



REPUBLIC OF KENYA



KENYA LAW
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Honey Creepers Investments Limited v Attorney General & 3 others; Ethics and Anti-Corruption Commission (Intended Interested Party) (Environment & Land Petition E049 of 2021) [2024] KEELC 4316 (KLR) (23 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4316 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION E049 OF 2021**

OA ANGOTE, J

MAY 23, 2024

**IN THE MATTER OF: THE UNLAWFUL, IRREGULAR AND
ILLEGAL ACQUISITION OF THE
PARCEL OF LAND KNOWN AS L.R.
NO. 209/14392-NAIROBI (THE
SUIT PROPERTY) REGISTERED TO
HONEY CREEPERS INVESTMENTS
LIMITED FOR CONSTRUCTION OF
THE NAIROBI EXPRESS WAY
PROJECT BY THE KENYA
NATIONAL HIGHWAYS
AUTHORITY**

AND

**IN THE MATTER OF: A DECISION BY THE NATIONAL
LAND COMMISSION MADE ON 8TH
JANUARY 2018 DIRECTING THE
CHIEF LAND REGISTRAR TO
LODGE A CAVEAT ON THE SUIT
PROPERTY, L.R. NO. 209/14392-
NAIROBI**

AND

IN THE MATTER OF: ARTICLES 1(1), 2(4), 3(1), 10, 20,



22, 23, 25, 27, 40, 47, 50, 62, 64,
67, 159, 160(1), 162(2)(B), 249(1),
258(1) AND 259 OF THE
CONSTITUTION OF KENYA
AND
ELC PET. NO. E049 OF 2021 RULING 2
IN THE MATTER OF: CONTRAVENTION OF ARTICLES
2(4), 10, 40 AND 47 OF THE
CONSTITUTION OF KENYA
AND
IN THE MATTER OF: THE FAIR ADMINISTRATIVE
ACTIONS ACT
AND
IN THE MATTER OF: THE NATIONAL LAND
COMMISSION ACT, NO. 5 OF 2012
AND
IN THE MATTER OF: SECTION 23 OF THE
REGISTRATION OF TITLES ACT,
CAP 281 LAWS OF KENYA
(REPEALED)
AND
IN THE MATTER OF: THE LAND ACT NO. 6 OF 2012
AND THE LAND REGISTRATION
ACT NO. 3 OF 2012

BETWEEN

HONEY CREEPERS INVESTMENTS LIMITED PETITIONER

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

NATIONAL LAND COMMISSION 2ND RESPONDENT

CHIEF LAND REGISTRAR 3RD RESPONDENT

KENYA NATIONAL HIGHWAYS AUTHORITY 4TH RESPONDENT

AND



RULING

1. Through a Notice of Motion dated 3rd October 2023, the Intended Interested party has sought for the following orders:
 - a. Spent.
 - b. The Honourable Court be pleased to issue an order for joinder of EACC to these proceedings as an Interested Party or in any other capacity as the court may deem fit.
 - c. The Honourable Court be pleased to grant EACC leave to file pleadings, witness statements and the necessary documents thereof.
 - d. The Honourable Court be pleased to grant the Petitioners corresponding leave to file responses if need be.
 - e. In The alternative, the 1st respondent (AG) be permitted to call other witnesses, namely Gordon Ochieng, Director Land Administration and Margaret Wambeti Ngari, investigation officer, EACC to produce the evidence obtained by EACC through its witness.
 - f. Costs of this application.
2. The grounds of the application, as set out in the application and the Supporting Affidavit sworn by Margaret Wambeti Ngari, an investigator with EACC, are that the EACC is a necessary party to these proceedings and is desirous of joining this suit as the findings of its investigations will assist the court to effectually and completely adjudicate all the questions arising in this suit.
3. Ms. Ngari deponed that the EACC is undertaking investigations into the allegation of irregular allocation of LR No. 209/14392 IR No. 86123 to Cab Investments Company Limited whereas the same is a road reserve; that investigations have established that the suit property herein was carved out of the larger Waiyaki Way Road Reserve, formerly known as Salisbury Road; and that the EACC has been established that the original allottee, Cab Investment Limited, is a non-existent entity as it is not registered in the Companies registry.
4. It was deposed that investigations by EACC have also established that the letter of allotment allotting the suit property to Cabs Investment Limited was defective as it was based on a PDP that was not approved.
5. Ms. Ngari deponed that in the course of investigations, EACC recorded the statement of Gordon Ochieng, Director Land Administration, who authored the letter Ref. 227144/1 dated 9th May 2001 addressed to the Director of Surveys verifying the letter of allotment Ref. 21929 dated 27th January 1999 as genuine. In his statement, she depones, he confirms that this letter did not address the issue of whether the land was available for allocation or not.
6. The Petitioner opposed the application by way of a Replying Affidavit sworn on November 9, 2023 by Ms. Irene Nyutu, the Petitioner's Legal Officer, who deposed that EACC has not produced any new evidentiary material to warrant its joinder as a party to these proceedings as an Interested Party.



