



Republic v National Land Commission & 2 others; Chege t/a Smart Choice Electronic Company (Exparte Applicant); Water and Sewerage Company Ltd (Proposed Interested Party) (Environment and Land Judicial Review Case 7 of 2019) [2025] KEELC 934 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEELC 934 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 7 OF 2019
JM ONYANGO, J
FEBRUARY 27, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

CHIEF LAND REGISTRAR 2ND RESPONDENT

KIAMBU COUNTY GOVERNMENT 3RD RESPONDENT

AND

**PETER MAINA CHEGE T/A SMART CHOICE ELECTRONIC
COMPANY EXPARTE APPLICANT**

AND

**THIKA WATER AND SEWERAGE COMPANY LTD PROPOSED
INTERESTED PARTY**

RULING

1. By Notice of Motion dated 1st July 2024, the Proposed Interested Party/ Applicant sought the following orders: -
 - a. Spent.
 - b. That this Honourable Court be pleased to grant leave to the Proposed Applicant to be enjoined in this suit as an Interested Party and file its pleadings.



- c. That the Judgment entered on 15th June 2020 together with all consequential orders be set aside pending hearing and determination of this Application *inter partes*.
 - d. That the Judgment entered on 15th June 2020 together with all consequential orders be set aside pending the hearing and determination of the Notice of Motion Application dated 11th April 2019.
 - e. That this Honourable Court be pleased to make such further and or other orders as it may deem just, fair, reasonable and appropriate in the circumstances in order for the ends of justice to be met.
 - f. That the costs of this application be provided for.
2. The application is based on the 5 grounds set out on the face of the Notice of Motion and on the Proposed Interested Party/Applicant's Supporting Affidavit sworn on even date by Moses Kinya, its Managing Director. Moses Kinya avers that following the issuance of Gazette Notice Number CXX-NO 138 dated 9th November 2018, the Proposed Interested Party/Applicant embarked on having the title deeds to land parcel numbers Thika Municipality Block 10/687, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704 and 705 (hereinafter referred to as the suit land) registered in their favour.
 3. It is his contention that the Proposed Interested Party appointed the firm of M/s Wairegi, Kiarie and Associates to carry out the regularization of the suit land. Upon obtaining copies of searches and green cards relating to the suit land, the said firm discovered that this suit had been referred for determination. The firm of advocates perused the court file and noted that judgment had been delivered on 15th June 2020.
 4. It is further his claim that the *Ex-parte* applicant obtained a decree and registered the same at the lands office. As a result, the restriction registered against the suit land was lifted. He is apprehensive that the *Ex-parte* Applicant may continue to deal with the suit properties adversely, to the detriment of the Proposed Interested Party contrary to the principles of natural justice. He faults the *Ex-parte* Applicant for failing to enjoin all parties affected by the decision of this court. He further states that the *Ex-parte* Applicant knew or ought to have known of the Proposed Interested Party's claim over the suit properties vide public documents under the care of the County Government. He adds that given that the suit land was public land, it is in the interest of the public that this application is allowed. He maintains that the Proposed Interested Party stands to suffer irreparable harm and damage if the judgment and resultant decree are not stayed.
 5. The application is opposed by the *Ex-parte* Applicant through a preliminary objection (P.O) dated 22/7/2024 seeking to strike out the instant application on the grounds that:(i) the honourable court does not have the jurisdiction to enjoin a party to a suit post-judgment; (ii) stay orders cannot issue post execution; (iii) the claim is an abuse of the court process and should be struck out in limine; and (iv) costs be provided for. The *Ex-parte* Applicant also filed a replying affidavit sworn on 17th September 2024 by Peter Maina Chege, the proprietor of the *Ex-parte* Applicant.
 6. Peter Maina Chege contends that the main issue for determination in the judgment was whether the *Ex-parte* Applicant had regularly revoked the *Ex-parte* Applicant's interest in the suit land. He adds that the court (Gacheru J) made a finding to the effect that the 1st Respondent did not grant the *Ex-parte* Applicant the right to be heard and therefore had acted in violation of Article 47 of the [Constitution](#) and the rules of natural justice. He argues that at the time the suit was filed, the Proposed Interested Party's interest in the suit property had not crystallized.



