



**Republic v Land Registrar, Nakuru District & another; Nakuru War Memorial Hospital Ltd (Exparte Applicant); County Government of Nakuru (Proposed Interested Party) (Environment and Land Judicial Review Case 1 of 2024) [2024] KEELC 4782 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4782 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 1 OF 2024**

**YM ANGIMA, J**

**JUNE 13, 2024**

**IN THE MATTER OF LOSS OF A CERTIFICATE OF LEASE VIDE GAZETTE**

**NOTICE NO. 6309 DATED 19 TH MAY, 2023**

**AND IN THE MATTER OF ARTICLES 10, 40, 47, 48, 50 & 64(B) OF THE  
CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF SECTIONS 4, 5, 7, 9 & 11 OF THE FAIR  
ADMINISTRATIVE ACTION ACT, 2015**

**AND**

**IN THE MATTER OF SECTIONS 14, 25, 26, 30 & 33 OF THE LAND  
REGISTRATION ACT**

**AND**

**IN THE MATTER OF RULES, 2, 5, 7, OF THE LAND (EXTENSION &  
RENEWAL OF LEASES) RULES, 2017**

**AND**

**IN THE MATTER OF AN ORDER OF CERTIORARI AND PROHIBITION  
BETWEEN**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**LAND REGISTRAR, NAKURU DISTRICT ..... 1<sup>ST</sup> RESPONDENT**



ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT

AND

NAKURU WAR MEMORIAL HOSPITAL LTD ..... EXPARTE APPLICANT

AND

COUNTY GOVERNMENT OF NAKURU .... PROPOSED INTERESTED PARTY

## RULING

### A. Petitioners' Application

1. *Vide* a notice of motion dated 06.11.2023 filed pursuant to Sections 8 & 9 of the *Law Reform Act* (Cap. 26) and Order 53 Rules 3(1) and (3) of the *Civil Procedure Rules* 2010 and pursuant to leave granted on 31.10.2023 by Hon. Lady Justice (Dr.) M.A. Odeny the ex Parte Applicant (the Applicant) sought the following judicial review orders:
  - a. That this honourable court be pleased to grant an Order of Certiorari to call for and quash the decision of the 1<sup>st</sup> Respondent herein vide the Kenya Gazette Notice No. 6309 of 19.05.2023 in respect of cancellation of a certificate of lease of all that parcel of land known as Nakuru Municipality Block 11/107 duly registered under the name of Nakuru War Memorial Hospital Limited.
  - b. That this honourable court be pleased to grant an Order of Prohibition prohibiting the Respondents from dealing in any manner whatsoever, investigating, cancelling, revoking and/or reviewing the certificate of lease of all that property known as Nakuru War Memorial Hospital Limited.
  - c. That costs of this application be provided for.
2. The application was supported by the supporting affidavit sworn by Dr. Simon Mwangi on 27.10.2023 as well as the statutory statement of even date filed with the application for leave to apply for judicial review. The application was also based upon the grounds set out on the face of the motion. The Applicant contended that at all material times it was the registered proprietor of Title No. Nakuru Municipality Block 11/107 (the suit property) on which it was operating a medical facility. It was pleaded that the 1<sup>st</sup> Respondent had published Gazette Notice no. 6309 dated 19.05.2023 (the Gazette Notice) purporting to cancel the Applicant's certificate of lease for the suit property on the ground that it had been issued erroneously.
3. The Applicant contended that the 1<sup>st</sup> Respondent's said action was illegal, unconstitutional and in breach of the rules of natural justice since it was never accorded an opportunity of being heard prior to the said cancellation or revocation of its title. The Applicant further contended that the 1<sup>st</sup> Respondent's said action was in violation of Article 47 of *the Constitution* of Kenya (*the Constitution*) and that in any event he had no legal authority to cancel or revoke a certificate of title and order that the suit property should revert to the government.
4. It was also the Applicant's case that its lease over the suit property could only be revoked either by the National Land Commission or the Environment and Land Court (ELC) and that the 1<sup>st</sup> Respondent's purported revocation of its certificate of lease was tainted with illegality, irrationality and procedural impropriety hence null and void.



## B. Application for Joinder

5. During the pendency of the said application, the intended Interested Party filed a notice of motion dated 02.11.2023 seeking leave to be joined as an Interested Party and for leave to file a response to the application for judicial review. It also sought costs of the application to be provided for. The application was filed pursuant to Article 62 of the Constitution, Sections 1A & 3A of the Civil Procedure Act (Cap. 21), Order 1 rule 10(2) & Order 51 rules 3 & 4 of the Civil Procedure Rules, 2010 and all other enabling provisions of the law.
6. The application was supported by an affidavit sworn by Dr. Samuel Mwangi Mwaura on 02.11.2023 and the grounds set out on the face of the motion. The intended Interested Party pleaded that it was the legitimate custodian of the suit property following expiry of the Applicant's lease in 2019. It was contended that the Applicant had secretly and fraudulently obtained an extension of the lease in 2021 without involving the intended Interested Party.
7. It was thus contended that since health care was a devolved function under the 4<sup>th</sup> Schedule to the Constitution then the intended Interested Party had an obligation to protect the suit property which was public land meant for provision of medical services. It was further contended that when a complaint over extension of the lease was made to the 1<sup>st</sup> Respondent, he noted that the certificate of lease was erroneously issued hence he published the Gazette Notice revoking the same. The intended Interested Party was thus desirous of joining the suit so that it may protect its perceived interest in the suit property.

