



**Singh v Kenya Railways Corporation & 2 others (Environment & Land
Petition E009 of 2023) [2024] KEELC 277 (KLR) (31 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 277 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND PETITION E009 OF 2023
NA MATHEKA, J
JANUARY 31, 2024**

BETWEEN

BALJEET SINGH PETITIONER

AND

KENYA RAILWAYS CORPORATION 1ST RESPONDENT

NATIONAL LAND COMMISSION 2ND RESPONDENT

LAND REGISTRAR, MOMBASA 3RD RESPONDENT

RULING

1. The application is dated 4th July 2023 and is brought under Section 1A (I) and 3A of the [Civil Procedure Act](#) Cap 21, Order I Rule 10 (2) and Order 51 Rule I of the [Civil Procedure Rules](#) 2010 seeking the following orders;
 1. The name of Kenya Railways Corporation, the 1st Respondent herein, be struck out from this suit with costs for being improperly joined to the proceedings.
 2. Costs of this application be provided.
2. It is based on the grounds that the Petitioner has improperly joined the 1st Respondent as a party to this suit. The 1st Respondent is a state corporation established under the [Kenya Railways Corporation Act](#), with no legal duty to apply for registration or removal of the encumbrance nor any obligation to pay compensation for compulsory acquisition or removal of the encumbrance. Section 107 (5) of the [Land Act](#), vests upon the 2nd Respondent the sole authority to publish a notice in the gazette for the acquisition of the property as well as the obligation to deliver a copy of the notice to the 3rd Respondent for placement of the encumbrance. Section 107 (5B) of the [Land Act](#) read together with Section 76 of the [Land Registration Act](#), vests upon the 3rd Respondent the authority to register the encumbrance against the title upon receipt or the foresaid notice from the 2nd Respondent. Section



78(1) of the [Land Registration Act](#) imposes the obligation to apply for removal of the encumbrance upon the 3rd Respondent or any person interested with the removal or the encumbrance. Section 125(1) of the [Land Act](#) imposes the obligation to pay compensation or compulsory acquisition on the 2nd Respondent. Section 78(1) of the [Land Registration Act](#), imposes the obligation to apply for removal of the encumbrance upon the 3rd Respondent or upon any person interested with the removal of the encumbrance. The 2nd Respondent having degazetted the suit property, it was evident that the 1st Respondent was no longer interested in the suit property, hence the 1st Respondent is also not obligated under Section 78(1) of the [Land Registration Act](#) to apply for removal or the encumbrance. The 1st Respondent still has no interest and it has never been in occupation of the property. The position that the 1st Respondent is not in occupation of the suit property is admitted by the Petitioner in paragraph 13 and 21 of his Affidavit sworn on 15th May 2023 in Mombasa Petition No. E027 of 2022 *Baljeet Singh v Kenya Railways Corporation & 2 Others*. Pursuant to the foresaid Sections 107 (5), 107 (5B) of the [Land Act](#), Section 76 and Section 78 (1) of the [Land Registration Act](#), the obligation to apply for removal of the encumbrance is imposed on the Petitioner, the 2nd and 3rd Respondents and not the 1st Respondent. The 1st Respondent does not have any legal liability to compensate the Petitioner or pay any mense profits or interest arising from the placement of the encumbrance. The plea for compensation and other reliefs sought for placement and/or removal or encumbrance do not lie against the 1st Respondent.

3. Consequently, the presence of the 1st Respondent is not necessary in these proceedings and its removal will not hinder the Court from effectually adjudicating upon the issues raised in this suit. Order I Rule 10(2) of the [Civil Procedure Rules](#), 2010 empowers this Honourable Court to order the name of a party improperly joined to be struck out. It is in the interest of justice that the name of the 1st Respondents/ Applicant to be struck out from these proceedings.
4. This court has considered the application and the submissions therein. The provisions of Order 1 Rule 10(2) and (4) under which the application is brought provides as follows;
 - (2) 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 to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.
 - (4) Where a defendant is added or substituted, the plaint shall, unless the court otherwise direct, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants”.
5. The court of Appeal in [Civicon Limited v Kivuwatt Limited & 2 Others](#) (2015) eKLR stated that;

the objective of these rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings”.



6. A more succinct test to be applied in answering the question of joinder was pronounced by the Court of Appeal in *Central Kenya Limited v West Bank Ltd & Others*, CA No. 222 of 1998 as follows;
- the paramount consideration is whether the party concerned is necessary for the effectual and complete adjudication of all the question involved in the suit.”
7. The Court of Appeal in *Meme v Republic* (2004) KLR 637 outlined the following circumstances which would warrant grant of leave to enjoin a party;
- (i) Where the presence of the party will result in the complete settlement of all the questions involved in the proceedings;
 - (ii) Where the joinder will provide protection for the rights of a party who would otherwise be adversely affected in law; and
 - (iii) Where the joinder will prevent a likely course of proliferated litigation.”
8. In *Central Kenya Ltd v Trust Bank Ltd & Others* CA No. 222 of 1998 the Court of Appeal held that;
- the paramount consideration is whether the party concerned is necessary for the effectual and complete adjudication of all the questions involved in the suit.”
9. Looking at the circumstances of this case the Petitioner in the petition that the 1st Respondent caused to be published by the 2nd Respondent a gazette notice No 1979 Vol. CXVII-No.30 dated 20th March 2015, notice of an intention to compulsorily acquire 0.7260 Ha of the Petitioners property MN/VI/2444 for the construction of the Mombasa Nairobi Standard Gauge Railway (SGR) project. That the 1st and 2nd Respondents proceeded to place an encumbrance on the said title. By a gazette notice dated 19th December 2018 the same was degazetted. That the said project was completed without any utilization of his land. I find that these are matters of fact and evidence to be adduced during the hearing and it would be premature for the court to remove the 1st Respondent from the proceedings. I also find that the presence of the 1st Respondent will result in the complete settlement of all the questions involved in the proceedings. From the foregoing I find this application has unmerited and I dismiss it. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 31ST DAY OF JANUARY 2024.

N.A. MATHEKA

JUDGE

