



Kariobangi South Land Owners Group & 265 others v Nairobi City County & 5 others; Kariobangi South Juakali Society & another (Interested Parties) (Environment & Land Petition 1337 of 2016) [2024] KEELC 3645 (KLR) (11 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3645 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION 1337 OF 2016**

MD MWANGI, J

APRIL 11, 2024

IN THE MATTER OF ARTICLES 19, 20, 21, 22, 23, 24, 25, 26, 27, 28,33, 34,35,36,37,40, 41, 42, 43,47, 50, 53, 54,55,56, 57, 60, 61,62,63, 64, 65, 66, 67, 68, 69, 70, 73, 74, 75, 79, 80, 159, 175, 176, 186, 249,260 OF THE CONSTITUTIONANDIN THE MATTER OF SECTIONS 3, 4, 7 (A) (E) (I) 12, 2 OF THE LAND ACT NO. 6 OF 2012ANDIN THE MATTER OF THE COUNTY GOVERNMENTS ACT OF 2012IN THE MATTER OF THE CITY BYLAWS AND BUILDING REGULATIONSIN THE MATTER OF THE LAND REGULATIONS ACT OF 2017 (ALLOCATION OF PUBLIC LAND)

BETWEEN

**KARIOBANGI SOUTH LAND OWNERS GROUP 1ST PETITIONER
JAMES MBUGUA KIMIRI 2ND PETITIONER
SABINA MANDERE 3RD PETITIONER
JOSEPH JUMA OMENYA & 262 OTHERS & 262 OTHERS & 262 OTHERS &
262 OTHERS & 262 OTHERS & 262 OTHERS 4TH PETITIONER**

AND

**NAIROBI CITY COUNTY 1ST RESPONDENT
GOVERNOR NAIROBI CITY COUNTY 2ND RESPONDENT
CHIEF OFFICER LANDS 3RD RESPONDENT
COUNTY SECRETARY NAIROBI CITY COUNTY 4TH RESPONDENT
NATIONAL LAND COMMISSION 5TH RESPONDENT
ATTORNEY GENERAL 6TH RESPONDENT**

AND



RULING

Background

1. The application before court is dated 16th November, 2023 and filed by the 1st Interested Party/Applicant who is seeking the following orders:
 - a. This suit/Petition be struck out with costs to the Respondents known as Kariobangi South Juakali Society.
 - b. The Honourable Court be pleased to make any other or further orders to avert an abuse of Court process and injustice being visited upon by the Respondents known as Kariobangi South Juakali Society.
 - c. Cost of this Application be borne by the Petitioners.
2. The Applicant alleges that the Petitioners are non-suited as they are not a duly registered society and organization known in law. The suit as presently pleaded cannot therefore be sustained. The 1st Interested Party further argues that the Petitioners have failed to comply with the orders issued by this court on 12th April, 2023 and on other dates thus rendering this Petition to be unsustainable in law.
3. The Applicant further states that the suit is res judicata in that the issues raised in the suit were fully determined by the High Court in Nairobi Civil Suit No. 2303 of 1998 and by the Court of Appeal in Civil Appeal No. 392 of 2017. The 1st Interested Party argues that the Petitioners' claim is malafides as the Petitioners are members of and beneficiaries of Kariobangi South Jua Kali Society. The Petition herein is therefore an abuse of the court process and ought to be dismissed with costs.
4. The Application is supported by the Affidavit of Richard Ndunda Maasai deponed on the 15th June, 2023 and filed on the same date. The Affidavit was initially filed in response to the Amended Petition. The assertions contained therein are by and large replicated in the grounds in support of the application.

Petitioners' Replying Affidavit

5. The Application is opposed by the Petitioners vide the Replying Affidavit sworn by Sabina Manderu on the 22nd November, 2023. The other parties to the suit informed court that they were not opposed to the application.
6. The Petitioners deny the allegations that their Petition is vexatious, frivolous or scandalous. The deponent avers that the Petitioners are properly before court and confirms that they have complied with the court's directions issued on the 12th April, 2023.
7. In response to the assertion that the suit is res judicata, the deponent denies the same and avers that they were not parties to any of the cases referred to by the Applicant.
8. The deponent further states that it is indeed the Applicant who does not have any locus standi as it has never filed its annual returns since 2010. The deponent argues that the Petition raises triable constitutional issues hence the matter should proceed to trial for the court to determine it on the basis of substantive justice without undue regard to technicalities.



