



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 146 OF 2018

(FORMERLY HC PETITION NO. 26 OF 2011)

- 1. IRENE KANYI MWANGI.....1ST PETITIONER
- 2. MARY NYAMBURA MUGO.....2ND PETITIONER
- 3. WANGECHI MBURU.....3RD PETITIONER
- 4. WINNIE MUTHONI.....4TH PETITIONER
- 5. HELLEN NYAGATI MUREITHI.....5TH PETITIONER
- 6. ZIPPORAH WARINGA.....6TH PETITIONER
- 7. HARIET WANJIRU.....7TH PETITIONER
- 8. LOISE WANJIKU.....8TH PETITIONER
- 9. MARY WANGARI W/O OWEN NDUNGU.....9TH PETITIONER
- 10. PENNINAH WANGUI NDUNGU D/O
OWEN NDUNGU.....10TH PETITIONER

AND

- ATTORNEY GENERAL.....1ST RESPONDENT
- PERMANENT SECRETARY, MINISTRY OF LANDS
AND SETTLEMENT2ND RESPONDENT
- PERMANENT SECRETARY, MINISTRY OF
SPECIAL PROGRAMMES.....3RD RESPONDENT

AND

JOSEPH KURIA NJUGUNA & 266 OTHERS INTERESTED PARTIES

RULING

1. This ruling is in respect of the 1st, 2nd and 3rd respondents’ Notice of Motion dated 23rd September 2019, an application seeking orders that Philip Kamau Njoroge be joined to these proceedings as an interested party or respondent. It is useful to recall that the petition herein was filed in court on 19th September 2011 in the High Court. The petitioners allege that their fundamental rights and freedoms have been violated with regard to the alleged sale of the property known as Ndonga Farm Subukia L.R. No.6507 to the Government of Kenya.

2. The present application is supported by an affidavit sworn by Winnie Jebet Cheruiyot, a Senior State Counsel in the Office of the Attorney General who is on record for the 1st, 2nd and 3rd respondents. She deposed that the proposed interested party or respondent was the vendor of the suit property in a transaction in which KShs 97,500,000 of public funds was spent and that it is alleged that he used a forged power of attorney to effect the transaction. She added that the 1st, 2nd and 3rd respondents intend to seek indemnity from the proposed interested party or respondent.

3. The petitioners and the 1st to 267th interested parties did not file any response to the application. They indicated that they do not object to it.

4. Philip Kamau Njoroge the proposed interested party or respondent responded to the application through his replying affidavit sworn on 25th October 2019. He acknowledged that the sale took place but added that he never signed any power of attorney on behalf of any person who has a beneficial interest in the suit property. He added that the government did not pay a purchase price that was agreeable to all the beneficiaries.

5. The application was canvassed through written submissions. Only the 1st, 2nd and 3rd respondents and the proposed interested party or respondent filed submissions. The 1st, 2nd and 3rd respondents argued that in view of the contents of his replying affidavit, the proposed interested party or respondent is a crucial party to this matter. They further argued that under **Rule 5 (d) and (e) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013** the court has a wide discretion to remove a party or enjoin any person to the proceedings.

6. The proposed interested party or respondent argued in his submissions that he has no objection to be joined as an interested party if the court so determines. He added that he has a legal and identifiable duty in the proceedings but should not be joined as a co-respondent with the 1st, 2nd and 3rd respondents since he has issues to raise against them.

7. I have considered the application, the affidavits filed and the submissions. **Rule 5 (d) and (e) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013** provide:

The following procedure shall apply with respect to addition, joinder, substitution and striking out of parties—

...

(d) 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 just—

(i) order that the name of any party improperly joined, be struck out; and

(ii) that the name of any person who ought to have been joined, or whose presence before the court may be necessary in order to enable the court adjudicate upon and settle the matter, be added.

(e) Where a respondent is added or substituted, the petition shall unless the court otherwise directs, be amended in such a manner as may be necessary, and amended copies of the petition shall be served on the new respondent and, if the court thinks, fit on the original respondents.

8. Thus, the power of the court to join any person who ought to have been joined, or whose presence before the court may be necessary in order to enable the court adjudicate upon and settle the matter cannot be disputed. In **H.E. Raila Amolo Odinga & Another v. IEBC & 3 Others (2017) eKLR** the Supreme Court stated:

While interpreting this provision in the Muruatetu case, this Court laid out clear guidelines on instances when a person may be enjoined to proceedings before it as an interested party. At paragraph 37, the Court held:

... 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 as replication of what the other parties will be making before the Court.

9. The proposed interested party or respondent has acknowledged in his replying affidavit that he sold the suit property to the government. He seems to be ready to mount a claim against the government for what he considers to be the difference between what the government paid for the property and a purchase price agreeable to all the beneficiaries. He expressly argued in his submissions that he has a legal and identifiable duty in the proceedings. He is therefore closely connected to the issues raised in this matter and his presence before the court will

certainly be necessary in order to enable the court adjudicate upon and settle the matter. I am satisfied that he should be enjoined in these proceedings. The only question that remains is whether he should be joined as an interested party or respondent.

10. The Supreme Court defined interested party in **Trusted Society of Human Rights Alliance v. Mumo Matemo & 5 Others** (2014) eKLR as follows:

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.

11. The 1st, 2nd and 3rd respondents say that they have a claim against the proposed interested party or respondent and that they intend to seek indemnity from him. As shown above, the proposed interested party or respondent also says he has a claim against the government. In these circumstances, we are dealing with parties who are keen on litigating against each other. Joinder as an interested party would not be ideal in the circumstances. To give them the latitude that they want in this litigation, joinder as a respondent is more appropriate.

12. In view of the foregoing discourse, Notice of Motion dated 23rd September 2019 has merit. I make the following orders:

i) Philip Kamau Njoroge is hereby joined to these proceedings as 4th respondent.

ii) The petitioners to file and serve an amended petition to reflect the above joinder within 14 (fourteen) days from the date of delivery of this ruling. If need be, the petitioners to also file and serve a further supporting affidavit within the same period.

iii) The respondents and the interested parties to file and serve, if need be, replying affidavits within 14 (fourteen) days of service of the amended petition.

iv) Costs of the application shall be in the cause.

Dated, signed and delivered in open court at Nakuru this 18th day of December 2019.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the 1st, 2nd and 3rd respondents/applicants

Mr Biko for the petitioners/ respondents

No appearance for the 1st to 267th interested parties/respondents

Mr Geke for the proposed 268th interested party/4th respondent

Court Assistants: Beatrice & Lotkomo