



**Delmonte Kenya Limited v Speaker of the National Assembly & 3 others; Kandara Residence Association otherwise known as Kandara Residents Association (Interested Party); Muthoni & 130 others (Proposed Interested Party) (Environment & Land Petition E002 of 2023) [2024] KEELC 1380 (KLR) (7 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1380 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MURANGA**

**ENVIRONMENT & LAND PETITION E002 OF 2023**

**LN GACHERU, J**

**MARCH 7, 2024**

**IN THE MATTER OF: ARTICLE 22(1) OF THE  
CONSTITUTION OF THE REPUBLIC OF KENYA**

**-AND-**

**IN THE MATTER OF: ARTICLES**

**1,2,3,10,19,20,21,23,25,27,35,40,46,47,48,50,60,64,67,93,118,124,159,162(2)  
(B),165,248,249 OF THE CONSTITUTION OF THE REPUBLIC OF KENYA**

**-AND-**

**IN THE MATTER OF; THE NATIONAL LAND COMMISSION  
ACT NUMBER 5 OF 2012 OF THE LAWS OF KENYA**

**-AND-**

**IN THE MATTER OF: THE NATIONAL ASSEMBLY STANDING ORDERS, 6TH EDITION**

**-AND-**

**IN THE MATTER OF: CONTRAVENTION AND THREATENED  
CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS  
UNDER ARTICLES 1,2,3,10,19,20,21,23,25,27,35,40,46,47,48,50,60  
AND 67 OF THE CONSTITUTION OF THE REPUBLIC OF KENYA**

**BETWEEN**

**DELMONTE KENYA LIMITED ..... PETITIONER**

**AND**

**SPEAKER OF THE NATIONAL ASSEMBLY ..... 1<sup>ST</sup> RESPONDENT**

**NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> RESPONDENT**



**MINISTRY O LANDS, PUBLIC WORKS, HOUSING & URBAN  
DEVELOPMENT ..... 3<sup>RD</sup> RESPONDENT**  
**ATTORNEY-GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**KANDARA RESIDENCE ASSOCIATION OTHERWISE KNOWN AS  
KANDARA RESIDENTS ASSOCIATION ..... INTERESTED PARTY**

**AND**

**CYRUS NJOROGE MUTHONI & 130 OTHERS .... PROPOSED INTERESTED  
PARTY**

### **RULING**

1. The Proposed Interested Parties herein Cyrus Njoroge Muthoni & 130 others, brought this Chamber Summons Application dated 11<sup>th</sup> December 2023, premised on Articles 50 and 159 of the [Constitution](#) of Kenya, Order 1 Rule 10 (2) of the [Civil Procedure Rules](#) and Sections 1A, 1B, 3 & 3A of the [Civil Procedure Act](#), and sought for the following orders: -
  - I. That leave be granted to the applicants herein, Cyrus Njoroge Muthoni and 130 others to be joined as interested parties and/or respondents to this petition.
  - II. That the costs of this application be provided for”.
2. The Application is supported by the Grounds stated on the face thereof and the Supporting Affidavit of Kelvin Kamau Wanjiru sworn on 11<sup>th</sup> December 2023.
3. The Applicants averred that they have been mentioned in the Report tabled before the National Assembly on 5<sup>th</sup> October 2023, which Report forms the basis of the instant Petition.
4. It was the Applicants averments that they discovered belatedly about this Petition, which was filed without involvement or invitation of the Applicants herein whereas, they are beneficiaries of the National Assembly Report herein dated 5<sup>th</sup> October 2023.
5. They further averred that the Petitioner herein did not disclose to the court that the Applicants are beneficiaries of the said National Assembly Report, or they have laid claim to the suit property, and they would be extremely aggrieved by the decision of the court in the event the Petition herein would be allowed, without involving them.
6. The Applicants stated that the Petitioner while imploring the Court to quash the said National Assembly Report dated 5<sup>th</sup> October 2023, wherein the Applicants are named as beneficiaries, deliberately avoided joining the them in the instant Petition, so as to drive them away from the seat of justice.
7. The Applicants alleged that they are holders of proprietary rights in respect of land parcel number LR 12157 and LR 12158, which are the subject of the instant Petition, and they should be afforded the opportunity by the Court to defend their rights, so that the Court can make an informed decision regarding the aforesaid properties.



