



**Republic v National Land Commission & another; County Government of Kiambu (Proposed Interested Party); Mihiu (Exparte Applicant) (Miscellaneous Application 11 of 2017) [2024] KEELC 5014 (KLR) (25 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 5014 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
MISCELLANEOUS APPLICATION 11 OF 2017**

**BM EBOSO, J  
JUNE 25, 2024**

**A. THE COUNTRY GOVERNMENT OF KIAMBU IS  
HEREBY JOINED AS A 3RD RESPONDENT IN THIS SUIT.**

**B. AS A CONSEQUENCE OF THE POST-JUDGMENT JOINDER,  
THE JUDGMENT RENDERED BY THIS COURT ON 16/11/2018  
IS HEREBY SET ASIDE ALONGSIDE THE RESULTANT DECREE.**

**C. THE CAUSE SHALL BE HEARD AFRESH.**

**D. THE COUNTY GOVERNMENT OF KIAMBU IS GRANTED 14 DAYS  
WITHIN WHICH TO RESPOND TO THE JUDICIAL REVIEW MOTION.**

**E. COSTS SHALL BE IN THE CAUSE.**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**COUNTY GOVERNMENT OF KIAMBU ..... PROPOSED INTERESTED PARTY**

**AND**

**STEPHEN KIMANI MIHIU ..... EXPARTE APPLICANT**



## RULING

1. This suit was initiated as a judicial review motion. Through the motion, the ex-parte applicant sought an order of certiorari quashing the decision of the National Land Commission published in the Kenya Gazette issue of 17/7/2017. The impugned decision was a recommendation to the Land Registrar to revoke the ex-parte applicant's title relating to land parcel number Ruiru Township/20 [hereinafter referred to as the "suit property"]. In addition, the impugned decision adjudged the suit property public land and vested it in the County Government of Kiambu. The National Land Commission made the decision in exercise of its grants review mandate under Article 68(c)(v) of the Constitution and Section 14 of the National Land Commission Act. The judicial review motion was heard and determined by Gacheru J vide a Judgment rendered on 16/11/2018.
2. About 5 years later, the County Government of Kiambu brought a post-judgment application dated 30/10/2023 seeking an order joining them as an interested party in the suit. They also sought an order reviewing and setting aside the Judgment of the Court. The said application is the subject of this ruling.
3. The application was premised on the grounds outlined on the face of the application and in the supporting affidavit and the further affidavit sworn by J.J Cheserek on 30/10/2023 and 1/12/2023 respectively. The application was canvassed through written submissions dated 1/12/2023, filed by J.J Cheserek - Legal Counsel for the County Government of Kiambu.
4. The applicant's case is that they were not joined and they had never participated in the proceedings in this matter, even though the suit property is public land that had, through the impugned decision, been vested in them. They contend that the Judgment delivered on 16/11/2018 adversely affects them. The applicant add that on 30/10/2023, at 5.00 a.m, they received a call from their tenant residing in Kangagi Estate, Ruiru, informing them that the ex-parte applicant had demolished County Government House No. 11020 built on the suit property and had evicted their tenant residing therein. The applicant further contend that they were never granted an opportunity to defend their entitlement to the suit property. The applicant faults the ex-parte applicant for deliberately failing to join them as a party in the proceedings despite knowing that the National Land Commission had directed the Land Registrar to revoke his title to the suit property and had vested the land in the applicant for a specific public use in tandem with the approved development and land use plan. The applicant contends that there will be no prejudice to the ex-parte applicant if the case is heard on merits.
5. The ex-parte applicant opposes the application through a replying affidavit sworn by Edith Nduta Kimani [the administrator of the estate of Stephen Kimani Mihui (deceased)] on 17/11/2023 and written submissions dated 30/1/2024, filed by M/s Mutiso & Company Advocates. The case of the ex-parte applicant is that the Court had not rendered any orders capable of being executed. The ex-parte applicant adds that the execution proceedings that led to the eviction were obtained in Ruiru ELC Case No. 49 of 2020. The ex-parte applicant contends that the applicant has not given any explanation for their inordinate delay in bringing the application despite being aware of the existence of the Judgment since 2020. The ex-parte applicant further contends that the applicant made applications on 2/6/2020 and 17/6/2020 to be joined in Ruiru ELC Case No. 49 of 2020 but the said applications were dismissed for want of merit. The ex-parte applicant adds that in response to the interested party's application for joinder, she filed a replying affidavit in which she attached the impugned Judgment. The ex-parte applicant contends that after being satisfied with the service of the pleadings upon the respondents, the Court [Gacheru J] determined that Stephen Kimani Mihui was the bonafide purchaser of the suit



