



**Republic v Land Registrar Rachuonyo East; Tindi (Exparte Applicant); Nyandega (Intended Interested Party) (Environment and Land Judicial Review Miscellaneous Application 6 of 2021) [2024] KEELC 533 (KLR) (31 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 533 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY**

**ENVIRONMENT AND LAND JUDICIAL REVIEW  
MISCELLANEOUS APPLICATION 6 OF 2021**

**GMA ONGONDO, J**

**JANUARY 31, 2024**

**IN THE MATTER OF ORDER 53 RULE 1 & 3 OF THE CIVIL PROCEDURE ACT**

**AND**

**IN THE MATTER OF THE LAND REGISTRATION ACT, NO. 3 OF 2012**

**AND**

**IN THE MATTER FOR AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF  
PROHIBITION CERTIORARI & MANDAMUS**

**AND**

**IN THE MATTER OF ARTICLE 2,10,19,40,47,48 AND 50 OF THE CONSTITUTION  
OF KENYA 2010**

**AND**

**IN THE MATTER OF SECTIONS 24, 26 AND 79 OF THE LAND REGISTRATION  
ACT 2012.**

**AND**

**IN THE MATTER OF SECTIONS 8 & 9 OF THE LAW REFORM ACT CAP 26 LAWS  
OF KENYA.**

**AND**

**IN THE MATTER OF SECTIONS 7 AND 8 OF THE FAIR ADMINISTRATIVE  
ACTIONS ACT 2015.**

**BETWEEN**

**REPUBLIC ..... APPLICANT**



**AND**  
**LAND REGISTRAR RACHUONYO EAST ..... RESPONDENT**  
**AND**  
**OTIENO KENNEDY TINDI ..... EXPARTE APPLICANT**  
**AND**  
**JOSEPH AROKA NYANDEGA ..... INTENDED INTERESTED PARTY**

**RULING**

1. In an application by way of a notice of motion dated 16<sup>th</sup> August 2021 generated under, inter alia, Articles 50 (1) and 159 (1) (d) of *the Constitution* of Kenya, 2010 and Order 1 Rule 10 (2) of the Civil Procedure Rules, 2010, the intended interested party/applicant, Joseph Aroka Nyandega through Modi and Company Advocates, is seeking the following orders;
  - a. Spent.
  - b. Spent
  - c. That, Joseph Aroka Nyandega be and is hereby joined as interested party in the ELC Judicial Review application herein.
  - d. That, the Honourable Court be pleased to set aside Judgment delivered on 29<sup>th</sup> day of July, 2021 consequential orders made pursuant to the same.
  - e. That, the Honourable Court be pleased to grant leave to the interested party to Respond to the Notice of Motion application dated 3<sup>rd</sup> May, 2021. (The Judicial review application herein).
  - f. That, the costs of this application be provided for.
2. The application is premised upon grounds (a) to (e) stated on it's face and the intended interested party's affidavit of eleven paragraphs sworn on even date. In a nutshell, the intended interested party's complaint is that he bought land reference number Central Kasipul/Kawere Kamagak/ 2147 (The suit land herein) from Jane Akinyi Odero and her children who put him in possession of it. That the intended interested party planted trees on the same and he is in possession of the same todate. That the Ex parte applicant, Otieno Kennedy Tindi and Jane Akiyo Odero sued him together with the respondent for a declaration of ownership of the suit land, among other orders, in Oyugis CMC Environment and Land case suit No. 11B of 2021 (Oyugis civil suit) which is still pending determination hence, precipitating the present application.
3. By a replying affidavit of thirteen paragraphs sworn on 10<sup>th</sup> May 2022, the Ex parte applicant through Mugo and Associates Advocates, stated that he was aware that this court was only dealing with purely administrative action and decision of cancellation of title without according him the right to be heard and not the issues raised in the Oyugis civil suit. That the issues raised in the grounds of the application and the supporting affidavit, are for determination in a different forum which will interrogate all the facts including the issues of ownership of the suit land.
4. The Ex parte applicant therefore, termed the application an afterthought, without merit, an abuse of the court process and intended to waste court's time. That the intended interested party's allegations



are false, baseless and ill motivated. In support of his averment, he referred to the his defence and counter claim in Oyugis Civil suit marked as “OK 1” and annexed to the affidavit.

