



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kigotho & another v National Land Commission & another; Kimotho  
& 2 others (Interested Parties) (Environment & Land Petition  
E001 of 2023) [2024] KEELC 6833 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6833 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**ENVIRONMENT & LAND PETITION E001 OF 2023**

**JM MUTUNGI, J**

**OCTOBER 17, 2024**

**IN THE MATTER OF ARTICLES 19, 20, 21, 22(1), 23,  
159, 165(3) OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF  
RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES  
35, 40, AND 47 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF SECTION 4, 8, 13, AND 19 OF THE CONSTITUTION  
OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL  
FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

**AND**

**IN THE MATTER OF NATIONAL LAND COMMISSION ACT, 2013**

**AND**

**IN THE MATTER OF THE NATIONAL LAND COMMISSION ACT, 2012**

**AND**

**IN THE MATTER OF COMPULSORY ACQUISITION OF TITLE NOS. KIINE/  
KIBINGOTI/NGUGUINE/3101 AND KIINE/KIBINGOTI/NGUGUINE/3102**

**BETWEEN**

**NAOMI NJERI KIGOTHO ..... 1<sup>ST</sup> PETITIONER**

**EUNICE WAIRIMU KIGOTHO ..... 2<sup>ND</sup> PETITIONER**

**AND**

**THE NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> RESPONDENT**



**KENYA NATIONAL HIGHWAYS AUTHORITY ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**RALPH AM KIMOTHO ..... INTERESTED PARTY**

**JAIRUS IKUA MUGERA ..... INTERESTED PARTY**

**EPHANTUS MURIMI MOFFAT ..... INTERESTED PARTY**

### **RULING**

1. This Ruling relates to the Applicants' Notice of Motion application dated 15<sup>th</sup> February 2024 where the Applicant prays for orders:
  - a. Spent.
  - b. That an order be issued enjoining the Applicants as Interested Parties in the proceedings.
  - c. That leave be granted to the Applicants to file a Replying Affidavit and a Statement of Interest to both the Claimant's Application and Memorandum of Claim including a witness statement.
  - d. That this Honourable Court be pleased to grant any other order deemed fit and just to meet the ends of Justice.
  - e. That costs of this Application be in the cause.
2. The application is predicated on the grounds outlined in the application and the Supporting Affidavit sworn on 15<sup>th</sup> February 2024, by the Intended 1<sup>st</sup> Interested Party/Applicant on behalf of the other Applicants. He asserts that both the Applicants and the Petitioners are descendants of Kibuthi and share a common ancestry and avers that at the time of Kibuthi's death, he had three sons: Mung'ora, Maciri, and Kiahiu and had land totaling 145.4 acres, but had before his death given 61 acres to his son, Mung'ora. Mung'ora then divided this land among his 8 sons, some of whom later sold their portions. The remaining 84.40 acres were registered as Kiine/Kibingoti/Nguguine/939 in the name of the Trust Land Board, the County Council of Kirinyaga, and were purportedly reserved for the other two sons, Kiahiu and Maciri.
3. The Applicants claim that in 1959 before the Arbitration Demarcation Committee could distribute the remaining land to Kiahiu and Maciri, the clan of Mung'ora raised a dispute claiming 18.96 acres out of the land that remained and that the dispute was heard by the Clan Unity Committee, which decreed that Maciri's house compensate Mung'ora's house with 6 cows and 2 lambs. The Applicants asserted that despite the decree being fulfilled by the clan of Maciri, the members of Mung'ora's clan refused to hand over the land they had already possessed and efforts to resolve the dispute involving the District Commissioner, the District Officer, Ndia, and the Chief did not yield any agreement. The Applicants aver that on 5/4/1978, the Land Parcel Kiiini/Kibingoti/Nguguine/939 was forcefully surveyed into 3 portions, namely Land Parcel Kiine/Kibingoti/Nguguine/1207, 1208, and 1209. These portions were allocated to Mung'ora, Kiahiu, and Maciri. Further subdivision was done on Land Parcel No. Kiine/Kibingoti/Nguguine/1207, allocated to Mung'ora, resulting in 8 portions. The Applicants claim that the house of Mung'ora should not have inherited Land Parcel No. Kiine/Kibingoti/Nguguine/1207. The dispute went to the Land Dispute Tribunal and the Provincial Land Appeal Tribunal at Baricho and Nyeri, which ruled in favor of the subdivision. The Applicants contend that the subdivision done



at the time of demarcation in 1978 was irregular as there was no adjudication report, planning report, or mutation. The Interested Parties thus lodged a claim before to the National Land Commission, but the claim is yet to be determined. The Interested Parties claim that the house of Mung'ora has continued to subdivide Land Parcel Kiine/Kibingoti/Ngunguine/1207 and its subdivisions.

4. The 2<sup>nd</sup> Respondent filed a Replying Affidavit on 14<sup>th</sup> March 2024, on behalf of the 1<sup>st</sup> Petitioner. The Petitioners aver that the current application lacks merit, is legally flawed, misconceived, frivolous, vexatious, and abuses the court process. They contend that the Applicants have not shown any justifiable grounds for them to be joined as Interested Parties and have not demonstrated the prejudice they would suffer if the Court grants the orders sought in the Petition. The Petitioners urge the Court to dismiss the application because the intended Interested Parties are attempting to file a new suit under the guise of being Interested Parties. They aver that the historical injustice claim that the Applicants raise relates to Land Parcel No. Kiine/Kibingoti/Ngunguine/939 which involved other parties not before the Court who might also want to be joined. The Petitioners aver that their claim against the Respondents was for the improper compulsory acquisition of the land parcel No. Kiine/Kibingoti/Ngunguine/3101 and 3102 that were subdivided from Land parcel Kiine/Kibingoti/Ngunguine/1207, which the Applicants have not demonstrated they have any interest in to justify their being joined in these proceedings.
5. I have considered the application, the Replying Affidavit sworn by the 2<sup>nd</sup> Petitioner/Respondent and the parties written submission. The issue for determination is whether the Applicants have satisfied the requisite threshold to warrant the Court's exercise of discretion to join them to the Petition as interested parties.
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) Rules 7 (1) and (2) of the Rules provide as follows:-
  7.
    - (1) A person, with leave of the Court, may make an oral or written application to be joined as an Interested Party.
    - (2) A Court may on its own motion join any Interested Party to the proceedings before it.
7. Rule 2 of the Rules defines an interested party as follows;

