



**Republic v National Land Commission & another; Njau (Interested Party) (Environment and Land Judicial Review Case 37 of 2018) [2024] KEELC 4661 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4661 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 37 OF 2018**

**JE OMANGE, J**

**JUNE 13, 2024**

**IN THE MATTER OF SECTION 8 AND 9 OF THE LAW  
REFORM ACT CAP 26 OF THE LAWS OF KENYA**

**IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010**

**AND**

**IN THE MATTER OF SECTION 14 OF THE NATIONAL  
LAND COMMISSION ACT CAP 50 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF SECTION 4 AND 5 OF THE FAIR ADMINISTRATION ACT OF 2015**

**IN THE MATTER OF REVIEW OF TITLE LR NUMBER 209/7383/356**

**AND**

**IN THE MATTER OF APPLICATION FOR LEAVE TO APPLY  
FOR ORDER OF CERTIORARI AND PROHIBITION**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

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

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

**AND**

**BERNARD NJAU ..... INTERESTED PARTY**



## RULING

1. In the amended application dated 1<sup>st</sup> November, 2023 the applicant had prayed for the following orders;
  - a. That this honourable court be pleased to strike out Benard K.Njau from these proceedings as an Interested Party
  - b. That in the alternative to prayer 1 above the honourable court orders the said Bernard K Njau to deposit security for costs to the tune of Ksh. 10,000,000
  - c. Costs of the application be borne by the Interested Party.
2. The applicants case is that the Interested Party has instituted numerous suits before courts which include ELC No 495 of 2009 Bernard K Njau Vs City Council of Nairobi and others. That these cases touch directly on the Applicant's suit property LR No 209/7383/356. That the Interested Party is a vexatious litigant who has been convicted for holding himself out to be the chairperson of Kimathi Estate Welfare Association when he is not. That the Interested Party should not be allowed to participate in the review application which is yet to be determined.
3. The application was supported by the affidavit of by Vittorio Vienenziana director of the applicant who deponed that the applicant is the registered proprietor of LR. No 209/7383/356 situated within Nairobi County. He deponed that the Interested Party has never been the chairman nor a member of Kimathi Estate Welfare Association and hence does not qualify to represent the association in these proceedings. He averred that this information was obtained from the Ministry of state for immigration and registration of persons.
4. The Interested Party filed grounds of objection on the following grounds;
  - a. That he is a resident and home owner of in Kimathi Estate hence the illegal acquisition of the Estate's land affects him personally, privately and directly, and he is a party directly affected by these judicial review proceedings recognized under Order 53 R. 3(2) Civil Procedure Rules 2010 as a person to be served and to participate in these proceedings even if not joined as a party.
  - b. That he is equally a public-spirited person who exercised his rights donated by Articles 22(2)(c) and 258(2)(c) of *the Constitution* 2010 to participate in these proceedings as an Interested Party and therefore there is no justification whatsoever to penalize him to deposit or pay security for costs of Kshs. 10 Million
  - c. That the Applicant has failed to prove its prejudice, if any, against the participation of the Interested Party in these proceedings and is otherwise engaged in delaying the conclusion of this suit. Moreover, it has admitted that the title to the suit land it laid claim to has already been revoked by the Respondents and reverted to the lawful owner, Kimathi Estate, which renders the application a nullity under the principles of mootness.
  - d. The Court is equally functus officio as it had already rendered itself in a judgement on 2nd December 2021 by dismissing the Applicant's judicial review application
  - e. That there is no reasonable justification for causing the striking out of the Interested Party after judgement, where the trial Court had already found that he was a necessary party in these judicial review proceedings, which renders the application before Court frivolous.



- f. That the allegations on the character of the Interested Party are false, unproven, did not affect this judicial review proceeding and the aforesaid judgement and are irrelevant and in bad taste, and ought to be expunged from record.
5. None of the parties filed submissions. On the basis of the pleadings that were filed, the only issue for determination by the court is whether the Interested Party should be struck out.
6. Order 1 Rule 10(2) of the Civil Procedure Rules states as follows: -

“The court may at any stage of the proceedings, either upon, or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant be struck out, and that the name of any person who ought to have been joined, whether as Plaintiff or Defendant or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon or settle all questions involved in the suit, be added.”
7. This court after considering this section did on 20<sup>th</sup> November, 2018 allow the Interested Party to be enjoined in the Judicial Review Application. The applicant now asks the court to strike out the Interested Party on the basis of other court decisions.
8. 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 v. Republic & 5 others [2016] eKLR, the court set out identifiable key elements for consideration in an application for joinder as an Interested Party. The elements are as follows: -
  - a. The Personal interest or stake that the party has in the matter must be set out. 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 submission 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.”
9. In response to the claim by the applicant that he was found not to be the Chair of the estate association, the Interested Party states that as a resident of the estate he has an identifiable stake in this matter. I have considered the allegations levelled against the Interested Party. I find that the findings in other court cases cannot be used to override his right to be heard in a case in which he was the primary complainant and in which he has participated up to Judgement stage.
10. The continued participation of the Interested Party will not prejudice the applicant as he shall have an opportunity to counter any issues that are raised by the Interested Party. On the question of costs, there is no justification for this given that the court is enjoined to promote access to justice. Security for costs should only be in circumstances where it is self-evident that there is a litigant who is vexatious and intent on abusing the process of the court. Given my finding that the Interested Party has an identifiable stake and also considering that he has not filed this case but has been enjoined as one affected by the outcome, it would be unjust to order him to offer security for costs. I therefore find that the application has no merit and is dismissed with costs.



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

**J. OMANGE**

**JUDGE**

In the presence of: -

Ms. Ndirangu for the Plaintiff/Respondent

Court Assistant -Steve