7. Ms. Nyutu deponed that the mandate to review grants or dispositions of public land to establish their propriety or legality is vested in the National Land Commission, the 2nd Respondent herein.
8. She deponed that the letter dated October 24, 2022 from the Business Registration Service to the EACC regarding Cab Investments Co. Ltd only confirms that the company does not appear in the database, which could be because of a change of name, because the company was wound up or deregistered, or because the company has not undergone the process of verification to link their manual file to the respective official e-citizen accounts.
9. She deponed that Cab Investments Company rightfully and legally sold the suit property to the Petitioner for consideration; that the statements of Gordon Ochieng and Timothy Mwangi do not introduce any new facts that would assist this court in determining this matter and that the statement by Timothy Mwangi mirrors his Replying Affidavit sworn on May 31, 2022 and filed in this suit by the Hon. Attorney General.
10. It was the deposition of the Petitioner's Legal Officer that the part development plan register is already before this court and was produced as annexure TW2 in Timothy Mwangi's Replying Affidavit and that the 1st Respondent is ably represented and can seek leave at anytime to call such further witnesses as it deems fit. She urged that the EACC should not be allowed to advance the 1st Respondent's case on its behalf.
11. Both parties filed and exchanged submissions which I have considered.

Analysis and Determination

12. Having considered the application, and responses filed by the parties, the only issue for this court's determination is whether the Intended Interested party, Ethics and Anti-Corruption Commission (EACC) should be joined in this suit.
13. By way of background, the Petitioner filed this suit claiming that he lawfully acquired the suit property and that it has not been compensated for the acquisition of the suit property for the construction of the Nairobi Expressway Road Project.
14. The Petitioner has sought declaratory reliefs that the first registration of the suit property was done procedurally; that the Petitioner is a bona fide proprietor of the suit property; that the acquisition of the suit property without full and just compensation violated its rights under article 40(3) of the Constitution and section 111 of the Land Act and is invalid and that the decision by the 4th Respondent to take possession of and utilize the suit property without the 2nd Respondent giving notice to the Petitioner and hearing its claim for compensation violated its right to fair administrative action contrary to Article 47(1) of the Constitution.
15. The Petitioner has also sought for an order of mandamus to direct the 3rd Respondent to withdraw a caveat entered against the title on 4th January 2011; and an order of mandamus directing the 2nd and 4th Respondents to compensate it for compulsorily acquiring the suit property at the value of Kshs. 3 billion, among other reliefs.
16. The 1st Respondent has opposed the Petition on the grounds that the suit property was surveyed as a new grant parcel of land out of land set aside and classified as a public road reserve and that the Petitioner does not possess any proprietary rights over the suit property or any sub plot thereof.
17. The Intended Interested Party, the Ethics and Anti-Corruption Commission has sought to be joined in this suit as an Interested Party. EACC argues that it is a necessary party to this suit.