8. The Application is opposed by the Petitioner/ Respondent vide a Replying Affidavit of Harry Odoni (Legal Officer of the Petitioner) sworn on 20<sup>th</sup> December 2023, who averred that the Applicants have not demonstrated that they have an identifiable stake in the subject Petition, that entitles them to be joined as Interested parties herein.
9. It was the Petitioner's argument that the Applicants' document marked "KKW-2" titled "Authority to Act" does not meet the requirements of the law in that the Court cannot ascertain for itself whether the 130 persons whose names have been listed therein wish to be joined to the instant Petition.
10. Further, the deponent argued that the principal aim of the subject Petition is to quash the Reports of the National Assembly dated 19<sup>th</sup> November 2019, 10<sup>th</sup> December 2021 and 5<sup>th</sup> October 2023, and that in all three preceding Reports, none of the 131 persons seeking joinder in the present Petition were mentioned.
11. The Petitioner alleged that in the National Assembly's Report dated 5<sup>th</sup> October 2023, it was stated that the "chairman of Gatanga Quarry Owners Sacco" as having appeared before the National Assembly, but the instant Application for joinder does not seek to join Gatanga Quarry Owners Sacco, as Interested Parties.
12. It was further argued that the Applicants have not demonstrated to the Court any linkage between themselves and Gatanga Quarry Owners Sacco, to warrant joinder and, that the said Gatanga Quarry Owners Sacco, is a corporate entity with capacity to sue and be sued and therefore, cannot be represented by the Applicants herein.
13. It was alleged that the 131 applicants seeking joinder have not demonstrated the issues which they could address before the court, which issue cannot be adequately addressed by the parties already in the Petition, and that their joinder would result in convoluted, confusion and unnecessary delay of the hearing and determination of the present Petition.
14. The Applicants filed a Further Affidavit dated 15<sup>th</sup> January 2024, in response to the opposition raised against their joinder to the current Petition by the Petitioner.
15. They reiterated that the National Assembly Report dated 5<sup>th</sup> October 2023, which the instant Petition seeks to quash has named the Applicants in paragraphs 52 to 57 and 73 thereof.
16. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents did not object or oppose joinder of the applicant Interested Parties. Similarly, the 1<sup>st</sup> Interested Party did not object to the instant Application for joinder.
17. The Application was canvassed by way of written submissions. The Applicants filed their submissions on 26<sup>th</sup> Jan 2024, through Ishmael & Co Associates Advocates, and urged the court to allow their Application. The Petitioner/ Respondent filed its rival written submissions on 6<sup>th</sup> February 2024, through Njoroge Regeru & Company Advocates, and urged the court to dismiss the Application.
18. It was the Applicants' submissions that there is a long-running history of litigation between themselves and the Petitioner herein as evidenced by the proceedings in Nyeri Civil Appeal No. E085 of 2022 *Cyrus Njoroge Muthoni v National Land Commission & 4 others*, and therefore, the Court is well-aware of the aforesaid litigation history having handled the preceding case when it was before it.
19. They further submitted that the Petitioner's bundle of documents at pages 251 and 255 tendered before the Court mention the Applicants as beneficiaries of the suit land through a Parliamentary Report which subject Report the Petition herein seeks to quash.



