



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU

E.L.C. PETITION NO. 1 OF 2014

IN THE MATTER OF ARTICLES 62 (2), 63(1), (2), (3), (4) AND 67 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF ARTICLE 47 OF THE CONSTITUTION OF

KENYA 2010

AND

THE LAND ADJUDICATION ACT, CAP 284, LAWS OF KENYA

AND

IN THE MATTER OF CONTRAVENTION AND/OR APPREHENDED CONTRAVENTION OF MBEERE COMMUNITY RIGHTS AND INTEREST IN LAND IN ALL THAT TRUST LAND KNOWN AS MWEA WITHIN THE AREAS KNOWN AS KARABA, WACHORO, RIAKANAU, GATEGI AND MAKIMA, UNDER ARTICLES 62(2), 63(1), (2), (3), (4) AND 67 OF THE CONSTITUTION OF KENYA, 2010

BETWEEN

- MBEERE ELDERS ADVISORY WELFARE GROUP (NGOME).....1ST PETITIONER**
- DAVID MITI NJUKI.....2ND PETITIONER**
- NJERU BANDA.....3RD PETITIONER**
- ESTON NYAGA NTHIGA.....4TH PETITIONER**
- SERAPHINO NGARI.....5TH PETITIONER**

VERSUS

- THE ATTORNEY GENERAL.....1ST RESPONDENT**
- COMMISSIONER OF LANDS.....2ND RESPONDENT**
- DIRECTOR OF LAND ADJUDICATION.....3RD RESPONDENT**
- CHIEF LAND REGISTRAR.....4TH RESPONDENT**
- DISTRICT LAND REGISTRAR MBEERE.....5TH RESPONDENT**
- THE COUNTY COUNCIL OF MBEERE.....6TH RESPONDENT**
- THE NATIONAL LAND COMMISSION.....7TH RESPONDENT**

THE COUNTY SECRETARY LAND AND

PHYSICAL PLANNING EMBU COUNTY.....8TH RESPONDENT

AND

AMBROSE KITHAKA KARIUKI & 233 OTHERS.....INTERESTED PARTIES

AND FURTHER

JUSTINE NYAKI NGURE & 14 OTHERS.....235TH – 249TH INTERESTED PARTIES

VERSUS

NAOMEY MUTHONI NYAGAH & 293 OTHERS.....9TH – 303RD RESPONDENTS

RULING

1. This ruling is in respect of three (3) separate applications by various applicants to be joined as parties to the petition in various capacities. The first application is a Notice of Motion dated 31.12.18 brought under the provisions of **Article 22(2) (b) (c) (d) and Article 159 (2) (b) and (d) of the Constitution of Kenya; Rules 4 and 5 (d) (ii) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013** (hereinafter the *Mutungu Rules*); **Section 63 (4) of the Land Registration Act; Sections 3A, 1A and 1B of the Civil Procedure Act (Cap. 21) and Order 1 Rule 8 (1), (2) and (3); and Order 5 Rule 17 of the Civil Procedure Rules** (hereinafter *the Rules*) filed by the firm of Njiru Kithaka & Co. Advocates for the proposed 6th – 9th Petitioners.
2. The Applicants in the said application were seeking to be joined in the proceedings as the 6th, 7th, 8th, and 9th Petitioners respectively. The said application was based upon the grounds set out on the face of the motion and supported by an affidavit sworn by Peter Nyaga Mitaru on 31.12.18.
3. The Applicants contended that they were all members of the Mbeere Community on whose behalf the petition was filed and as such had a stake in the outcome of the petition. It was further contended that there were attempts by the current Petitioners to frustrate the hearing and conclusion of the petition by attempting to withdraw it against the wishes of the community. It was also contended that the Petitioners no longer had the interests of the Mbeere Community at heart and that they had caused large portions of the land in dispute to be unfairly allocated to themselves, their families, friends and senior government officials to the prejudice of community members.
4. The second application is a Notice of Motion dated 30.01.19 brought under the provisions of **Order 5, Order 1 Rules 3, 5, & 14 of the Rules and all enabling provisions of the law**. The said application was filed by the firm of Mutuma, Gichuru & Associates Advocates, on behalf of the Applicant who is the current Member of Parliament for Mbeere South Constituency. The application was based on the grounds set out on the face of the motion and supported by an affidavit sworn by Hon. Geoffrey Kingangi Muturi on 30.01.19.
5. It was contended that as a Member of Parliament for Mbeere South Constituency, the Applicant had an obligation to voice the interests of his electorate with regard to community land which was the subject of the petition herein. It was contended that he had received complaints from some of his constituents who were aggrieved by the manner of allocation of the suit property. He therefore wanted to be joined as an interested party in the petition in order to articulate those grievances.
6. The third application is a Notice of Motion dated 03.02.19 brought under the provisions of **Articles 48, 50(1) of the Constitution of Kenya 2010, Order 1 Rules 10(2) and 22 of the Rules, Section 3A of the Civil Procedure Act (Cap. 21) and all enabling provisions of the law** seeking the following substantive orders:
 - a) *That Benson Muthike Warui & 5799 Others be joined in the petition as Interested Parties.*
 - b) *That the court be pleased to grant them leave to file pleadings in response to the petition.*
7. The said application was based upon the grounds set out on the face of the motion together with seven (7) supporting affidavits sworn by some of the applicants. It was contended that the applicants were residents of Makima, Karaba, Riakanau and Gategi Adjudication areas within Mwea Settlement Scheme. It was contended that the land the subject of the petition was community land part of which they had been in occupation for many years. They were apprehensive that any decisions made in the matter might affect them hence the need to participate in the proceedings.
8. When the matter was last listed on 06.02.19 leave was granted to any party desirous of opposing any of the 3 applications to file their responses within 14 days upon service thereof. The respective applicants in the said applications were granted 14 days upon service of the last of the responses to file their written submissions whereas the rest of the parties were granted 14 days upon service of the last of the applicants' submissions to file and serve their written submissions.
9. There is no indication on record of any responses having been filed in opposition to the three applications. Although the applicants in the said applications filed their written submissions on 13.03.19, 17.04.19 and 10.05.19 respectively there were no submissions from any of the other parties by the time of preparation of the ruling.