9. The deponent asserts that the Petitioners have substantively complied with the directions issued by the Court and it is fair and just that the matter proceeds to full hearing. She argues that striking out a suit is draconian and it is a tool that should only be used by the court in clear and obvious cases. She therefore prays that the application be dismissed with costs.

Court's directions

10. When the matter came up for directions, parties agreed to have the application dispensed with by way of written submissions with an opportunity to highlight the submissions before the court. Both the 1st Interested Party and the Petitioners complied. The 1st Interested Party/Applicant filed its submissions dated 24th January, 2024 whereas the Petitioners' submissions are dated 5th February, 2024. On the 15th February, 2024 the parties highlighted their respective submissions before the court. The proceedings of the day form part of the record of the court. I need not replicate them in this ruling.

Issues for determination

11. The critical question that presents itself in this matter is the role and place of an interested party in a case. The application under consideration is by the 1st Interested Party who seeks to strike out the petition herein. The issue then is whether an interested party can seek to strike out a case.

Analysis and determination

12. The 'Mutunga Rules', *{the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, Legal Notice No. 117 of 2013}, define an interested party as:

“A person or an entity that has an identifiable stake or legal interest or duty in the proceedings and may not be directly involved in the litigation”

13. The Supreme Court defined an Interested Party in the case of *Communications Commission of Kenya & 4 Others v Royal Media Services Limited & 7 Others* (2014) eKLR where it cited with approval the holding by the Court of Appeal in the case of *Trusted Society of Human Rights Alliance v Mumo Matemu* (2014)eKLR, which stated that:

“An interested party is one who has a stake in the proceedings, though he or she was not 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 she herself appears in the proceedings, and champions his or her cause.”

14. An Interested Party thus is not a principal party to the proceedings. The contest in a suit is only between the principal parties.

15. The Supreme Court in the case of *Francis Karioko Muruatetu & Another v Republic & 5 Others* [2016] eKLR the pronounced itself on the extent to which an Interested Party may participate in the proceedings as follows:

“any party seeking to join proceedings in any capacity, must come to terms with the fact that the overriding interest or stake in any matter is that of the primary/principal parties' before the Court. The determination of any matter will always have a direct effect on the primary/principal parties. Third parties admitted as interested parties may only be remotely or indirectly affected, but the primary impact is on the parties that first moved the Court....



Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed by the Court from the pleadings and submissions of the principal parties. An Interested Party may not frame its own fresh issues, or introduce new issues for determination by the Court. One of the principles for admission of an Interested Party is that such a party must demonstrate that he/she has a stake in the matter before the Court. That stake cannot take the form of an altogether a new issue to be introduced before the Court”.

16. In the case of *Trusted Society of Human Rights Alliance v Mumo Matemu* (2014)eKLR the Court of Appeal court stated that:

“A suit in Court is a solemn process, owned solely by the parties. This is why there are laws and Rules, under the Civil Procedure Code, regarding Parties to suits, and on who can be a party to a suit. A suit can be struck out if a wrong party is enjoined in it. Consequently, where a person not initially a party to a suit is enjoined as an interested party, this new party cannot be heard to seek to strike out the suit on the grounds of defective pleadings.”

17. The 1st Interested Party in this matter is such a party and cannot be heard to seek to strike out the suit.

18. The upshot is that the 1st Interested Party’s notice of motion application dated 16th November, 2023 lacks merit and is hereby dismissed but with no orders as to costs.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 11TH DAY OF APRIL, 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Micah h/b for Mr. Mbabu for the 1st Interested Party/Applicant

Mr. Ondieki for the Petitioners/Respondents

Mr. Okore for the 1st - 4th Respondents

Ms. Nyang’ for the 2nd Interested Party

N/A for the 5th and 6th Respondents

Yvette: Court Assistant

