



**Evergreen Apartments Management Limited v Foody Freshi t/a Hera Aqua Gardens & 6 others
(Environment & Land Case E451 of 2021) [2024] KEELC 6993 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6993 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E451 OF 2021
LN MBUGUA, J
OCTOBER 17, 2024**

BETWEEN

EVERGREEN APARTMENTS MANAGEMENT LIMITED PLAINTIFF

AND

FOODY FRESHI T/A HERA AQUA GARDENS 1ST DEFENDANT

**RUBY HOUSE KANDARA NINE T/A RUBY CUT
RESTAURANT 2ND DEFENDANT**

VICTOR LUMUMBA 3RD DEFENDANT

NAIROBI CITY COUNTY GOVERNMENT 4TH DEFENDANT

**DIRECTOR OF ENVIRONMENT, NAIROBI CITY COUNTY
GOVERNMENT 5TH DEFENDANT**

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 6TH
DEFENDANT**

**THE CHAIR, NAIROBI CITY COUNTY ALCOHOLIC DRINKS AND
LICENSING BOARD 7TH DEFENDANT**

RULING

1. Before me is the application dated 15th May 2024 where the proposed interested party prays for orders that Macangira Africa Limited Kileleshwa t/a Nana Inkiri restaurant be enjoined in this suit as an interested party, that they be given leave to file a response to the pleadings hearing, and that the court do order inspection by the relevant authorities of the business premises situated on the suit plot L.R.209/6493/ K15.



2. The application is premised on the grounds set out on the face of the application and on the supporting affidavit of one DR. Wasena Angira, director of the proposed interested party. He contends that the premises in question were formally occupied by the 1st Defendant, but the proposed interested party has now taken over the premises as from January 2023, whereby they operate a restaurant, salon, and carwash and that there is no bar, of which there was a change of user to that effect. To this end, he contends that there are changes of circumstances and that the orders sought in the suit shall greatly affect their business as the 1st defendant is no longer on the ground.
3. I did not see any submissions by the applicant.
4. The plaintiff opposes the application vide the replying affidavit of its director one Violent, Awori dated 8th July 2024. She contends that their complaint relates to noise pollution by the defendants which amounts to violation of the right to a clean and healthy environment. She states that the applicant has not annexed any document to evidence that it is not operating a noise emitting pub and that there is no evidence of a transfer of business from the first defendant to the proposed interested party.
5. In their submissions dated 8th July 2024, the plaintiffs contend that the averments of the applicants are not substantiated or predicated on evidence. That the proposed party has not explained their stake in the suit or how their inclusion will aid in determining the suit. In particular, that the applicant has not exhibited its lease or sublease of the premises from Kenya Railways Corporation or the 1st defendant. To this end, the plaintiffs aver that the inclusion of the applicant in these proceedings will only convolute the dispute further.
6. To buttres their arguments, the plaintiffs have cited the case of Francis Karaoki Murautetu & Another versus Republic and 5 Others, Petition No. 15 as consolidated with 16 of 2013, [2016] eKLR.
7. The issue of joinder was addressed in the Supreme Court case of *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 Others* [2014] eKLR as follows;

“...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.”
8. The applicant contends that they are now the ones operating the suit premises. Having taken over the same from the 1st defendant as from January 2023. However and as rightly submitted by the plaintiff, the applicant has not presented sufficient material before this court to warrant the issuance of the said orders. In particular, there is no lease or sublease availed to demonstrate that the applicant is operating a business on the suit property. What they have availed as evidence of operating a business on the suit land is a business permit from Nairobi County which expired on 23. 1.2024, long before they filed their current application on 15.5.2024.
9. I am inclined to believe and as submitted by the plaintiffs that the application is geared towards convoluting the dispute. In the circumstances, the said application dated 15.5.2024 is found to be unmerited, the same is hereby dismissed with costs to the plaintiff.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF OCTOBER, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA



JUDGE

In the presence of:-

Koki Mbulu for Plaintiff

Ms Muyoyi for 6th defendant

Court assistant: Joan/Vena