10. The court has considered the three applications for joinder of the respective applicants in various capacities, the affidavits in support thereof as well as the annexures thereto. The court shall first deal with the two applications for joinder as interested parties. The principles to be considered in granting or declining such applications were considered in the case of **Kenya Medical Laboratory Technicians & Technologists Board & 5 Others Vs the Attorney General & Others (2017) eKLR** whereby Mativo J held as follows;

“The test is not whether the joinder of the person proposed to be added as an interested party would be according to or against the wishes of the petitioner or whether the joinder would involve an investigation into a question not arising on the cause of action averred by the petitioner. It is whether the intended interested party has an identifiable stake, or a legal interest or duty in the proceedings.”

A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights ...”

11. Similarly, in the case of **Trusted Society of Human Rights V Mumo Matemo & 5 Others (2014) eKLR**, it was held, *inter alia*, that;

“... an interested party is one who has a stake in the proceedings though he or she was not a 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.”

12. On the basis of the material on record, the court is satisfied that the applicants in the Notice of Motion dated 03.02.19 have demonstrated that they have an identifiable stake in the proceedings and that they may be affected by any decision which may ultimately be made on the petition. Accordingly, the court shall allow them to be joined in the petition and to file any necessary pleadings and affidavits.

13. The court is, however, far from satisfied that the applicant in the Notice of Motion dated 31.01.19 has demonstrated any stake, legal interest, or other duty in the petition before court. It may well be the case that he has received some complaints from his constituents regarding allocation of the property in dispute. It may well be the case that some of his constituents could be landless. But that does not confer any legal status or interest upon the applicant to join legal proceedings on their behalf. It is true that the Applicant is a representative of his constituents in Mbeere South Constituency. However, he has chosen the wrong forum for the purpose of political representation of his people.

14. By the Notice of Motion dated 31.12.18 the applicants sought to be joined in the petition as co-petitioners. It is not in dispute that they are members of the Mbeere Community on whose behalf the petition was filed in the first instance. Their greatest concern and apprehension is that the original Petitioners are no longer acting with their interests at heart. They are concerned that the current Petitioners are intent on frustrating the hearing of the petition as evidenced by a previous attempt to withdraw it altogether.

15. The addition, joinder, substitution and striking out of parties in constitutional petitions is provided for in **Rule 5** of the Mutunga Rules. Those provisions are similar to the ones contained in **Order 1** of the **Rules**. By those provisions, the court is empowered at any stage of the proceedings either with or without application to join additional parties if the ends of justice so require.

16. The court is aware that the applicants seeking to be joined as Petitioners may well be entitled to file their own separate petition. However, where the cause of action arises from the same act, transaction, or series of transactions, or where similar questions of fact or law would arise if separate suits were filed, it would be prudent to have all issues or questions settled in one suit. There would be no need for multiplicity of petitions if the matters in question can be resolved in an existing petition.

17. In the premises, the court is satisfied that the applicants in the Notice of Motion dated 31.12.18 have made a case for joinder as co-petitioners in the pending petition. The court needs to make economic use of judicial time by discouraging multiplicity of petitions on disputes which would raise similar questions of fact or law. The court shall therefore allow the said application for joinder.

18. The upshot of the foregoing is that whereas the court finds merit in the Notice of Motion dated 31.12.18 and the Notice of Motion dated 03.02.19, it finds no merit in the Notice of Motion dated 30.01.19. Consequently, the court makes the following orders;

- a. The Notice of Motion dated 31.12.18 is hereby allowed in terms of Order No. 2 thereof.
- b. The added Petitioners shall be at liberty to file and serve any necessary affidavits or pleadings, if need be, within 21 days from the date hereof.
- c. The Notice of Motion dated 03.02.19 is hereby allowed in terms of Order No. 2 thereof.
- d. The added Interested Parties shall be at liberty to file and serve any necessary affidavits or pleadings, if need be, within 21 days from the date hereof.
- e. The Notice of Motion dated 30.01.19 is hereby dismissed in its entirety with no order as to costs.
- f. Costs of the Notice of Motion dated 31.12.18 and the Notice of Motion dated 03.02.19 shall be in the cause.

19. It is so ordered.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **16TH** day of **MAY, 2019**.

In the presence of Mr. Kamunda for the Petitioners, Ms Kithaka for proposed Petitioners, Mr. Momanyi for the 1st – 234th Interested Parties, Mr. Njagi for the 235th – 249th Interested Parties.

Mrs. Njoroge & Mr. Siro present for the Respondents for Attorney General, 1st – 5th Respondents in the absence of the rest of the Respondents.

Mr. Nzioki present for proposed Interested Parties and Mr. Nzioki holding brief for Mr. Mutuma for other proposed Interested Parties.

Court Assistant Mr. Muinde

Y.M. ANGIMA

JUDGE

16.05.19