5. The respondent was duly served as disclosed in affidavits of service sworn on 8<sup>th</sup> March 2023 and 5<sup>th</sup> December 2023. Be that as it may, the respondent did not respond to the application.
6. The application was heard by way of written submissions further to application orders made on 20<sup>th</sup> June 2022 and Order 51 Rule 16 of the Civil Procedure Rules, 2010.
7. In the submissions dated 1<sup>st</sup> August 2023, learned counsel for the Ex parte applicant referred to the grounds of application including that there exists Oyugis Civil suit and the grounds of opposition thereto inclusive of the assertion that the application is an abuse of the court process and intended to waste the court’s time as the Judicial Review application was purely dealing with administrative issues and not the issues of ownership and possession of the suit land. Counsel identified triple issues for determination, inter alia, whether the interested party has satisfied the requirements of setting aside the ex parte judgment delivered on 29<sup>th</sup> July 2021 and whether the issue before the subordinate court and this court is one and the same.
8. It was the Ex Parte applicant’s submission that while the instant Judicial forum is for determination of the administrative action, the merits of the case or issue of ownership is to be handled in Oyugis Civil suit; Jane Akinyi Odero and another-vs-Joseph Aroka & another. Counsel termed the Judicial Review Application different from Oyugis Civil suit and the instant application is defective and abuse of the court process. Counsel cited the case of Republic-vs-Boundary Commission for England, Ex parte (1983) (34) and implored the court to dismiss the application with costs.
9. The respondent did not file any submissions herein.
10. I have anxiously considered the entire application, the Ex parte applicant’s replying affidavit and the submissions in entirety. So, the issues for determination are condensed to whether the interested party is deserving of the orders sought in the application and the just orders to grant in this matter.
11. The intended interested party is seeking to be joined to the Judicial Review application but the ex parte applicant has opposed the application. In *Concise Oxford English Dictionary 12<sup>th</sup> Edition*, the term ‘Joinder’ means;  

“An act of bringing parties together.”
12. Order 1 Rule 10 (1) and (2) of the Civil Procedure Rules, 2010 provides that the court has the discretionary power at any stage of the suit to order any person to be added as a plaintiff if it is satisfied that it is necessary for the determination of the real matter in dispute or whose presence before the court may be necessary in order to enable the court effectively and completely to adjudicate upon and settle all questions involved in the suit.
13. The ex parte judgment sought to be set aside in the application, was delivered on 29<sup>th</sup> July 2021. It is in favour of the Ex parte applicant.
14. Besides, the said judgment is technical in nature. In *Dhiman Kashavji Jivraji Shah (2015)* eKLR, the Court of Appeal observed;

“.....the courts exist for the purposes of dispensing justice and that the sword of justice cuts both ways.....Further, it has been said time and again that a technical judgment is not the best judgment.....”



15. Notably, the parties including the intended interested party are entitled to rights under Articles 25 (c), 48 and 50 (1) of the Constitution of Kenya, 2010. The orders sought in the application are within those rights.
16. In that regard, the intended interested party has established that he is entitled to orders 3, 4 and 5 sought in the application as stated in paragraph 1(c) (d) and (e) hereinabove. The same are hereby granted accordingly
17. Moreover, the court is aware of the definition of the term “suit” under section 2 of the Civil Procedure Act Chapter 21 Laws of Kenya. It is common baseline that Oyugis Civil suit and the Judicial Review Application are running simultaneously.
18. It is noteworthy that the 2<sup>nd</sup> plaintiff, 1st defendant and 2nd defendant Oyugis Civil suit are the Ex parte Applicant, intended interested party and respondent respectively herein. The subject matter of the two cases is the same namely the suit land reference number Central Kasipul/Kawere/2147. Therefore, I am of the considered view that this matter is sub-judice.
19. Wherefore, this Judicial Review Application in entirety is hereby stayed under section 6 of the Civil Procedure Act Chapter 21 Laws of Kenya.
20. Costs of the application be in the cause.

**DELIVERED, SIGNED AND DATED AT HOMABAY THIS 31<sup>ST</sup> JANUARY 2024**

**G.M.A ONG'ONDO**

**JUDGE**

**PRESENT;**

- a. Mr. Mugo learned counsel for the Exparte- Applicant
- b. Mr. Modi learned Counsel for intended interested party
- c. Luanga, court assistant

