



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CASE NO. 278 OF 2016**

**PREM RAMNATH GUPTA.....PLAINTIFF**

**VERSUS**

**ESTHER KACHE.....1<sup>ST</sup> DEFENDANT**

**COUNTY GOVERNMENT OF KILIFI.....2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL on behalf of**

**COUNTY LAND REGISTRAR KILIFI.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. This suit was initially filed by the Plaintiff as Mombasa ELC No. 90 of 2014 against two Defendants on 22<sup>nd</sup> April 2014. Following an application made by the Plaintiff dated 20<sup>th</sup> June 2014, the Honourable the Attorney General was enjoined as the 3<sup>rd</sup> Defendant on behalf of the County Land Registrar Kilifi. Subsequently by an order made on 29<sup>th</sup> September 2016, it was directed that the suit be transferred to this Court for hearing and determination.

2. However, before the hearing could commence, the 2<sup>nd</sup> Defendant filed the present application dated 2<sup>nd</sup> May 2018 praying for orders as follows:-

***1. That the Court be pleased to enjoin the Chief Land Registrar, the Director of Land Administration, the Director of Physical Planning and the National Land Commission respectively as the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants in this suit;***

***2. That the Court be and is hereby pleased to enjoin the Ethics and Anti-Corruption Commission as an Interested Party to this suit;***

***3. That the Plaintiff be directed to further amend his Complaint to enjoin the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> proposed Defendants as Defendants in this suit and to serve the Further Amended Complaint on the said Defendants within 21 days or as otherwise directed by the Court;***

***4. That the Plaintiff be directed to further amend his Complaint to enjoin the proposed Interested Party as a party to this suit and to serve the Further Amended Complaint on the Interested Party within 21 days or as otherwise directed by the Court;***

**5. That the costs of this application and the suit be provided for.**

3. The Motion which is brought under Section 1A, 1B and 3A of the Civil Procedure Act, Order 1 Rule 10(2) of the Civil Procedure Rules as well as Article 159 of the Constitution is premised on the grounds, inter alia;

**a) That the 2<sup>nd</sup> Defendant's position is that the suit property which the Plaintiff claims constitutes the only available public recreational park within Kilifi Township;**

**b) That it is vital that the proposed parties be enjoined as the Chief land Registrar, the Director Land Administration, the Director Physical Planning and the National Land Commission are the custodians of all public records relating to the creation of the suit property which records should be produced in Court to demonstrate that the Plaintiff acquired a legally valid title before the draconian relief sought herein can be granted;**

**c) That the Ethics & Anti-Corruption Commission has a statutory mandate to investigate and recover all public land illegally or irregularly acquired by private persons.**

4. The application is opposed by the Plaintiff. By Grounds of Objection filed herein on 3<sup>rd</sup> July 2018, the Plaintiff objects to the Application on the grounds inter alia:-

**i) That the application is bad in law, made in bad faith and only intended to waste precious judicial time and further delay the matter which had already been set down for hearing on two occasions;**

**ii) That there is no basis at all that has been laid by the Applicant to warrant the jointing of the proposed parties in this suit and neither has it been shown how the said proposed parties would assist the Honourable Court and the parties in adjudicating on the issues comprehensively;**

**iii) That in any event the Defendants have the liberty to call as witnesses the said proposed parties;**

**iv) That there is no prejudice at all that will be suffered by the Defendants if the application is dismissed as they still have an opportunity to call as witnesses the said proposed parties;**

**v) That this is a suit that was filed four years ago in the year 2014 and which has been in the Defendants knowledge since then, and hence the application is actuated by bad faith and is intended to delay the hearing;**

**vi) That the Defendants have indeed raised in their Defence the issue that the suit property is a public utility area evidencing that they have all along raised that point and ought to know that they will require evidence to buttress that point;**

**vii) That further, the Defendants have failed to demonstrate the role that the alleged proposed parties would play in this suit and in particular how their joinder would assist this Court to determine the issues;**

**viii) That the application is a non-starter and a fishing expedition and the same ought to be dismissed with costs.**

5. I have considered the Application and the response thereto. I have also perused and considered the submissions and authorities to which I was referred by the Learned Advocates for the parties.

6. As it were, joinder of parties is governed by Order 1 Rule 10(2) of the Civil Procedure Rules. In law, joinder should be permitted of all parties in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in

the alternative, where if such persons brought separate suits, any common question of law or fact would arise.

7. In this regard, the Court may even on its own motion add a party to the suit if such party is necessary for the determination of the real matter in dispute or whose presence is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all questions involved in the suit.

8. But in the same breadth, joinder of parties may be refused where such joinder will lead into practical problems of handling the existing cause of action together with the one of the party being joined; or where it is unnecessary or will just occasion unnecessary delay or costs on the parties.

9. In the matter before me, the Plaintiff filed this suit against the existing Defendants in 2014. In its Defence to the Plaintiff's Claim, the 2<sup>nd</sup> Defendant avers inter alia that the suit property is a public utility area and that its alienation to the Plaintiff would cause untold suffering to the residents of Kilifi Town. It is in that regard that the 2<sup>nd</sup> Defendant now seeks to enjoin the proposed additional four Defendants and the Ethics & Anti-Corruption Commission as an Interested Party.

10. I have considered the grounds put forth by the 2<sup>nd</sup> Defendant for this application. I am not persuaded that it has demonstrated any proper role(s) that the proposed parties would play in this dispute and how their joinder in particular would assist this Court to effectually determine the issues herein.

11. As it were, there is nothing in law that I am aware of that could stop the 2<sup>nd</sup> Defendant from calling as witnesses officers from the proposed 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants to come and produce the records they hold in regard to the suit property. They need not be parties in these proceedings to produce such records. In regard to the proposed Interested Party; nothing was placed before me to demonstrate that the 2<sup>nd</sup> Defendant has called upon them to investigate any alleged improprieties arising from the alienation of the suit property. They need not be enjoined herein for them to carry out their Constitutional and statutory mandate.

12. In my mind, I think the proposed joinder is only intended to vex the parties and to convolute the proceedings with unnecessary new matters and grounds not earlier on contemplated or envisaged in the pleadings. The Plaintiff has no claim against the proposed Defendants and/or Interested Party and I see no reason why he should be forced to sue them.

13. In the result, I decline to exercise my discretion in favour of the Applicant. The Notice of Motion Application dated 2<sup>nd</sup> May 2018 is accordingly dismissed with costs to the Plaintiff.

**Dated, signed and delivered at Malindi this 26th day of June, 2019.**

**J.O. OLOLA**

**JUDGE**