



REPUBLIC OF KENYA



**Ethics and Anti Corruption Commission v Kensko Agro Produce Limited & 4 others
(Environment & Land Case E051 of 2023) [2024] KEELC 7144 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7144 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E051 OF 2023
NA MATHEKA, J
OCTOBER 30, 2024**

BETWEEN

ETHICS AND ANTI CORRUPTION COMMISSION PLAINTIFF

AND

KENSKO AGRO PRODUCE LIMITED 1ST DEFENDANT

FRANCIS WAIGANJO KIMANGA 2ND DEFENDANT

LUCY WANJIRU KIMANGA 3RD DEFENDANT

SILVER CLOUDS INVESTMENT LIMITED 4TH DEFENDANT

WILSON GACHANJA 5TH DEFENDANT

RULING

1. The application is dated 6th June 2024 and is brought under Section IA, 1B, 34 and 6 of the [Civil Procedure Act](#) Cap 21, Order 1 Rules 3 and 10 and Order 51 Rule 1 of the Civil Procedure Rules 2010 seeking the following orders;
 1. That this Application be certified urgent and be heard in the first instance and service thereof be dispensed with on a priority basis.
 2. That pending the inter partes hearing of this Application, this Honourable Court be pleased to vacate the hearing date of the Suit herein scheduled on 2nd July 2024
 3. That this Honourable Court be pleased to join HF Bancassurance Intermediary Ltd as a Defendant in the proceedings herein or in any other capacity that the Court may deem just and fit.
 4. That this Honourable Court be pleased to direct the parties herein to serve HF Bancassurance Intermediary Ltd with all their respective pleadings filed herein.



5. That this Honourable Court be pleased to grant HF Bancassurance Intermediary Ltd leave to file its pleadings, responses and supporting documents as it deems fit.
 6. That this Honourable Court be pleased to stay the proceedings herein pending the hearing and determination of Mombasa Court of Appeal Civil Application No. E060 of 2023 - EACC vs KBC, HFCK Ltd, AG and Kensko.
 7. That this Honourable Court do issue any other or further orders that it may deem just and fit to secure compliance with its orders,
 8. That the costs of this Application be in the cause.
2. It is supported by the annexed Affidavit of Belinda Ng'ang'a and on grounds that the Applicant is the legal and registered proprietor of the 3 parcels of land known as Title No. Mombasa/Block 580, 581 and 582 ("Suit Properties) and holds the Certificates of Lease thereto dated 10th July 2023. The Suit Properties were purchased by Housing Finance Company of Kenya Ltd ("HFCK" currently known as HF Group PLC) from the 1st Defendant ("Kensko") vide an Agreement for Sale dated 22nd February 1995 at a Purchase Price of Kshs.44,000,000.00The Agreement provided that the Suit Properties were being sub-divided from the parcel of land Title No. Mombasa/Block XXI/577. The Plaintiff in E051 of 2023 ("EACC") is seeking inter alia orders for the survey plan FIR No. 258/88 creating the grant for Title No. Mombasa Municipality/Block XXI/577 to Kensko to be declared null and void. Additionally, EACC prays that the subdivision via the survey plan F/R No. 262/39 of Title No. Mombasa Municipality/Block resulting in Title Nos. Mombasa/Block - 584 be declared null and void.
 3. That it is imperative that the Applicant herein be joined in these proceedings to defend the Plaintiffs' claims herein because the Applicant has an existing right to relief. The joinder is also necessary to avoid multiplicity of suits and proliferated litigation. The Applicant's joinder in this suit will protect its rights and avoid being adversely affected in law. That the Court shall be assisted in the determination of the real matter in dispute and to effectually and completely adjudicate upon and settle all questions involved in the suits. This Court has judicial discretion to allow joinder of the Applicant to this suit if it considers the Applicant to be a necessary party for effective and complete adjudication of any dispute or issues before this Court. The requirements for determining whether a party should be enjoined or not as laid down in Joseph Njau Kingori vs Robert Maina Chege & 3 Others (20021) eKLR have been demonstrated by the Applicant as the Applicant is a necessary party by virtue of being the legal registered proprietors of the Suit Properties
 4. That there is a pending Application in the Court of Appeal, Civil Application No. E060 of 2023 - EACC vs KBC, HFCK Ltd, AG and Kensko wherein EACC is seeking orders to reopen Civil Appeal No. 82 of 2018 KBC vs HFCK Ltd, AG and Kensko and the Judgment dated 7th March 2019 to be set aside. The EACC is also praying to be joined in the proceedings and that additional evidence be taken for examination or in the alternative the trial Court takes such evidence in ELC No. 282 of 2013 - HFCK Ltd vs KBC, AG and Kensko. In light of the foregoing, the suit herein which is coming up for hearing on 2nd July 2024, ought to be stayed pending the hearing and determination of the said Application in the Court of Appeal. It is prudent for this Honourable Court to await the outcome of the Court of Appeal Application because the Court of Appeal is aware of the ongoing proceedings herein, Furthermore, the matters in issue herein are also directly and substantially in issue in the Court of Appeal to wit the additional evidence.
 5. The stay of proceedings herein shall prevent the Court of Appeal from simultaneously entertaining and adjudicating upon two concurrent litigations in respect of the same cause of action, same subject matter and the same relief. EACC should be pinned down to the litigation in the Court of Appeal so



