



**County Government of Taita Taveta & another v Isangaiwich  
Group Ranch & 3 others (Environment & Land Case 19 of 2023)  
[2024] KEELC 128 (KLR) (Environment and Land) (23 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 128 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VOI  
ENVIRONMENT AND LAND  
ENVIRONMENT & LAND CASE 19 OF 2023  
NA MATHEKA, J  
JANUARY 23, 2024**

**BETWEEN**

**COUNTY GOVERNMENT OF TAITA TAVETA ..... PLAINTIFF**

**AND**

**JAMES MWAFUNJA (SUING ON HIS OWN BEHALF AND ON BEHALF  
OF THE MEMBERS OF THE MWAKITAU SUB-LOCATION COMMUNITY  
BASED ORGANIZATION AND THE 10,000 RESIDENTS OF MWAKITAU SUB-  
LOCATION) ..... INTENDED PLAINTIFF**

**AND**

**ISANGAIWICH GROUP RANCH ..... 1<sup>ST</sup> DEFENDANT**

**DEPUTY COMMISSIONER MWATATE SUB- COUNTY ..... 2<sup>ND</sup> DEFENDANT**

**OFFICER COMMANDING MWATATE DIVISION (OCPD) ..... 3<sup>RD</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The application is dated 26<sup>th</sup> July 2023 and is brought under Section IA, 1B and 3A of the [Civil Procedure Act](#), Order 1 Rule 10(2), Order 2 Rule 15, Order 40 Rule 7, Order 51 Rule I of the [Civil Procedure Rules](#), 2010 seeking the following orders;
  1. That this application be certified as urgent and be heard ex-parte in the first instance.
  2. That this Honourable Court be pleased to order that the Applicant herein be joined to the proceedings as the intended co-plaintiff in the Suit.



3. That this Honourable Court be pleased to grant the Applicant leave to file their pleadings.
4. That costs of this application be in the cause.
2. It is based on the grounds that the Applicant and the person's he represents are residents of Mwakitau sub location and members of the Mwakitau Sub-Location Community Based Organisation. The matter herein relates to Bura/Isangaiwich/18, Bura/Isangaiwich/19 & Bura/Isangaiwich/20 wherein the applicant has resided for over 20 years. Mwakitau sub-location is made up of over 1,000 households and over 10,000 residents in total. As a consequence thereof, the dispute as to ownership of the suit. property cannot be conclusively determined without the participation of the applicant. In the circumstances, the applicant has demonstrated a recognizable stake, legal interests and/or duty in the proceedings to assist the Honourable Court arrive at a just and efficacious determination of the suit. The foregoing is clear that the intended co-plaintiff is a necessary party in these proceedings as it is closely connected to the suit in dispute for the effectual determination of the suit. That no party herein shall suffer any prejudice if the orders sought herein are granted and that the Applicant's participation in this suit is for the just determination of the Petition. It is in the interests of justice that the intended co-plaintiff to be enjoined in these proceedings to facilitate the final and effectual determination of the issues arising from the Petition. That the application has been brought without any delay, hence the Orders sought herein should be granted.
3. 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”.
4. The court of Appeal in [\*Civicon Limited vs 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”.
5. A more succinct test to be applied in answering the question of joinder was pronounced by the Court of Appeal in [\*Central Kenya Limited vs 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.”



6. The Court of Appeal in *Meme vs 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.”

7. In *Central Kenya Ltd vs 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.”

8. Looking at the circumstances of this case the Proposed Plaintiff submitted that the matter herein relates to Bura/Isangaiwich/18, Bura/Isangaiwich/19 & Bura/Isangaiwich/20 wherein the Applicant has resided for over 20 years. Mwakitau sub-location is made up of over 1,000 households and over 10,000 residents in total. I agree that, the dispute as to ownership of the suit property cannot be conclusively determined without the participation of the Applicant. I find that the Applicant having an interest in the suit property is necessary for the effectual and complete adjudication of all the question involved in the suit. From the foregoing I find this application has merit and I grant the following orders;

1. That the Proposed Plaintiff herein be joined in this suit as an interested party forthwith before the matter proceeds to full trial.
2. Costs to be in the cause.

9. It is so ordered.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY VIA EMAIL THIS 23<sup>RD</sup> DAY OF JANUARY 2024.**

**N.A. MATHEKA**

**JUDGE**