7. He argues that the Proposed Interested Party has not met the threshold to be enjoined in this suit for the following reasons: (i) the personal interest or stake that the Proposed Interested Party has in the matter has not been set out in the application clearly; (ii) the prejudice to be suffered by the Proposed Interested party has not been demonstrated with sufficient clarity; (iii) the Applicant has not set out the case and/or submission it intends to make before the court and demonstrate the relevance of those submissions; (iv) the Proposed Interested Party has not demonstrated that their submissions are not merely a replication of what other parties will be making before the court.
8. He adds that a mere interest without a demonstration that the presence of a party will assist in the settlement of the questions involved in the suit is not sufficient to entitle one to be enjoined in a suit. He contends that the Proposed Interested Parties can neither introduce new issues in the suit nor assume the role of the substantive litigating parties. He further contends that there are no exceptional circumstances pleaded to warrant the joining of a party post-judgment. Peter Maina Chege argues that the court lacks jurisdiction to join the Proposed Interested Party having rendered its decision and is therefore functus officio. He faults the Proposed Interested Party for filing this application four years after the judgment was rendered. He urges the court to dismiss this application and order the Proposed Interested Party to pay costs.
9. The application was canvassed by way of written submissions dated 16th January 2025 filed by M/s Wairegi Kiarie and Associates Advocates. The Ex-parte Applicant filed their submissions dated 5th November 2024 through M/s Muturi S.K & Co. Advocates, which I have read and considered.

Analysis and Determination

10. This court is of the considered opinion that the issue for determination is whether the Proposed Interested Party has met the threshold to be enjoined in the suit post-judgment.

Brief Background of the suit

11. Upon being granted leave to institute judicial review proceedings, the Ex-parte Applicant filed a Notice of Motion application dated 11th April 2019 seeking the following orders:
 - a. An order of Certiorari to remove into the High Court and quash all the proceedings , and determination contained in the Kenya Gazette special issue Vol. CXXI-No 21 of 15th February 2019 at page 573 and 574 in relation to Municipality Block 10/687, 695 , 696, 697, 698, 699, 700, 701, 702, 703, 704 and 705 (the suit properties).
 - b. An order of prohibition directed to the Respondents prohibiting them, their agents, servants and or anyone under their direction from revoking, resurveying, excising or vesting the suit properties to the interested party or in any other manner whatsoever alienating the aforesaid suit properties.
 - c. A Declaration that the gazette Notice Vol CXX-No 138 of 9th November 2018 at page 3988 constitutes a lawful recommendation over the suit properties and should be upheld.
 - d. An order that the determination and gazettement contained in the gazette Notice special issue Vol. CXX-No21 of 15th February 2019 at page 573 and 574 in relation to the suit properties is unconstitutional null and void.
 - e. A Declaration that the 1st Respondent has no jurisdiction to revoke the Applicant's titles to the suit properties'
 - f. Damages and costs.



12. From the record, it emerges that on 3rd March, 2017, the 1st Respondent invited the public to respond to a claim over the suit land raised by the Proposed Interested Party. In response to the invite, the Ex-parte Applicant appeared and made its representation. Vide Kenya Gazette Vol. CXX-No138 of 9th November 2018, the 1st Respondent delivered its recommendation to the effect that the title documents be regularized to the owners and upon this recommendation, the Ex-parte Applicant regularized the titles to the suit land and vide a letter dated 14th November 2018, he registered the gazette Notice effectively regularizing the titles. However, vide a Gazette Notice Vol. CXXI No. 21 of 15th February 2019, the 1st Respondent reversed the earlier determination without giving the Ex-parte Applicant an opportunity to be heard. The 1st Respondent also revoked the titles to the suit land held by the Ex-parte Applicant and vested them in the Proposed interested party.
13. The Ex-parte Applicant argued that the reversal of the earlier decision by the 1st Respondent amounted to arbitrary deprivation of property contrary to Article 40 of the *Constitution* of Kenya and a breach of *Fair Administrative Action*. He added that the Gazette Notice of 15th February 2019 was in contravention of the principle of finality of decisions.
14. Upon consideration of the parties' submissions, the court (Gacheru J) delivered her judgment on 15th June 2020, where she found that the notice of motion application dated 1th April 2019 was merited and proceeded to grant the Ex-parte applicant prayers a, b, c, d and f as sought in the application.
Whether the Proposed Interested Party has met the threshold to be enjoined in the suit post-judgment
15. The Proposed Interested Party/Applicant has premised this application on sections 1A and 3A of the *Civil Procedure Act* as read with Order 51, 53 Rule 3 (2) of the *Civil Procedure Rules*. The Proposed Interested Party seeks to be enjoined in the suit for the reason that it has a claim over the suit properties by virtue of the public documents under the care of the County Government. The Proposed Interested Party adds that as a result of the judgment, the restriction registered against the suit land was lifted.
16. The Ex-parte Applicant on the other dismissed the application for lacking exceptional circumstances to warrant the joining of a party post-judgment. It is his claim that the Proposed Interested Party has not demonstrated how it will enrich the proceedings if the application is allowed. The Ex-parte Applicant added that the court is functus officio having delivered judgment in the suit and the judgment having been executed.
17. The general law on joinder is that a court can, either on its own motion or by an application, join a party to a case before passing judgment in the case. The jurisdiction to join a party to a case post-judgment is exercised only in exceptional and justifiable circumstances. In *Merry Beach Limited v Attorney General & 18 Others* [2018] eKLR the Court of Appeal stated as follows:

