



REPUBLIC OF KENYA



**Ngai & 5 others v Attorney General & 3 others; Jotham (Applicant) (Environment & Land Petition 1 of 2018) [2024] KEELC 5287 (KLR) (17 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5287 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT & LAND PETITION 1 OF 2018**

**JM MUTUNGI, J**

**JULY 17, 2024**

**BETWEEN**

**ALICE MWERU NGAI ..... 1<sup>ST</sup> PETITIONER  
JOTHAM MWANIKI ..... 2<sup>ND</sup> PETITIONER  
ZAWERIO KAMAU ..... 3<sup>RD</sup> PETITIONER  
BETHWEL MWANIKI ..... 4<sup>TH</sup> PETITIONER  
AGNES WAMBUI KAMAU ..... 5<sup>TH</sup> PETITIONER  
ANDREW MURIITHI KAMAU ..... 6<sup>TH</sup> PETITIONER**

**AND**

**HON. ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT  
KENYA POWER & LIGHTING CO. LTD ..... 2<sup>ND</sup> RESPONDENT  
KENYA NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> RESPONDENT  
SIEMENS SOUTH AFRICA ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**FLORENCE WAKARII JOTHAM ..... APPLICANT**

**RULING**

1. The Applicant vide an application dated 10.07.2023 sought orders that:
  1. Spent.
  2. That the Petitioner herein, Jotham Mwaniki, be struck out in these proceedings and the Applicant's name, Florence Wakarii Jotham, be substituted as the Petitioner.



3. That the costs of this application be provided.
2. The application is based on the grounds and the Supporting Affidavit sworn by the Applicant, who is also the intended 2<sup>nd</sup> Petitioner. The Applicant averred she was the spouse of Jotham Mwaniki Gikunju and the legal owner of the land parcel identified as Ngariama/Merichi/2237, which is impacted in these proceedings. The Applicant has stated that she had reached an agreement with the 2<sup>nd</sup> Petitioner for him to initiate the lawsuit on behalf of their family. However, following the respondents' challenge of the lawsuit based on the issue of locus standi, she now prays that her husband's name be replaced with hers in the suit, arguing that it would serve the interests of justice.
3. The application was opposed through a Replying Affidavit filed by the 2<sup>nd</sup> Respondent. The opposition was based on three key arguments. Firstly, the 2<sup>nd</sup> Respondent contended the application was premised on wrong legal provisions. Secondly, it was contended that the Court did not possess the jurisdiction to adjudicate this matter, as the 2<sup>nd</sup> Petitioner lacked the necessary legal standing, rendering his claim fundamentally flawed. Lastly, the 2<sup>nd</sup> Respondent argued that the Applicant had failed to demonstrate there was a genuine mistake to warrant the Court to exercise its discretion in her favour.
4. Concerning the first argument, the 2<sup>nd</sup> Respondent contended that the Applicant's application was merely an afterthought and described it as frivolous, vexatious, and an outright waste of the court's time. The 2<sup>nd</sup> Respondent argued that it was defective because, as a Constitutional petition, it should not fall under the standard provisions of the Civil Procedure Act and Rules. In the second argument, the 2<sup>nd</sup> Respondent contended that this Court does not have jurisdiction to entertain the application because the 2<sup>nd</sup> Petitioner's claim was void from the outset. Furthermore, the 2<sup>nd</sup> Respondent argued that the Applicant is not in a position to substitute the 2<sup>nd</sup> Petitioner due to a lack of legal standing. The 2<sup>nd</sup> Respondent maintained that the 2<sup>nd</sup> Petitioner's claim was fundamentally defective as it was initiated by the 2<sup>nd</sup> Petitioner who lacked the necessary legal competence. In addressing the third argument, the 2<sup>nd</sup> Respondent contended that the purported *bona fide* mistake referenced in the third ground of the Applicant's application was not genuine. This contention was based on the admission by the Applicant that the 2<sup>nd</sup> Petitioner, with full knowledge and consent, filed the petition on behalf of the Applicant. Furthermore, it was argued that the Applicant initiated this application only after the 2<sup>nd</sup> Respondent highlighted the issue of locus standi, and despite this, the 2<sup>nd</sup> Petitioner continued to prosecute the matter. The 2<sup>nd</sup> Respondent further argued that the Applicant and 2<sup>nd</sup> Petitioner cannot claim bona fide mistake since legal counsel represented the 2<sup>nd</sup> Petitioner throughout the proceedings.
5. I have considered the application and the Replying Affidavit sworn by a representative of the 2<sup>nd</sup> Respondent in response. The issue for determination is whether the Applicant has satisfied the requisite threshold to warrant the exercise of discretion by the Court to join her to the Petition in substitution of the 2<sup>nd</sup> Petitioner.
6. Joinder of parties to constitutional petitions as in the instant matter is regulated by the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (Legal Notice No. 117) and not by the Civil Procedure Rules. Rules 5 (b)(c) and (d) of the Rules provide as follows:-
  - (b) A petition shall not be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every proceeding deal with the matter in dispute.
  - (c) Where proceedings have been instituted in the name of the wrong person as petitioner, or where it is doubtful whether it has been instituted in the name of the right petitioner, the Court may at any stage of the proceedings, if satisfied that the proceedings have been instituted