“Interested Party” means a person or entity with an identifiable stake or legal interest or duty in the proceedings before the Court but is not a party to the proceedings or may not be directly involved in the litigation.”
8. The Supreme Court of Kenya in *Communications Commission of Kenya and 4 others ...Vs... Royal Media Services Limited & 7 others* Petition No. 15 OF [2014] eKLR defined an Interested Party 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. 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. The Court has to address the question of whether the Intended Interested Parties have met the criteria for joinder as Interested Party in these proceedings. The Law on joinder of Interested Parties to suits has been settled by the Supreme Court of Kenya in the Case of Francis K. Muruatetu and another v. Republic & 5 others (2016) eKLR, where the Court set out elements for consideration in an application for joinder as an Interested Party. The elements are: -

- “ a) The Personal interest or stake that the party has in the matter must be set out in the application. The Interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
- b) The prejudice to be suffered by the intended Interested Party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
- c) Lastly, a party must, in its application, set out the case and/or submission it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.”

10. In the current application and response thereof, it has been acknowledged that an appeal has been made regarding the historical injustice claim with reference number NLC/HLI/079/2017, before the National Land Commission, concerning the original suit land Parcel No. Kiine/Kibigoti/Nguguine/939. This appeal is still ongoing and involves the parties mentioned here as well as other parties not currently involved in this Court Case. It has also been acknowledged that land parcel No. Kiine/Kibigoti/Nguguine/1207 is a subdivision of Land Parcel No. Kiine/Kibigoti/Nguguine/939, and that land parcel Nos. Kiine/Kibigoti/Nguguine/3101 and 3102 are subdivisions from Land Parcel No. Kiine/Kibigoti/Nguguine/1207. The Petitioners have filed a Petition against the Respondent, seeking, among other things, a declaration that their rights over their properties land Parcel Nos. Kiine/Kibigoti/Nguguine/3101 and 3102 have been violated because the Respondent failed to pay them compensation for compulsorily acquiring the said property. They are seeking an order to compel the Respondent to pay the Petitioners just compensation for the property's compulsory acquisition. A cursory look at the annexures by the Applicant shows that the land dispute concerning Land Parcel No. Kiine/Kibigoti/Nguguine/939 and its subsequent subdivisions has been ongoing since 1979 and has not been conclusively determined to date.



11. In as much as this Court has wide discretion to join additional parties to legal proceedings, such discretion must be exercised judiciously and for good reason. It is not intended to be exercised arbitrarily, capriciously or upon sympathy. Solid grounds must be demonstrated before Judicial discretion can be exercised in favour of an Applicant. In my view, other than stating that the suit properties are part of an ongoing claim for historical injustice, they have not demonstrated their stake in this suit or what they stand to lose if their application is not allowed.
12. In the Case of Skov Estate Limited & 5 others v Agricultural Development Corporation & another [2015] eKLR the Court dealing with the issue of an Interested Party seeking to be enjoined in a suit stated as follows;

“In my view, for one to convince the Court that he/she needs to be enjoined to the suit as Interested Party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the Court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party.

In other words, there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the Judgment or Order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the Court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended Interested Party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent Plaintiff and Defendant. The threshold for joinder of an Interested Party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an Interested Party, must be looked at within the context and surrounding circumstances of each particular case.”

13. In my opinion, the Applicants have not shown their personal interest in Land Parcels Kiine/Kibingoti/Ngunguine/3101 and 3102, or in Land Parcel No. Kiine/Kibingoti/Ngunguine/1207, which is the original parcel from which the parcels originated. It is evident that the two parcels are registered in the name of the Petitioners, and the Applicants' claim otherwise brings up a question of ownership, which is not an issue in the Petition. The issue of ownership at any rate would not be an issue that could properly be determined in this instant Petition. The issue for determination in the Petition is whether compensation ought to have been made to the Petitioners in respect of the land registered in their names compulsorily acquired by the Respondents. The Applicants have not sufficiently demonstrated the prejudice they would suffer if the Court grants the requested orders. The Petitioners argue that the Respondents have discriminated against them by not compensating them, despite compensating owners of adjacent parcels of land, who are in fact their relatives and whose parcels originated from the subdivision of Land Parcel No. Kiine/Kibingoti/Ngunguine/1207. The Applicants have not demonstrated the relevance of their involvement in the Petition. Based on their pleadings and submissions, they do not bring any new information or dimension to the Petition and their inclusion



is not necessary for the adjudication of the Petition. The Intended Interested Parties main argument revolves around a claim of injustice concerning the land in question, which is essentially the same argument the Respondents have made. There is no basis for joinder of the Applicants as Interested Parties in the Petition.

14. It is my finding that the application is not merited and the same is dismissed. Parties will bear their own costs of the application.

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

**J. M. MUTUNGI**

**ELC - JUDGE**

