



Curly Wurly Limited & 3 others v Kenya Ports Authority & 3 others (Environment & Land Case 200'B' of 2021) [2024] KEELC 6139 (KLR) (24 September 2024) (Ruling)

Neutral citation: [2024] KEELC 6139 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 200'B' OF 2021
NA MATHEKA, J
SEPTEMBER 24, 2024**

BETWEEN

**CURLY WURLY LIMITED 1ST PLAINTIFF
EXON INVESTMENTS LIMITED 2ND PLAINTIFF
COAST CLAY WORKS LIMITED 3RD PLAINTIFF
FUEL HANDLING TERMINAL (KENYA) LIMITED 4TH PLAINTIFF**

AND

**KENYA PORTS AUTHORITY 1ST INTENDED DEFENDANT
NATIONAL LAND COMMISSION 2ND INTENDED DEFENDANT
KENYA NATIONAL HIGHWAYS AUTHORITY . 3RD INTENDED DEFENDANT
KENYA RAILWAYS CORPORATION 4TH INTENDED DEFENDANT**

RULING

1. The application is dated 19th February 2024 and is brought under the Provisions of Article 159 of *the Constitution*, Section 3 and 19 the *Environment and Land Court Act*, 2011; Section 1A, 1B, 3A, 63 (e) & 100 of the *Civil Procedure Act* Cap 21 Laws of Kenya and Order I Rule 10 (2)(4) & (25) and Order 8 Rule 3 of the Civil Procedure Rules 2010 seeking the following orders;
 1. That this application be heard on priority to any other or further proceedings in this suit.
 2. That the Honourable Court be pleased to order the addition of Kenya Railways Corporation and Kenya National Highways Authority as the 3rd and 4th Defendants respectively in the suit herein.



3. That the Honourable Court be pleased to grant leave to the parties herein to amend their pleadings to capture the joinder of Kenya Railways Corporation and Kenya National Highways Authority as the 3rd and 4th Defendants respectively to this suit.
 4. That the Honourable Court be pleased to issue further or other orders and/or directions as it may deem fit to grant to serve the ends of justice for the parties herein.
 5. That costs of this application be provided for.
2. It is made on the following grounds that the 1st Plaintiff is the registered owner of the parcels of land known as Plot Number MN/VI/500 and MN/VI/2424. On or about 2008 and 2011, the 1st Defendant ("KPA"), other State agencies and stakeholders undertook measures to implement the Mombasa Port Development Project ("MPDP project") to expand and increase the Port of Mombasa container handling capacity. The Kenya National Highways Authority (KeNHA) was charged with the construction of the access roads of the MPDP project such as the Port Access Road to Kipevu West Container Terminal which affected the portions of the suit properties. At around the same time, Kenya Railways Corporation ("Kenya Railways") was also implementing the Mombasa - Nairobi Standard Gauge Railway project ("SGR project").
 3. In planning for the MPDP and SGR projects, Kenya Railways requested KeNHA to revise the initial design for the MPDP project to put up further construction ancillary to the SGR project. Accordingly, on various instances and as recent as the year 2019, the 2nd Defendant ("the NLC") published numerous Gazette Notices on behalf of Kenya Railways and KeNHA pursuant to the provisions of the [Land Act](#), 2012 and the Land Acquisition Act Cap. 295 Laws of Kenya [Now Repealed]. Some of the said Gazette Notices were published for purposes of intention to acquire, others for inquiry into compensation and while others for deletion from gazette of the portions of the suit properties. It is essential to note that none of the said Gazette Notices were published by the NLC for or on behalf of KPA in respect of the portions of the suit properties. The Gazette Notices were only published by the NLC for and on behalf of Kenya Railways and KeNHA. However, the proposed revision of the initial design of the MPDP project was vetoed by the project consultants, who reverted to its initial design with several adjustments to mitigate the number of projects affected persons entitled to compensation. Consequently, several of the affected landowners including the Plaintiff herein were inadvertently omitted from the KeNHA and Kenya Railways compensation programmes. In addition, there was no transfer or handover of claims for compensation from the KeNHA and Kenya Railways compensation programmes to KPA for settlement. This led to many affected landowners such as the 1st Plaintiff herein being omitted from the aforesaid compensation programme of KPA. The various persons whose plots were affected brought claims for compensation to KPA who subsequently undertook a joint survey of the MPDP project area involving the said project affected persons, KeNHA and the Government Surveyor.
 4. This court has considered the application and the submissions therein. The applicant seeks to enjoin Kenya Railways and KeNHA as 3rd and 4th Defendants. As to whether they ought to be enjoined in the suit as defendants, the Court is guided by Order 1 Rule 10(2) of the Civil Procedure Rules which states;

“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 and settle all questions involved in the suit, be added”.

5. The Supreme Court decision in *Communications Commission of Kenya and 4 Others vs Royal Media Services Limited & 7 Others* Petition No. 15 of (2014) eKLR where the Court pronounced itself on who an Interested Party is and held as follows:

“In determining whether the applicant should be admitted into these proceedings as an interested party, we are guided by this Court’s decision in the *Mumo Matemo* case where the court (at paragraphs 14 and 18) held:

“An interested party is one who has a stake in the proceedings, though he or she was not 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 she herself appears in the proceedings, and champions his or her cause. Similarly, in the case of *Meme v. Republic*, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- (i) Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;
- (ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) Joinder to prevent a likely course of proliferated litigation.

We ask ourselves the following questions:

- a) what is the intended party’s state and relevance in the proceedings and
- b) will the intended interested party suffer any prejudice if denied joinder.?”

6. It is therefore clear that the parties who should be made parties to a suit are persons who are necessary for a complete and effectual adjudication of disputes before the court. The applicant seeks to enjoin the of Kenya Railways Corporation and Kenya National Highways Authority as the 3rd and 4th Defendants in this suit. The reason being that the roles played by Kenya Railways and KeNHA in the implementation of the aforesaid projects, the presence of the State agencies is necessary for their contribution to the award of compensation to the 1st Plaintiff as it may be determined by the NLC in accordance with the provisions of the *Land Act*, 2012. That the presence of Kenya Railways and KeNHA is necessary in the suit herein to enable the Court to effectively and conclusively adjudicate upon and determine all questions involved in this suit.
7. The 4th Intended Defendant submitted that the 1st Defendant cannot rely on the 4th Defendants mere intention to acquire the Plaintiff’s suit property in any way as it never materialized. The intention is not a legal demand to compulsory acquire so as to require any form of contribution from the intended 4th Defendant.
8. I find that the intended defendants were among the lead agencies in the implementation of the MPDP and SGR projects and concur with the applicant that there may be a possibility that Kenya Railways and KeNHA may be reasonably affected by the litigation between the parties herein as the State agencies have been extensively mentioned in the pleadings and evidence filed by the parties before the



Court. I find that no prejudice shall be suffered by the parties herein as the addition of Kenya Railways and KeNHA as parties to this suit is necessary and shall enable the Court to completely and effectually determine all questions involved in the suit herein in finality. I therefore find that this application is merited and I grant the following orders;

1. That Kenya Railways Corporation and Kenya National Highways Authority be enjoined as the 3rd and 4th Defendants respectively in the suit herein.
2. That leave is granted to the parties herein to amend their pleadings to capture the joinder of Kenya Railways Corporation and Kenya National Highways Authority as the 3rd and 4th Defendants respectively to this suit.
3. Costs of this application to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 24TH DAY OF SEPTEMBER 2024.

N.A. MATHEKA

JUDGE