through a mistake made in good faith, and that it is necessary for the determination of the matter in dispute, order any other person to be substituted or added as petitioner upon such terms as it thinks fit.

- (d) 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 just—
- (i) order that the name of any party improperly joined, be struck out; and
  - (ii) that the name of any person who ought to have been joined, or whose presence before the court may be necessary in order to enable the court adjudicate upon and settle the matter, be added.
7. It is evidently clear from the above provision that the discretionary power of the Court to join, substitute and/or strike out parties is wide and unfettered. The discretion of the Court in any case under the Rules, is circumscribed in such a manner as to lean on sustaining rather than striking out petitions and/or parties. The scope and objectives under Rule 3 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, 2013 (Legal Notice No. 117) is unreservedly to enhance access to Justice without undue regard to technical and procedural technicalities. Subrule 3(2) provides thus:-
- (2) The overriding objective of these rules is to facilitate access to justice for all persons as required under Article 48 of the Constitution.
8. The Court in furthering the overriding objective envisaged by the *Rules* is under Subrule 5 of Rule 3 enjoined to handle all matters before it to achieve the just determination of the proceedings in an efficient and timely manner and at a cost affordable by the respective parties. Subrule 8 of Rule 3 provides as follows:-
- (8) Nothing in these rules shall limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.
8. In the present petition it is acknowledged that the 2<sup>nd</sup> Petitioner is not the registered owner of land parcel Ngariama/Merichi/2237 which was a resultant sub-division from land parcel Ngariama/Merichi/466 which is the land the subject matter in these proceedings. The Applicant who is the spouse of the 2<sup>nd</sup> Petitioner is the registered proprietor of land parcel Ngariama/Merichi/2237 and therefore the proper party who ought to have been joined in the petition. The Applicant is a person who has an identifiable stake or legal interest in the proceedings before the Court as her parcel of land is alleged to have been affected by the acts of the Respondents. She qualifies as a necessary party to the proceedings. I see no prejudice that any of the Respondents could suffer by the joinder of the Applicant as the 2<sup>nd</sup> Petitioner in place of the 2<sup>nd</sup> Petitioner Jotham Mwaniki.
9. As per the *Rules* a party can be joined and/or substituted at any stage in the proceedings whenever the Court is satisfied that the joinder is appropriate and necessary for the ends of justice to be met. In the circumstances of this matter I am satisfied the Applicant's application has merit and I allow the same in terms of Prayer (2) of the application dated 10<sup>th</sup> July 2023.
11. The costs of the application shall be in the cause.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 17<sup>TH</sup> DAY OF JULY 2024.**

**J. M. MUTUNGI**