20. The Applicants also submitted that they appeared before the Parliamentary Committee which generated the Report and which Report the instant Petition seeks to quash. That the aforesaid Committee listened to the concerns of the Applicants herein, and entered some recommendations which are reproduced by the Petitioner herein at paragraph 73 of page 255 of the Petitioner's bundle of documents.
21. In trying to convince the court to allow their Application, the Applicants relied on the case of *Kenya Medical Laboratory Technicians and Technologies Board & 6 others V Attorney-General & 4 others* [2017]e KLR, wherein three elements need to be satisfied by a party seeking to be joined in proceedings as an Interested Party. These are:
- a). The Intended Interested Party must have an identifiable stake
  - b). Or, legal interest.
  - c). Or, duty in the proceedings.
22. The Applicants submitted that following the reasoning of the Court in *Kenya Medical Laboratory Technicians and Technologies Board & 6 others V Attorney-General & 4 others* [2017]e KLR, the applicable test for joinder of an Interested Party in a suit lies not so much in an analysis of what are the constituents of the Applicant's rights, but rather, in what would be the result on the subject-matter of the action if those rights could be established. It was their argument that they have a legal, identifiable and demonstrable interest in the issues raised in the subject Petition.
23. In its Written Submissions the Petitioner/ Respondent argued that the Applicants did not participate in the formulation of three Reports which it seeks to quash, unlike the 1<sup>st</sup> Interested Party who filed a Petition before the National Assembly, which Petition culminated in the National Assembly Report of 5<sup>th</sup> October 2023.
24. Reliance was placed in the cases of *Francis Karoki Muruatetu & Another v The Republic & 5 others* and *Trusted Society of human Rights Alliance v Mumo Matemu*, wherein the Supreme Court of Kenya laid down three principles applicable before a Court of law can join an Interested Party. These three principles are; -
- “a). An Applicant must have an identifiable stake or legal interest in the matter or the proceedings.
  - b). An Applicant must demonstrate to the satisfaction of the court that he will suffer prejudice in case of non-joinder.
  - c). An Applicant must set out the case it intends to make before the Court and the relevance thereof.”
25. The Petitioner further relied on the case of *Skov Estate Limited & 5 others v Agricultural Development Corporation & Another* [2015]e KLR, where the court did warn against the danger of allowing mere spectators and busybodies to be joined in proceedings under the guise of Interested Parties.
26. The Petitioner also submitted that the Applicants need to demonstrate a clearly-identifiable interest or stake that is proximate enough to the issues under consideration in the instant Petition to merit being enjoined as an Interested Party, and furthermore that it would not suffice for the Applicants to show that they would be merely affected by the Judgment to be issued in the subject Petition.



27. It was further submitted that the deponent, Kelvin Kamau Wanjiru appeared in Parliament in regard to its Report dated 5<sup>th</sup> October 2023, in his capacity as the Chairman of Gatanga Quarry Owners Sacco, which is an entity that is distinct from the 130 Applicants herein, who have filed the instant Application. Further, the Petitioner submitted that Gatanga Quarry Owners Sacco, is a body corporate, capable of suing and being sued, pursuant to the provisions of Section 12 of the Cooperative Societies Act, and, therefore, the Applicants cannot purport to represent the aforesaid Society.
28. The Petitioner relied on the holding in the case of Joseph Muthuri Ikunyua & 32 others v Cooperative Bank of Kenya & 14 others [2018] eKLR in support of the preceding proposition.
29. The Petitioner also submitted that the Applicant's document titled "Authority to Act" is fatally defective as it is not accompanied by a Supporting Affidavit signed by the 130 Applicants, which would confirm that the aforesaid Applicants wish to be joined to the subject Petition. The Petitioner submitted that the document titled "Authority to Act" is signed by Ishmael & Company Advocates, not by any of the 130 Applicants, which renders the same document fatally defective.
30. Further, the Petitioner/ Respondent submitted that the seven (7) pages of signatures provided by the Applicants do not state the title of the instant Petition, therefore, it is possible that the aforesaid signatures were collected for a different purpose unrelated to the subject Petition.
31. The Petitioner further submitted that the Applicants are involved in Civil Appeal Number E085 of 2022-Cyrus Njoroge Muthoni & 130 others v the National Land Commission, which dispute concerns land parcel number LR 12157 and LR 13169, and land parcel LR Number 12158, is not among the parcels of land in contention in the afore-mentioned suit and the foregoing case is currently under consideration by the Court of Appeal. Therefore, the Applicants have no legal interest or legal rights in respect of LR 12157 and LR 12158, because any such legal interest is subject to determination by the Court of Appeal.
32. The above are the arguments for and against the instant application for joinder, which this court has carefully considered, and finds the issues for determination are; - whether the Applicants are entitled to the Orders sought.
33. The principles governing the joinder of a party as an Interested Party to a suit were set out in the case of Francis Kariuki Muruatetu and Another v Republic & 5 Others[2016] e KLR as follows:

"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 a 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 participation, 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.”

