



Panchal & another v National Land Commission & 9 others (Environment & Land Case 97 of 2021) [2024] KEELC 5011 (KLR) (15 February 2024) (Ruling)

Neutral citation: [2024] KEELC 5011 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT & LAND CASE 97 OF 2021**

AE DENA, J

FEBRUARY 15, 2024

BETWEEN

DIVYANSHU RAVINSHAKER PANCHAL 1ST PLAINTIFF

HALIMA GATHANGA GACHINGA 2ND PLAINTIFF

AND

NATIONAL LAND COMMISSION 1ST DEFENDANT

HIGHWAY AUTHORITY 2ND DEFENDANT

DOGO MOHAMED 3RD DEFENDANT

LAND REGISTRAR KWALE 4TH DEFENDANT

THE HON ATTORNEY GENERAL 5TH DEFENDANT

DAVID MWAKONDO MAGANGA 6TH DEFENDANT

PWANI MOHAMED 7TH DEFENDANT

MAEMBE MOHAMED 8TH DEFENDANT

SAUMU MOHAMED 9TH DEFENDANT

RIZIKI MOHAMED 10TH DEFENDANT

RULING

1. The application the subject of this ruling is the Notice of Motion dated 19th October 2023 which seeks for orders;
 - a. That this honourable court be pleased to enjoin Guriro Limited, Raphael Daktari Mbatia and Charles Kithinji Murira as Interested Parties in this matter.



- b. That this Honourable court do issue conservatory orders prohibiting the 5th Defendant from conducting any further transactions and or dealings regarding parcel number Kwale Tsunza/1166 pending hearing and determination of this suit.
 - c. That the costs of this application be provided for.
2. The application is premised on grounds on its face and is supported by an affidavit sworn by Divyanshu Ravinshaker Panchal on 19/10/23. It is deponed that the said Guriro Limited has placed a caution on the Kwale Tsunza /1166 (suit property) obstructing any dealings thereof. That the said Raphael Daktari Mbatu holds a title to the suit property in his name. That the said Charles Kithinji Murira alleges purchaser's interest and was seeking to place a caution on the suit property. That the intended interested parties appear to have an interest in the suit property and should be enjoined for a fair hearing, finality, prevention of multiplicity of suits and effective and efficient administration of justice. That in the absence of the joinder these proceedings will be rendered nugatory.
 3. The 3rd Respondent Dogo Mohamed Juma responded to the application vide a replying affidavit sworn on 11/12/23. She depones interalia that a reading of the caution, the interest claimed by Guriro Limited is unknown. That however from the Green Card if she owed anything to them then it is a friendly loan which does not confer interest on the land. That as for Charles Kithinji Murira she was not aware of his interest except that he is a speculator. That the attached title in the name of Raphael Daktari Mbatu was cancelled after it was found to be false and wanting following investigations by the DCI.
 4. In response to the application Maembe Mohamed, Saumu Mohamed, Riziki Mohamed filed replying affidavits sworn on 11/12/23 adopting the depositions made in the replying affidavit of Dogo Mohamed.
 5. The Plaintiff in the counterclaim responded on 23/11/23 vide the replying affidavit of David Mwakondo Maganga. It is deponed that the proposed interested parties have no role to play in the matter as the name of Raphael Daktari Mbatu does not feature in the green card produced by the 1st Defendant. The title purportedly held by the said Raphael Daktari Mbatu whose source is not disclosed is fake and cannot be the basis for joinder. Referring to section 71 and 72 of the Registered Land Act it is averred the interest claimed by Guriro Ltd being 'to obstruct any ill or fraudulent dealings' is grossly misplaced. That the jurisdiction to remove cautions is conferred upon the Land Registrar under section 73 of the RLA.
 6. The Plaintiff further states that the purported caution by Charles Kithinji Murira has remained unregistered since 29/9/21 to date. That even if it was registered jurisdiction was vested in the Land Registrar. The court is referred to various dates when the hearing of the case has had to be adjourned at the instance of the 1st Defendant and is invited to take judicial notice of the 1st Defendant's actions of frustrating the due legal process. The court is urged to dismiss the application.
 7. Raphael Daktari Mbatu the 2nd Intended Interested party while confirming the details in the title dated 7/6/17 to be his he denies having any interest in the suit property.
 8. The application was disposed by way of written submissions. The 1st Defendant and the Plaintiff complied and the court has considered the same in rendering this ruling. At the time of preparing the ruling there were no submissions filed on behalf of the 3rd 7th 8th 9th 10th Respondents.