“However, there are exceptional circumstances that could justify a court to enjoin a party even after judgment has been passed. One such exception is where a matter has been determined and adverse orders have been issued against a party who was neither given notice of the suit nor heard on the issue in dispute. The order enjoining a party would also have to set aside the judgment entered to give him / her an opportunity to be heard.”
18. What emerges from the record and from the evidence presented in this application is that the National Land Commission carried out a hearing under Article 68(c)(v) of the *Constitution* and Section 14 of the *National Land Commission Act* in relation to the title to the suit land held by the Ex-parte Applicant. In exercise of the above mandate, the 1st Respondent recommended that the suit land be regularized to the owners (the Ex-parte Applicant) through a Gazette Notice dated 9th November 2018.



19. Later on, through a Gazette Notice dated 15th February 2019, the 1st Respondent Commission reversed the earlier Gazette Notice and unilaterally revoked the Ex-parte Applicant's titles to the suit land.
20. It does also emerge that, aggrieved by the finding and decision of the Commission, the Ex-parte Applicant initiated this suit against the Commission and the Land Registrar, seeking an order of certiorari quashing the above decision. The Ex-parte applicant did not, however, join the Thika Water & Sewerage Company Limited (the Proposed Interested Party) as a Respondent or as an interested party in the suit.
21. The suit was subsequently heard in the absence of the Proposed Interested Party and the decision that had vested the suit property in the Proposed Interested Party was set aside in its absence. Against the above background, the County Government has come to court seeking an order of joinder post-judgment. In addition, the County Government wants the impugned judgment set aside on the ground that it was not heard yet both the decision of the 1st Respondent Commission and the subsequent proceedings and judgment of this court directly affect them because they have an interest in the suit land.
22. It does also emerge that, armed with the judgment of this court, the Ex-parte Applicant managed to have the restrictions registered against the suit properties lifted.
23. Does the application under consideration meet the threshold for joinder post-judgment? The impugned decision of the 1st Respondent was made in exercise of the Commission's constitutional mandate under Article 68(c) (v) of the Constitution and Section 14 of the National Land Commission Act. The decision held that the suit land was public land held by the Proposed Interested Party on behalf of the public. Further, the decision vested the suit land in the Proposed Interested Party. For this reason, Thika Water & Sewerage Company Limited was a necessary party to any judicial review proceedings initiated to annul the decision given by the 1st Respondent on 15th February 2019.
24. For the above reasons, this court is satisfied that the criteria for an order of joinder post-judgment have been met.
25. Consequently, I find merit in the application and I allow it and make the following orders:
 - a. The judgment delivered by this court on 20th June 2020 is hereby set aside.
 - b. The Interested party is hereby joined to the suit.
 - c. The Interested party shall file its pleadings within 21 days.
 - d. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 27TH DAY OF FEBRUARY 2025.

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J. M ONYANGO
JUDGE

In the presence of:

Mr Kipkorir for the Ex-parte Applicant

Mr Wairegi for the Applicant



No Appearance for the Respondents

Court Assistant: Hinga