34. Further, in the case of *Trusted Society of Human Rights Alliance v Mumo Matemu* [2014] eKLR, the Supreme Court held as follows:

“An interested party is one who has a stake in the proceedings, though he or she was not a party to the cause ab initio. He or she is one who will be affected by the decision of the court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or herself appears in the proceedings, and champions his or her cause.....”

35. It is not in dispute that land parcel number LR 12157, is the subject of the Report of the National Assembly of 5<sup>th</sup> October 2023, which the Petitioner has invoked this Court to quash in the instant Petition. The Applicants have referred to paragraph 73 of the said Report wherein it was stated as follows:

“The lease for LR No 12157 and LR 13169 comprising 1000 acres should be returned to the Government of Kenya and declared public land and allocated to 131 families for their settlement by the National Land Commission, within sixty days of tabling this report”.

36. From the foregoing, it is clear that if the court herein would issue a decision to quash the above referred Report, then that decision would directly affect the Applicants herein, who have allegedly acquired a legal interest in LR No 12157 and LR 13169, courtesy of the said Report of the National Assembly.

37. The Petitioner submitted that the Applicants have an opportunity to ventilate their claim over land parcel number LR No 12157, before the Court of Appeal. While the same is true, it is also undeniable that in seeking to quash the Report of the National Assembly dated 5<sup>th</sup> October 2023, by this Court, the Petitioner has placed the question of the ownership and possession of the LR No 12157 squarely before the Court.

38. The Applicants herein have demonstrated that they have identifiable stake and in the event of non-joinder, they would definitely suffer prejudice, given that the Parliamentary Report has identified their interests in its Report, and the Petitioner herein is seeking to quash that Report. The Applicants too just like the 1<sup>st</sup> Interested Party should be allowed to participate in these proceedings, wherein, they would ventilate their issues, and state their position in the subject matter herein.

39. It is this court’s considered view that in the interests of justice, and to enable the Court to make an informed decision on the same, it is necessary that the Applicants herein be joined to the Petition as the 2<sup>nd</sup> Interested Parties. By joining them, the Applicants will be granted an opportunity to be heard, thus, they will not be condemned unheard.

40. Having carefully considered the instant Application, the opposition to the same, the rival written submissions and cited authorities, this Court holds and finds that the Applicants herein have established to the satisfaction of this court that they have a demonstrable interest or stake in the subject-matter of the instant Petition. Indeed, they stand to lose their alleged legal interest in LR No 12157 and LR 13169, if the Report of the National Assembly dated 5<sup>th</sup> October 2023 is quashed by the Court.

41. For the above reasons, the court finds and holds that the instant Chamber Summons Application dated 11<sup>th</sup> December 2023, is merited. Consequently, the said application is allowed wholly in terms of prayer No. 1, and are joined as 2<sup>nd</sup> Interested Parties, with costs being in the cause.



Petition to be amended within the next 7 days to include the 2<sup>nd</sup> Interested Parties.

It is so ordered.

**DATED, SIGNED AND DELIVERED ONLINE AT MURANGA THIS 7<sup>TH</sup> MARCH 2024.**

**L. GACHERU**

**JUDGE**

**DELIVERED ONLINE IN THE PRESENCE OF; -**

Mr Thuo for Petitioner/ Respondent

M/s Akama for 1<sup>st</sup> Respondent

Absent for 2<sup>nd</sup> Respondent

Absent for 3<sup>rd</sup> Respondent

Absent for 4<sup>th</sup> Respondent

Mr Swanya for 1<sup>ST</sup> Interested Party.

M/s Wairimu H/B for Mr. Nguringa for Proposed Interested Party.

Joel Njonjo – Court Assistant

**L. GACHERU**

**JUDGE**

**7/03/2024**