Determination __**

9. The main issue that commends determination is whether the intended Interested Parties should be enjoined in this case.
10. The application is brought under the provisions of Order 1 Rule 10(2) of the Civil Procedure rules, Article 159(2)(2) of *the Constitution* of Kenya and Sections 3A of the *Civil Procedure Act*.
11. The provisions of law guiding the enjoining of a party to a suit or removal therefrom is Order 1 Rule 10 of the Civil Procedure Rules. Order 1 Rule 10 (2) provides as follows; -
 - (1)
 - (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.
12. The jurisdiction of this court to enjoin a party in proceedings is discretionary. It is trite however that such discretion should be exercised judicially. It is noteworthy that this is a new trend as initially the law only envisaged the main parties to a suit, the Plaintiff and Defendant. The subject of joining to a suit Interested Parties has been a subject of determination in various courts including the Supreme Court.
13. The Supreme Court of Kenya in Francis Kariuki Muruatetu & another v Republic & 5 others [2016] eKLR referring to dictum of the court in the case of Trusted Society of Human Rights Alliance v. Mumo Matemu & 5 Others, Supreme Court Petition No. 12 of 2013, [2014] eKLR had this to say laid out the elements; -
 - [37] From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party:**

One must move the Court by way of a formal application. 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 a replication of what the other parties will be making before the Court.



14. This court set out to interrogate whether the proposed interested parties have met the above criteria. What is the interest or stake in these proceedings of the intended parties? The reason for the proposed joinder of Raphael Daktari Mbatia is that he holds a title to the suit property in his name. I will not spend time on the 2nd Intended Interested Party as he has stated on oath that he does not have any interest in the suit property.
15. With regard to the proposed joinder of M/s Guriro Limited it is averred he has placed a caution on the Kwale Tsunza/1166 (suit property) obstructing any dealings thereof. A copy of a green card is attached. Entry No. 8 reads 'Caution by Guriro Limited to Obstruct any IL or Fraudulent Dealings'. Looking at this entry one cannot identify what the interest of the cautioner in the property is. What was Guriro Limited claiming? For example the caution under entry No. 3 therein clearly identifies a purchaser's interest. The nature of the interest having not been stated this court has no way of determining how proximate it is to the proceedings herein and whether the said company is a necessary party to the matter before court.
16. I now come to the proposed joinder of Charles Kithinji Murira on the grounds that he alleges purchaser's interest and was seeking to place a caution on the suit property. Annexure D is a copy of Caution which appears to have been presented to the Land Registry on 29/9/21 alleging purchasers' interest and which caution is clearly unregistered. It does not bear the signature of the Land Registrar as having been registered. Additionally two years later it was yet to be registered. As far as this court is concerned there is no such caution registered against the suit property based on this annexure. The main contest in this suit is between the initial vendors who are the estate of the late Juma Ganadza, the applicant herein and the Plaintiff in the Counterclaim and I do not see how the presence of the 3rd proposed Interested Party will assist the court in settling this issue.
17. The court has further been invited to issue conservatory orders prohibiting the Land Registrar from registering any further transactions in this matter. I note that the Respondents did not address me in opposition to or for the prayer. The gist of the conservatory orders is to secure the parcel register which to me is for the benefit of all parties. I note that the court had initially issued orders of injunction which collapsed with the withdrawal of the initial suit filed the Applicant. Given the circumstances of this case I find it necessary that the register should be protected with a view to maintain the status quo as so as to avoid further dealings which will complicate this matter.
18. The upshot of the foregoing is that I decline to issue the orders for joinder of the proposed Interested Parties.
19. In order to maintain the status quo for purposes of preserving the suit property I direct that a prohibitory order to issue, to prohibit the Land Registrar Kwale from effecting any transfer or any interference with the title no Kwale Tsunza/1166 pending the hearing and determination of this suit.
20. Costs shall be in the cause.
Orders accordingly.

RULING DATED SIGNED AND DELIVERED THIS 15TH DAY OF FEBRUARY 2024.

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A.E DENA

JUDGE

Mr. Tindika for the Plaintiffs in the Counter Claim



Mr. Borona for the 1st Defendant in ELCC 97/2021

No appearance for the Attorney General

No appearance for the 3rd Defendant

Mr. Daniel Disii – Court Assistant