as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and to prevent multiplicity of proceedings. The Supreme Court of Kenya in *Kenya National Commission on Human Rights vs Attorney General: Independent Electoral & Boundaries Commission & 16 others (Interested Parties)* (20201) eKLR upholds this notion.

6. That the case filed herein by EACC is frivolous, vexatious and oppressive because it is concurrent with the Application in the Court of Appeal regarding the parcel of land Title No. Mombasa Municipality/Block XX11577. This Court shall be faced with substantially the same question or issue that is before the Court of Appeal hence such question or issue should be determined in only the Court of Appeal. That unless this Court potently and urgently intervenes to grant the orders sought herein for joinder and stay of proceedings, the Applicant shall be prejudiced and suffer irreparable losses and damages and the administration of justice shall be compromised.
7. This court has considered the application and the submissions therein. The applicant seeks to be enjoined as a defendant or an interested party. As to whether they ought to be enjoined in the suit as a defendant or an interested party, 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”.

8. 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.?"

9. 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 claims that it is the legal and registered proprietor of the 3 parcels of land known as Title No. Mombasa/Block 580, 581 and 582 and holds the Certificates of Lease thereto dated 10th July 2023. The Plaintiff in this suit, E051 of 2023 ("EACC") is seeking inter alia orders for the survey plan FIR No. 258/88 creating the grant for Title No. Mombasa Municipality/Block XXI/577 to Kensko to be declared null and void. Additionally, EACC prays that the subdivision via the survey plan F/R No. 262/39 of Title No. Mombasa Municipality/Block resulting in Title Nos. Mombasa/Block 580 - 584 be declared null and void. I find that the Applicant has proprietary interest over the suit properties and ought to be enjoined. I find that no prejudice shall be suffered by the parties herein as the addition of the Applicant as the defendants to this suit is necessary and shall enable the Court to completely and effectually determine all questions involved in the suit herein in finality.
10. On the issue of stay pending the Application in the Court of Appeal, Civil Application No. E060 of 2023 - EACC vs KBC, HFCK Ltd, AG and Kensko wherein EACC is seeking orders to reopen Civil Appeal No. 82 of 2018 KBC vs HFCK Ltd, AG and Kensko and the Judgment dated 7th March 2019 to be set aside. The EACC is also praying to be joined in the proceedings and that additional evidence be taken for examination or in the alternative the trial Court takes such evidence in ELC No. 282 of 2013 - HFCK Ltd vs KBC, AG and Kensko. I find that these matters are all related and touch on the same subject matter in ELC No. 282 of 2013 - HFCK Ltd vs KBC, AG and Kensko a judgement was delivered in favour of HFCK Ltd. Being aggrieved by the said judgement KBC filed Civil Appeal No. 82 of 2018 KBC vs HFCK Ltd, AG and Kensko which was dismissed on 7th March 2019. KBC filed ELC No. 192 and EACC instituted E051 of 2023 which both touch on Title No. Mombasa Municipality/Block XXI/583 – 584. However, the prayers touch on Title No. Mombasa Municipality/Block XXI/577. The Applicant states that this matter is therefore res judicata. I find that the pending the Application in the Court of Appeal, Civil Application No. E060 of 2023 - EACC vs KBC, HFCK Ltd, AG and Kensko wherein EACC is seeking orders to reopen Civil Appeal No. 82 of 2018 KBC vs HFCK Ltd, AG and Kensko and the Judgment dated 7th March 2019 to be set aside will have a bearing on this matter and would be prudent to await that outcome to avoid conflicting decisions touching on the same subject matter. For these reasons I find that this application is merited and I grant the following orders;
1. That HF Bancassurance Intermediary Ltd to be enjoined as a Defendant in the proceedings.
 2. That parties herein are to serve HF Bancassurance Intermediary Ltd with all their respective pleadings filed herein.
 3. That HF Bancassurance Intermediary Ltd is granted leave to file its pleadings, responses and supporting documents.
 4. That there be a stay the proceedings herein pending the hearing and determination of Mombasa Court of Appeal Civil Application No. E060 of 2023 - EACC vs KBC, HFCK Ltd, AG and Kensko.
 5. Costs of this application to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 30TH DAY OF OCTOBER 2024.



N.A. MATHEKA
JUDGE