18. Order 1 rule 10 (2) of the [Civil Procedure Rules](#) provides for the jurisdiction of the court to join a party to a suit, whose presence in the proceedings is necessary to assist the court to effectually and completely determine all the issues in dispute.
19. The [Constitution of Kenya \(Protection of Rights and Fundamental Freedoms\) Practice and Procedure Rules, 2013](#), Legal Notice No. 117 of 2013 defines 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.”
20. The Black’s Law Dictionary, 9th Edition defines an Interested Party as:
- “A party who has a recognizable stake (and therefore standing) in the matter”
21. The law on joinder of Interested Parties to suits has been settled by the Supreme Court of Kenya in the case of Francis K. Muruatetu and Another vs Republic & 5 Others (2016) eKLR as follows:
- “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.”
22. The Supreme Court of Kenya in [Communications Commission of Kenya and 4 Others vs Royal Media Services Limited & 7 others](#) [2014] eKLR relied on its earlier decision in the Mumo Matemo case where the Court in defining who an Interested Party is, held as follows:
- “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. Similarly, in the case of *Meme v Republic*, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:
- (i) Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;
 - (ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
 - (iii) Joinder to prevent a likely course of proliferated litigation.
- We ask ourselves the following questions:



- a) what is the intended party's state and relevance in the proceedings and
 - b) will the intended interested party suffer any prejudice if denied joinder?"
23. The question that is then before the court is whether the EACC has met the criteria for joinder as an Interested Party, by establishing that they have an identifiable and proximate interest in this suit; that they will suffer prejudice if not enjoined to this suit and that their submissions are relevant to this suit and will result in the complete settlement of all questions involved in these proceedings.
 24. The Intended Interested Party submits that under section 11(1)(j) of the [Ethics and Anti-Corruption Commission Act](#), the functions of the Commission include instituting and conducting proceedings in court for purposes of the recovery or protection of public property, or for the freeze or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures.
 25. In interpreting Section 11 of the [Ethics and Anti-Corruption Commission Act](#), the court in [Republic vs National Land Commission & 3 Others; Kibua & Another \(Ex parte Applicants\); Ethics and Anti-Corruption Commission \(Intended Interested Party\)](#) [2023] KEELC 22404 (KLR) opined that this section was not restricted to filing fresh suits and the wording does not exclude joinder to existing suits. The court held as follows:

“I reject the ex parte applicants’ argument that section 11 of the [Ethics and Anti-corruption Commission Act](#) only allows the Commission to file a fresh suit and not seek to be joined to existing proceedings. This is because the wording of that section does not exclude joinder. The power to institute and conduct proceedings in my view includes being sued, suing and joining existing proceedings. Therefore, I find and hold that the intended interested party by their evidence, have demonstrated a recognizable stake in the proceedings as they have power to institute proceedings in respect of property they think to be public property but unlawfully acquired.”
 26. In this case, the Intended Interested Party has submitted that it is undertaking investigations into allegations of irregular allocation of LR No. 209/14392 IR No. 86123 to Cab Investments Company Limited whereas the same is a road reserve and that investigations have established that the suit property herein was carved out of the larger Waiyaki Way road reserve, formerly known as Salisbury Road.
 27. In my view, the matters raised by the Commission are relevant in determining the issues raised in this suit as they go to the root of whether the Petitioner lawfully acquired title to the suit property or not.
 28. Indeed, the circumstances in this case are distinct from the case of [Fidel Holdings Limited vs Kenya Railways Corporation & Another; Ethics and Anti-Corruption Commission \(Interested Party\)](#) [2022] KEELC 2207 (KLR), where in that case, joinder was not sought in that matter by the EACC but by the 1st Respondent and further, the suit solely concerned recovery of compensation monies.
 29. In this case, joinder has been sought by the Commission itself, which has indicated that it has an interest in the suit property because it is carrying out investigations as to whether it was regularly allocated to Cab Investments Limited, who conveyed the same to the Petitioner herein.
 30. I therefore hold and find that the Ethics and Anti-corruption Commission is a necessary party to these proceedings, and its presence in these proceedings will enable the court to effectually and completely determine the matters in question.
 31. The application for joinder is therefore allowed as follows:



- a. The Ethics and Anti-Corruption Commission (EACC) is hereby joined to these proceedings as an Interested Party.
- b. The EACC is granted leave to file pleadings, witness statements and the necessary documents thereof within 21 days of this determination.
- c. The Petitioners and Respondents are granted corresponding leave to file responses if need be within 14 days of service.
- d. Costs of this application shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 23RD DAY OF MAY, 2024.

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Allan Kamau for 1st and 3rd Respondent

Ms Ahomo for Issa for Petitioner/Respondent

Ms Wairimu for Kibogi for intended Interested Party

Ms Wanini for 2nd Respondent

Ms Awino holding brief for Sagana for 4th Respondent

Court Assistant: Tracy