## C. Applicant's Response

8. The Applicant filed two replying affidavits in opposition to the application for joinder. They were both sworn by Dr. Simon Mwangi on 29.01.2024 and 23.02.2024 respectively. However, the contents and substance of the opposition were essentially the same in both affidavits.
9. The Applicant opposed the application upon, *inter alia*, the following grounds. First, that the application was incompetent, misconceived and an abuse of the court process since the intended Interested Party had not demonstrated any stake in the proceedings. Second, that the intended Interested Party was not a necessary party to the judicial review proceedings since the impugned Gazette Notice was issued solely by the 1<sup>st</sup> Respondent. Third, that the instant judicial review proceedings were not the right forum for adjudication of any ownership disputes since there was a pending civil suit being Nakuru ELC 36/2023 over the issue. Fourth, no orders or reliefs were being sought against the Interested Party hence it was merely a busy body and its application was intended to delay expeditious trial of the action. As a result, the court was urged to disallow the application for joinder.

## D. Directions on Submissions

10. The records shows that when the matter was still pending before the Environment and Land Court at Nakuru the parties agreed to canvass the application for joinder through written submissions. The record shows that the Interested Party filed its written submissions dated 20.02.2024 whereas the Applicant's submissions were dated 23.02.2024. There is, however, no indication on record of the Attorney General having filed any submissions on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.



## E. Issues for Determination

11. The court has considered the intended Interested Party's notice of motion dated 02.11.2023, the Applicant's replying affidavits in opposition thereto as well as the material on record. The court is of the opinion that the following are the key issues for determination herein:
  - a. Whether the intended Interested Party has made out a case for its joinder as an Interested Party in the proceedings.
  - b. Who shall bear costs of the application.

## F. Analysis and Determination

### Whether the intended Interested Party has made out a case for its joinder as an Interested Party in the proceedings

12. The court has considered the material and submissions on record on this issue. The court has also considered the nature of the proceedings herein. Although the intended Interested Party submitted that it had satisfied the legal requirements for its joinder as an Interested Party the Applicant contended otherwise. It is evident from the submissions on record that the parties were essentially agreed on the legal requirements and applicable principles for joinder but they differed only in their application to the facts and circumstances of this case.
13. In the case of *Francis Karioko Muruatetu & Another -vs- Republic & 5 Others* [2016] eKLR it was held by the Supreme Court, *inter alia*, that for an Applicant to be joined he must demonstrate:
  - a. 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.
  - b. 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.
  - c. 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.
14. In the case of *Trusted Society of Human Rights Alliance -vs- Mumo Matemu & 5 Others* [2014] eKLR it was held that an interested party is a party who shall be affected by the decision of the court once made whereas in *Joseph Njau Kingori -vs- Robert Maina Chege & 3 Others* [2002] eKLR it was held that an interested party must be a necessary party and whose presence is necessary to enable the court to effectively and completely adjudicate all the questions in controversy in the suit.
15. It is evident from the application for judicial review that the Applicant is challenging the Gazette Notice which cancelled its certificate of lease for the suit property on the ground that it was erroneously issued. The Applicant contended that the land registrar acted irrationally, illegally and unconstitutionally in purporting to cancel the certificate of title since he had no such power under the law and that it was not accorded an opportunity to be heard before such drastic action was taken.
16. The court is unable to agree with the intended Interested Party that it has an identifiable stake or legal interest in the application for judicial review since neither the Applicant nor the land registrar has made



any claim or sought any adverse order against it. It was not involved in the revocation or cancellation of the certificate of lease. Whatever decision the court may render in the application cannot possibly bind the intended Interested Party given the nature and scope of judicial review proceedings. Any decision made in the proceedings can only bind the Respondents and the Applicant.

17. The court is not persuaded that the intended Interested Party is a necessary or proper party and that the court cannot effectually adjudicate and determination the issues in dispute in its absence. The court is of the view that the Applicant's grievances on alleged illegality and unconstitutionality of the 1<sup>st</sup> Respondent's action can be resolved in the absence of the intended Interested Party. It must be remembered that the question of who is the legitimate owner of the suit property can only be resolved in the pending civil suit viz Nakuru ELC No. 36 of 2023 (now Nyandarua Elcl No. 3 of 2024). It is evident from the material on record that the intended Interested Party is one of the Defendants in that suit which is pending hearing before this court. The intended Interested Party shall thus have an opportunity to give its side of the story and to demonstrate that it is the legitimate owner or holder of the suit property.
18. The court thus finds and holds that no prejudice shall be suffered by the intended Interested Party if it is not joined or heard in the instant application for judicial review. In the premises, the court finds and holds that the intended Interested Party has failed to make out a case for it to be joined in the application for judicial review. In the event, the court is not inclined to allow the application for joinder and the consequential orders sought.

#### **b. Who shall bear costs of the application**

19. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court finds no good reason to depart from the general rule. As a consequence, the Applicant shall be awarded costs of the application dated 02.11.2023 to be borne by the intended Interested Party.

#### **G. Conclusion and Disposal Order**

20. The upshot of the foregoing is that the court finds no merit in the application by the intended Interested Party for leave to be joined as an Interested Party in the application for judicial review. As a result, the court makes the following orders for disposal thereof:
  - a. The notice of motion dated 02.11.2023 be and is hereby dismissed.
  - b. The Applicant is hereby awarded costs of the application to be borne by the County Government of Nakuru.

It is so ordered.

**RULING DATED AND SIGNED AT NYANDARUA AND DELIVERED THIS 13<sup>TH</sup> DAY OF JUNE, 2024 VIA MICROSOFT TEAMS.**

**Y. M. ANGIMA**

**JUDGE**

**In the presence of:**

Mr. Kahiga for the ex-parte Applicant



Ms. Adomeyon for the Attorney General for the Respondents

Mr. Okore holding brief for Prof. Ojienda for the intended Interested Parties

C/A - Carol

