



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC JUDICIAL REVIEW APP. NO. 4 OF 2016**

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW  
ORDERS OF MANDUMUS**

**AND**

**IN THE MATTER OF: ARTICLES 23 AND 40 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF: SECTION 8, 87, 88, 91, 96, 105, 106, 107 AND 108 OF THE COUNTY  
GOVERNMENT ACT, ACT NO.17 OF 2012**

**AND**

**IN THE MATTER OF: SECTIONS 4(3), (b), 5(2), 8(a), 9, 11(1) OF THE FAIR  
ADMINISTRATION ACT. ACT NO. 4 OF 2015**

**AND**

**IN THE MATTER OF: SECTION 13 OF PART III OF THE ENVIRONMENT AND LAND  
COURT ACT**

**AND**

**REPUBLIC.....APPLICANT**

**=VERSUS=**

**EMMANULE KAINGU KARISA.....1ST EX-PARTE APPLICANT**

**SWALEH BWANA OBO.....2ND EX-PARTE APPLICANT**

**AND**

**THE NATIONAL LAND COMMISSION.....1ST RESPONDENT**

**THE LAND SETTLEMENT &**

**ADJUDICATION DEPARTMENT.....2ND RESPONDENT**

**THE COUNTY GOVERNMENT OF LAMU.....INTERESTED PARTY**

**MANDA SURVEYING PROJECT COMMITTEE.....INTENDED INTERESTED PARTY**

**R U L I N G**

1. What is before me is the Application by the Intended Interested Party dated 9<sup>th</sup> September, 2016.
2. In the Application, the Applicant is seeking the leave of this court to appear and be heard in opposition to the Notice of Motion dated 13<sup>th</sup> July, 2016.
3. The Application is supported by the Affidavit of the Chairman of the Intended Interested Party who has deponed that the Applicant is the representative of the beneficiaries of the Manda Settlement Scheme and that it has been instrumental in the settlement process since it was mooted.
4. It is the Applicant's case that it represented the interests of its members in Malindi ELC No. 13 of 2013 (J.R); that it successfully argued that the Ex-parte Applicants are a busybodies and that the orders being sought if granted will directly affect the interests of its members.
5. In response to the Application, the Ex-parte Applicants filed Grounds of Opposition in which they averred that the Intended Interested Party is an amorphous body without a specific interest in the group; that the Applicant does not have a locus standi and that the Applicant seems to be a front for certain unknown vested interests intended to dispose deserving beneficiaries on the basis of origin and other illegal considerations.
6. In his Replying Affidavit, the 1<sup>st</sup> Ex-parte Applicant deponed that he has lived on the subject land for many years; that the Applicants have no interest in the matter but are only interfering on behalf of undisclosed interests and that the inclusion of the Applicant will not assist the court at all.
7. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents' counsels informed the court that their clients do not appose the Application.
8. Counsel appeared before me and made oral submissions which I have considered. The Ex-parte Applicant's counsel also relied on three authorities which I have considered.
9. In their Notice of Motion dated 2<sup>nd</sup> August, 2016, the Ex-parte Applicants are seeking for an order prohibiting the Respondents from carrying out or proceeding with the exercise of demarcation of the unregistered land on Manda Island.
10. The Ex-parte Applicants are also seeking for an order of certiorari to issue against the Respondents for quashing of the demarcation exercise that may have been conducted in disregard of the existing law.
11. The Ex-parte Applicants' Motion is premised on the ground that a Sub-County Selection Committee has never been put in place for the purpose of identifying the genuine squatters residing on Manda Island contrary to the provisions of Section 134 (4) of the Land Act.
12. The Interested Party is seeking to be enjoined in the suit because, according to its Chairman, it represents the welfare of its members who are residents of Manda Island.
13. The Certificate of Registration annexed on the Applicant's Application shows that the Applicant was registered by the Ministry of Gender, Sports, Culture and Social Services as a Self Help Group on 26<sup>th</sup> March, 2007.
14. According to the Certificate of Registration, one of its objectives is to take care the of social welfare of its members who are residents of Manda Island.

15. The fact that the Applicant is a registered organization with a specific mandate shows that it is not an amorphous organization as averred by the Ex-Parte Applicants.

16. It is trite that a person who intends to be joined to existing legal proceedings ought to show that he has an identifiable legal interest in the proceedings before the court.

17. According to the provisions of Order 53 Rule 3(4) of the Civil Procedure Rules, if the Court is of the opinion that any person who ought to have been served has not been served, the court may direct that such a person be served.

18. Considering that the Motion by the Ex-parte Applicants is based on the Judgment of this court in Judicial Review Application No. 4 of 2016, in which the Court directed the 1<sup>st</sup> Respondent herein to establish a Sub-County Selection Committee to carry out the identification of the beneficiaries of land in Manda Island, and in view of the fact that the Applicant herein also participated in the previous suit, the Ex-parte Applicant should have served the Applicant with the Motion.

19. Having participated in J.R. No. 4 of 2006 as the representative of its members, who are said to be residents of Manda Island, the Intended Interested Party cannot be said to be a busybody, or a body without locus standi.

20. It is my view that the Applicant, just like any other resident of Manda Island, has the right to join in these proceedings with a view of presenting any material that may assist the court in determining the main Motion, because the outcome of the Motion may affect the interests of its members.

21. It is for those reasons that I allow the Application dated 13<sup>th</sup> September, 2016 with costs.

Dated, signed and delivered in Malindi this 14<sup>th</sup> day of **October**, 2016.

**O. A. Angote**

**Judge**