise; that an informal settlement scheme cannot be imposed on its private property where it has heavily invested; that in view of the conservatory



order issued on 6<sup>th</sup> September 2017, by the court, the gazette notice referred to by the applicants has no legal effects, and the application should be dismissed with costs.

3. The court gave directions on filing and exchanging replies and submissions on 30<sup>th</sup> January 2025 and 27<sup>th</sup> June 2025. That during the mention of 30<sup>th</sup> June 2025, counsel for 1<sup>st</sup> to 8<sup>th</sup> respondents indicated their clients were not participating in the hearing of the application.
4. The learned counsel for the petitioner and applicants filed their submissions dated the 20<sup>th</sup> June 2025 and 27<sup>th</sup> June 2025 respectively, which the court has considered.
5. The issues for determinations by the court in the applicants joinder application are as follows:
  - a. Whether the applicants have met the legal threshold to be joined in the petition as interested parties.
  - b. Who pays the costs?
6. The court has carefully considered the grounds on the notice of motion, affidavit evidence, submissions by the learned counsel, superior courts decisions cited thereon and come to the following conclusions:
  - a. The learned counsel for the applicants have among others submitted that they have met the threshold for joinder as required in the Supreme Court of Kenya case of “Francis Muruatetu versus Attorney General Petition No. 5,” and that of “Harcharan Singh versus Tarabana Company Limited E033 of 2023.” That the applicants have established personal interest by their efforts of approaching the County Government and National Land Commission, leading to the gazattement of revocation of the petitioner’s title. That they have therefore shown the prejudice they will suffer if they are not joined and heard in this petition. That their application has been made in a proceeding that pending in court hence satisfying the requirement set in the cases of “Florence Nafula & 5 Others versus Jonathan Ayodi Ligure versus John Tabalya Mukite & Another; Benson Girenge Kidiavai & 67 Others (applicants/intended interested parties) [2021] eKLR, and Elizabeth Nabangala Wekesa versus Erick Omwamba & 3 Others; Esther Momanyi Omwamba (applicant) [2021] eKLR.”
  - b. The learned counsel for the petitioner submitted inter alia that the applicants have not met the threshold for joinder as they have not established any proximate legal interest in the suit properties. That as deposed in the petitioner’s replying affidavit the applicants were not among the squatters on the suit properties who were engaged in the resettlement discussions or compensated. That in view of the conservatory order issued on 6<sup>th</sup> September 2017, restraining any further adverse dealing on the suit properties, the applicants are strangers in this petition. The learned counsel cited the cases of Hacharan Singh Sehmi & Others versus Tarbana Company Limited & Others Supreme Court Petition (Application) No. E033 of 2023, where the court emphasized that:

“Joinder of a group is not a matter of right but a judicial discretion which must be exercised on the basis of a legally identifiable interest in the subject matter of the dispute....”

The counsel went on to submit that the court had adopted the test from the Muruatetu case that an applicant must establish, that he has a clearly identifiable and proximate personal stake; show the specific prejudice that would arise if not joined and set out the distinct case they intend to make. The counsel referred to the



case of Civicon Limited versus Kivuwatt Limited & Others CACA No. 45 of 2014, where the Court of Appeal clarified that:

“Any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined. In the same vein, a party seeking joinder who fails to establish any right over or interest in the subject matter cannot be enjoined.”

The counsel submitted that the applicants have not tendered any documentary proof of occupation, ownership or entitlement to the suit properties. That no evidence of customary rights, allocation letter or public records of their entitlement to the suit properties have been availed. That the applicants have not demonstrated what prejudice they stand to suffer if they are not joined in the petition and they have not indicated what legal issues they intend to raise in the petition if joined. That the application should be dismissed with costs.

- c. From the applicants’ depositions, they allege that they were among those squatters who were forcefully removed from the suit properties when the petitioner deployed machinery to level the area. The petitioner has in their deposition disputed the applicants’ claim, stating that they were not squatters on the suit properties, as they were not among those it compensated to vacate or engaged with in the resettlement discussions. The petitioner has attached to its replying affidavit copies of the nine cheques and eight payment vouchers all carrying various dates of 2009 in support of its deposition. The said annexures show that the petitioner made the specified payments to the persons named thereon, who it has deposed were among the squatters it compensated to vacate, and the applicants were not among them. The petitioner has also annexed the letter to the Governor, Mombasa County dated 6<sup>th</sup> March 2015 expressing its offer to surrender a portion of the suit property for resettlement of the squatters thereon. The petitioner’s position is that the applicants were not among those earmarked for resettlement.
- d. I notice that the counsel for the applicants and petitioner have in their submissions relied on the Supreme Court of Kenya cases of Hacharan Singh Sehmi & Others versus Tarbana Company Limited & Others [supra] and Francis Muruatetu versus Attorney General [supra], that restated the responsibility of an applicant in a joinder application paraphrased to include that:
  - i. Establishing that they have a clearly identifiable and proximate personal stake in the subject matter;
  - ii. Show the specific prejudice that would arise if not joined; and
  - iii. Set out the distinct case they intend to make if joined.

Considering that there is no evidence tendered to confirm that the applicants were actually squatters on the suit properties, and that they were forcefully evicted during the levelling of the land, and in the absence of evidence that they subsequently re-occupied the said properties, then there is no evidence presented by the applicants of any identifiable stake over the suit properties. This is especially so as they were evidently not among those compensated to vacate, who may probably claim what they were given was insufficient or among those being engaged in the discussions for resettlement. Assuming for a moment that the applicants ought to have been among those compensated to vacate or to be engaged in the resettlement discussion but



were left out, the court would have expected them to avail documentary evidence of the steps they took to be included, but no such evidence was presented.

- e. The supporting affidavit sworn on 11<sup>th</sup> July 2024 and filed with the notice of motion on 1<sup>st</sup> October 2024 did not have any annexures though one was mentioned at paragraph 16. The further affidavit sworn on 2<sup>nd</sup> April 2025 has at paragraphs 2 to 7 annexed six documents, which are supporting affidavit sworn on 11<sup>th</sup> July 2024, Dhome Lands Committee minutes of 9<sup>th</sup> July 2024, document headed “Further Affidavit, Authority to Act” dated 10<sup>th</sup> July 2024, but not commissioned, copy of gazette notice of 17<sup>th</sup> July 2017, aerial photograph, and letter to the Governor, Mombasa County dated 22<sup>nd</sup> October 2024. None of these documents amounts to evidence of the applicants’ legal interest over the suit properties. The applicants have therefore failed to show the court that they would suffer prejudice if they were not joined in this petition. They have also failed to set out any distinct case they intend to make if joined, in the petition. The court therefore finds the applicants are not necessary parties to be joined in the petition and their application is without merit.
  - f. That as the applicants have filed in their application, they should pay the petitioner costs as it has definitely incurred expenses defending it.
7. In view of the above determinations on the notice of motion dated 11<sup>th</sup> July 2024 and filed on 1<sup>st</sup> October 2024, the court finds and orders as follows:
- a. That the application is without merit, and is dismissed.
  - b. The applicants to pay the petitioner’s costs.

It is so ordered.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 30TH DAY OF JULY 2025.**

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

In the presence of:

Petitioner: Mr. Borona

Respondents : M/s Langat for 7<sup>th</sup> to 5<sup>th</sup> and 7<sup>th</sup> Respondents

Mr. Tajbhai for 6<sup>th</sup> Respondent

Applicants/Intended Interested Parties : Mr. Adika

Shitemi-Court Assistant.

S. M. KIBUNJA, J.

