



**Kaiyaki & 3 others v Roysambu Constituency Development Fund  
& 3 others (Environment & Land Case 1057 of 2016 & 392 of 2008  
(Consolidated)) [2024] KEELC 7470 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7470 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ENVIRONMENT & LAND CASE 1057 OF 2016 & 392 OF 2008 (CONSOLIDATED)**  
**LN MBUGUA, J**  
**OCTOBER 30, 2024**

**BETWEEN**

**LERIMA OLE KAIYAKI ..... 1<sup>ST</sup> PLAINTIFF**  
**DANIEL KIPKORIR TANUI & SUSAN CHEROP KAAI (ADMINISTRATORS  
OF THE ESTATE OF SAMUEL KIPTANUI CHEROP) ..... 2<sup>ND</sup> PLAINTIFF**  
**JOEL KANI OLE SIKAMOI ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**ROYSAMBU CONSTITUENCY DEVELOPMENT FUND ..... 1<sup>ST</sup> DEFENDANT**  
**BOARD OF MANAGEMENT OF GARDEN ESTATE SEC  
SCHOOL ..... 2<sup>ND</sup> DEFENDANT**  
**WAIHENYA NDIRANGU (MP) ROYSAMBU CONSTITUENCY .... 3<sup>RD</sup>  
DEFENDANT**

**AS CONSOLIDATED WITH**  
**ENVIRONMENT & LAND CASE 392 OF 2008**

**BETWEEN**

**CITY COUNCIL OF NAIROBI ..... PLAINTIFF**

**AND**

**JOEL KANI OLE SIKAMOI ..... DEFENDANT**



## RULING

1. The Intended Interested Party's Notice of Motion dated 19.6.2024 is for determination. He seeks orders to be enjoined in this suit with a view to applying for an order to expunge the surveyor's report dated 22.2.2023 which was submitted to this court.
2. The application is premised on grounds on its face and on the applicant's supporting affidavit sworn on 19.6.2024. He avers that Land parcel No. 4894/77 measuring approximately 12.31. acres was subdivided in 1966 into 2 portions being LR No. 11793 measuring approximately 6.5 acres and a portion measuring 5.8 acres which was set aside as government land.
3. That parcel LR No. 11793 was allocated to Nairobi City Council while the other parcel was renamed LR No. 20528 and allocated to one Margaret Nyakinyua Murigu on 12.7.1995 who subsequently sold that parcel to him on 10.1.1996.
4. He avers that on 2.8.2022, this court ordered that a surveyor's report be filed indicating beacons of Land Parcel No. 4894/77 which report was filed on 27.2.2023. He points out that due to fraudulent dealings at the surveyor's office, his parcel of land which is No. 20528 now reads No. 20605 which does not exist in the lands office, ardhisa portal and / any records of registration. He contends that title to his plot has always been LR 20528 as per records in the lands office and that it has never been LR 20605 as indicated in the surveyor's report.
5. The 1<sup>st</sup> and 3<sup>rd</sup> Plaintiffs have opposed to the application vide Grounds of Opposition dated 18.7.2024. They contend that the application is a replica of the application dated 22.2.2024 which was determined vide a ruling delivered on 20.4.2023. They aver that the applicant cannot seek to expunge a report in a matter in which he is not a party, thus the application is an abuse of the court process.
6. The application is opposed also by the 2<sup>nd</sup> Plaintiff vide Grounds of Opposition dated 22.7.2024 where it is argued that the proposed interested party has no capacity to seek any orders concerning LR No. 11973 (Original part of LR No. 4897/77) which is separate and distinct from LR No. 20605 cited as LR No. 20528 in the surveyor's report.
7. It is also contended that the application offends the principle of res judicata, the Intended Interested Party having exhausted his right to be heard in HCCC No. 399 of 2001 and Court of appeal case No. of 2004 Nairobi (Margaret Nyakinyua Murigoi v James Kimani Horeria).
8. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are opposed to the application vide Grounds of Opposition dated 9.7.2024 where they aver that the application is res judicata as the issue of joinder of the applicant has been determined by the court vide its ruling dated 20.4.2023.
9. The Intended Interested Party filed submissions dated 19.7.2024 arguing that his prayers would not affect any of the parties as his land, parcel LR 20528 has not been claimed by any of the parties to this suit.
10. The other parties did not file submissions.
11. The court has considered the application as well as responses filed and the submissions of the applicant. The provisions of Order 1 Rule 10 of the Civil Procedure Rules permits joinder of parties whose presence is necessary for the adjudication of disputes.



12. In *Trusted Society of Human Rights vs Mumo Matemu and 5 others* [2014] eKLR, the Supreme Court of Kenya held that:

“ An interested party is one who has a stake in the proceedings through though he or she was not party to the cause ab initio.....”

13. In the ruling dated 20.4.2023, the applicants prayer to have the surveyors report expunged was declined on the basis that the applicant was not a party to these proceedings. Now that he has made an application for joinder, should he be allowed to come on board these proceedings?.

14. In as much as the applicant has now used the correct route of challenging the report, there is still a hitch in that he has not offered his statement of claim or a pleading which would enable him to tender evidence. It is therefore not clear as to how he would challenge any evidence tendered herein, seeing that the report forms part of the evidence that the court will refer to in the determination of the matter. Further, he says that his land is not being claimed by any of the parties, it is therefore again not clear as to how he stands to be adversely affected by the competing claims of the parties herein.

15. In the end, I find that the application is not merited, the same is hereby dismissed with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30<sup>th</sup> DAY OF OCTOBER, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Nyang for 1<sup>st</sup> Plaintiff

Mengitch for 2<sup>nd</sup> Plaintiff

Nyareso for Plaintiff in 392/2007

Evans Gaturu for Applicant

Court assistant: Vena

**AMENDED AND SIGNED IN NAIROBI THIS 22<sup>ND</sup> DAY OF NOVEMBER, 2024.**

**LUCY N. MBUGUA**

**JUDGE**

