



Mwaisama & 158 others v Ndara B Community & another; Univerisal Resources International Limited (Applicant) (Environment & Land Petition E001 of 2023) [2024] KEELC 3880 (KLR) (Environment and Land) (16 May 2024) (Ruling)

Neutral citation: [2024] KEELC 3880 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT & LAND PETITION E001 OF 2023
EK WABWOTO, J
MAY 16, 2024**

BETWEEN

GARDIEL MNYAMBO MWAISAMA & 158 OTHERS PETITIONER

AND

NDARA B COMMUNITY 1ST RESPONDENT

TRUSTEES OF DIASPORA UNIVERSITY TOWN 2ND RESPONDENT

AND

UNIVERISAL RESOURCES INTERNATIONAL LIMITED APPLICANT

RULING

1. This Ruling is in respect to the application dated 27th February 2024 which seeks to join Universal Resources International Limited to these proceedings. The grounds advanced in support of the application are that the Applicant has legitimate interest on the suit land LR No. Sagalla/Ndara B/17. It was contended that the 1st Respondent has a performing contract over the suit land with the Applicant. It was also contended that in view of the foregoing it is important and necessary to have the Applicant joined to have her day in court since she is likely to be affected by any orders that shall be issued by this court.
2. The 1st and 2nd Respondents in opposition to the application argued that the Applicant cannot assist the Respondents in the mater and further that the Applicant's interest has nothing to do with the Respondent's interest in the land.



3. Upon considering the application and the parties' oral submissions, I note that the main issue for determination is whether the Applicant has sufficiently demonstrated that there is need to join her as a party to these proceedings.
4. On the issue of joinder of parties to Constitutional Petitions, Rule 7 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules* 2013 (The Mutunga Rules) provides as follows:

“Interested party

A person with leave of the court make an oral or written application to be joined as an interested party.

A court may on its own motion join any interested party to the proceedings before it.”
5. In the case of *Trusted Society of Human Rights Alliance v Mumo Matemu* [2014] eKLR, the Supreme Court held that:

“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...”
6. In *Esther Awwor Adero Ang'awa v Cabinet Secretary Responsible for Matters Relating to Basic Education & 7 others; John Diro & 6 others (Intended Interested Parties)* [2021] eKLR, the Court highlighted that enjoinder is not simply a right but subject to the discretion of the Court based on the grounds laid before the Court. The Court further relied on the Supreme Court's guiding principles in *Francis Kariuki Muruatetu & Another v Republic & 5 others* Petition 15 as consolidated with 16 of 2013 [2016] eKLR that include: -
 - (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.
7. In the instant application, the court has perused the Exploration, Prospecting and Mining Consent agreement between the 1st Respondent and the Applicant and it is evident that the Applicant has acquired some rights and interest in respect to the suit property wherein it stands to be affected by the orders that shall be issued by this court.
8. Further, joinder of a party to proceedings is at the discretion of the court and this court finds that the Applicant has demonstrated its stake to these proceedings.



9. It is the Court's finding that having perused the Petition, the supporting affidavits as well as the other affidavits on record, there is a compelling need to grant the order of joinder of the Applicant as this will lead the court in effectively adjudicating on the issues raised in the Petition.
10. In the end, the application dated 27th February 2024 is hereby disposed as follows:-
- i. Universal Resources International Limited is hereby joined to this proceeding as a 3rd Respondent.
 - ii. The 3rd Respondent shall file and serve its response to the Petition within 21 days.
 - iii. Upon service the Petitioner shall have 7 days leave if necessary to file any affidavit in response.
 - iv. Each party to bear own costs of the application.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN VOI THIS 16TH DAY OF MAY, 2024.

E. K. WABWOTO

JUDGE

In the presence of :-

Mr. Mwazighe for Petitioner.

Mr. Onindo for 1st and 2nd Respondents.

Mr. Kago for Applicant.

Court Assistants; Mary Ngoira and Norah Chao