property. The *ex-parte* applicant further contends that she only executed the Judgment of the Senior Principal Magistrate Court after Ruiru ELC Case No. 49 of 2020 was heard and determined on merits.

6. The single question that falls for determination in this ruling is whether the application meets the threshold for an order of joinder of a party to a suit post-judgment. I will be brief in my analysis and disposal of the question.
7. 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. Secondly, the jurisdiction to join a party to a case post-judgment is exercised only in exceptional and justifiable circumstances. One such exceptional scenario is where a case has been determined and adverse orders have been issued against a party who was neither given notice of the case nor heard on the issue in dispute.
8. Kenya's Court of Appeal outlined the above principle in *Merry Beach Limited v Attorney General & 18 Others* [2018]eKLR 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.”
9. What emerges from the record and from the evidence presented in this application is that the National Land Commission carried out a grant review hearing under Article 68(c)(v) of the *Constitution* and Section 14 of the *National Land Commission Act* in relation to the title held by the *ex-parte* applicant. The Commission made a finding that the title related to public land that had been planned and reserved for use as a public market and shopping centre. As part of the grants review decision, the Commission directed the Land Registrar to revoke the *ex-parte* applicant's title and “complete surrender process vesting the land in the County Government for specific use according to the approved subdivision plan.”
10. 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* did not, however, join the County Government of Kiambu as a respondent or as an interested party in the suit.
11. The suit was subsequently heard in the absence of the County Government and the decision that had vested the suit property in the County Government Kiambu was set aside in the absence of the County Government. 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 on the dispute yet both the decision of the Commission and the subsequent proceedings and judgment of this court directly affect them as owners of the suit property.
12. It does also emerge that, armed with the judgment of this court, the *ex-parte* applicant together with two others initiated Ruiru SPMC E & L Case No. 49 of 2020 against a tenant of the County Government and obtained a decree evicting the tenant. Again, the *ex-parte* applicant did not join the County Government as a party to the said suit.
13. Does the application under consideration meet the threshold for joinder post-judgment? The impugned decision of the National Land Commission 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 County Government on behalf of the public. Further, the decision vested the land in the County Government of Kiambu. For this reason, the County Government of Kiambu was a necessary party to any judicial review proceedings initiated for the purpose of annulling the decision. Indeed, the subsequent proceedings and quashing orders adversely affected the County Government in the sense that it divested from them the land which had been vested in them by dint of the decision of the Commission.

14. For the above reasons, this court is satisfied that the criteria for an order of joinder post-judgment has been met. As a logical consequence of the post judgment joinder order, the Judgment that was rendered by this court in the absence of the County Government of Kiambu is hereby set aside. Costs shall be in the cause.
15. In the end the application dated 30/10/2023 is allowed in the following terms:
  - a. The Country Government of Kiambu is hereby joined as a 3rd respondent in this suit.
  - b. As a consequence of the post-judgment joinder, the judgment rendered by this court on 16/11/2018 is hereby set aside alongside the resultant decree.
  - c. The cause shall be heard afresh.
  - d. The County Government of Kiambu is granted 14 days within which to respond to the judicial review motion.
  - e. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 25TH DAY OF JUNE 2024**

**B M EBOSO**

**JUDGE**

**In the presence of:**

Mr Mararo for the Intended Interested Party

Court Assistant: Hinga

