



**Ndungu v Karanja & another (Environment & Land Case E077 of 2024)  
[2024] KEELC 13646 (KLR) (25 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13646 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E077 OF 2024  
MD MWANGI, J  
NOVEMBER 25, 2024**

**BETWEEN**

**GEORGE MWAURA NDUNGU ..... APPLICANT**

**AND**

**PETER NGUGI KARANJA ..... 1<sup>ST</sup> DEFENDANT**

**PETER NDUNGU ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

In respect of the Chamber summons dated 5th September 2024 seeking Joinder of KENHA and Savannah Land Surveyors as interested parties under Order 1, Rule 10 (2) of the [Civil Procedure Rules](#), Sections 1A, 1B and 3A of the [Civil Procedure Act](#) and Article 50 of the [Constitution](#))

**Background.**

1. The Chamber summons application under consideration by the 1<sup>st</sup> Defendant herein who seeks to join Kenya National Highway Authority (KENHA) and Savannah Land Surveyors as interested parties in this suit. The application is supported by the affidavit of Peter Ngugi Karanja and is premised on the grounds on the face of it.
2. The 1<sup>st</sup> Defendant/Applicant asserts that the proposed interested parties shall be affected by the outcome of this suit and their presence in the suit is necessary to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit. The 1<sup>st</sup> Defendant states that the dispute between the parties relates to two plots which the Plaintiff claims ownership over while the 1<sup>st</sup> Defendant and other members of the public insist that they are part of the road reserve.
3. It is the 1<sup>st</sup> Defendant/Applicant's claim that Savannah Land Surveyors, (the 2<sup>nd</sup> proposed interested party) were commissioned by Kamae Resettlement Project to conduct survey on its property. It was



upon conclusion of the survey that the project issued allotment letters to its members, the 1<sup>st</sup> Defendant being one such allottee.

4. The Applicant reiterates that the two plots, the subject matter of this suit are within the 70 meters provision for the Northern Bypass road reserve. KENHA, the proposed 1<sup>st</sup> interested party allegedly established beacons demarcating the road reserve which according to the Applicant remain intact to date.
5. The 1<sup>st</sup> Defendant/Applicant argues that since the question in this case is whether the two plots are part of the road reserve, the proposed interested parties are extremely necessary in the suit to shed light on the issue to enable the court effectively and justly determine that issue. The proposed interested parties will provide documentations including maps, mutations and survey plans that delineate the boundaries of the road reserve. The 1<sup>st</sup> proposed interested party will provide expert testimony in court explaining the legal and technical aspects of road reserves, how they are determined and confirm whether the disputed plots are within the 70 meters road reserve provision. The Applicant affirms that KENHA has the legal mandate to manage road reserves.
6. The proposed 2<sup>nd</sup> interested party on its part having surveyed and prepared reports and maps showing the location and dimensions of the property will be able to verify whether the plots in question are within the road reserve.

#### **Responses by the other parties.**

7. The application by the 1<sup>st</sup> Defendant is opposed by the Plaintiff and the 1<sup>st</sup> proposed interested party.
8. The Plaintiff in the replying affidavit sworn by George Mwaura Ndungu terms the application as misconceived and unknown in law as the procedure adopted is not the one contemplated under order 1 rule 10 of the *Civil Procedure Rules*. It has not set out the proposed interested party's personal interests or stake in the suit as per the Supreme Court decision in the case of *Francis Karioko Muruatetu and another v Kenya Republic and others*. There is further no relief flowing from the Applicant to the interested parties.
9. It is the Plaintiff's case that the 1<sup>st</sup> Defendant's assertions are premised on mere allegations without any concrete evidence. The interested parties are not necessary parties to the proceedings and have no identifiable stake in the suit. Again the Applicant has not demonstrated clearly and precisely the prejudice to be suffered by the interested parties in case of non-joinder.
10. Finally, the Plaintiff states that the Applicant has not demonstrated how the presence of the interested parties in these proceedings will assist the court in settlement of the questions in controversy.
11. KENHA, the proposed 1<sup>st</sup> interested party responded to the application by way of grounds of opposition dated 31<sup>st</sup> October, 2024 and a replying affidavit sworn by one Milcah Muendo, an Assistant Director Survey Mapping Department Directorate of Highway Design and safety at KENHA.
12. The deponent deposes that KENHA's mandates is to construct, upgrade, rehabilitate and maintain national trunk roads on behalf of the national government. The northern bypass is not one such road since it is under the jurisdiction of the Kenya Urban Roads Authority (KURA). She has attached as exhibit 1 the roads classification register pursuant to Legal Notice No.2 of 2<sup>nd</sup> January, 2016 and gazette notice No. 9491 of 5<sup>th</sup> August, 2022.
13. In a supplementary affidavit sworn on 15 November 2024, the 1<sup>st</sup> Defendant/Applicant reiterates his averment in the application under consideration. He insists that the two plots, the subject matter of



these proceedings are situated within the road reserve of the northern bypass which makes it public land. He contests the assertions by KENHA insisting that the road reserve on the northern bypass falls under its jurisdiction.

### **Submissions by the Parties**

14. The application was heard orally on 20th November 2024. The Applicant, the Plaintiff and the proposed 1<sup>st</sup> interested party through their respective advocates made submissions in support of their respective positions. The submissions form part of the record of this court.

### **Issues for determination**

15. The sole issue for determination is whether the 1<sup>st</sup> Defendant/Applicant has made a case for joinder of the proposed interested parties.

### **Determination**

16. In the case of *Muruatetu & Another v Republic* (2016) KESC 12 (KLR) CIV) (28 January, 2016) Ruling, the Supreme Court of Kenya revisited its earlier decision in the case of the *Trusted Society of Human Rights Alliance v Mummo Matemu & 5 others*, Supreme Court Petition No.12 of 2013, (2014) eKLR and restated that,

“Suffice it to say that while an interested party has a ‘stake/interest’ directly in the case, an amicus’s interest is its ‘fidelity’ to the law: that an informed decision is reached by the Court having taken into account all relevant laws, and entertained legal arguments and principles brought to light in the Courtroom.

Consequently, 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...”

17. The Supreme Court went ahead to identify the elements applicable when a party seeks to be enjoined in the proceedings as an interested party in the following words;

“One must move the court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

- i. 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.
- ii. 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.
- iii. Lastly, a party must, in its application, set out the case and/or submissions 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...”



18. In this case, it is interesting that it is not the proposed interested parties who have applied to the court to be joined into these proceedings as such; it is the 1<sup>st</sup> Defendant who have applied for them to be so joined. His reasons in a nutshell are that the proposed interested parties hold critical evidence that we will help the court in determining the question whether the two plots the subject matter of this suit are part of the road reserve along the northern bypass. He states that they will provide ‘expert testimony’ in court explaining the ‘legal and technical aspects of road reserves’, how they are determined and confirm whether the two plots are within the 70 metres road reserve provision.
19. The 1<sup>st</sup> proposed interested party opposed the application out rightly stating that the northern bypass is under the jurisdiction of KURA. It therefore has no interest or stake in this case.
20. The question that confronts me in determining this application is whether the 1<sup>st</sup> Defendant can compel the 1<sup>st</sup> Interested Party to be in the suit as an interested party?
21. The answer is rather obvious, it is a capital NO! In any event, whether to join a party in the matter or not as an interested party is at the discretion of the court. As this court has repeatedly held, its discretion being judicial discretion must be exercised judiciously for purposes of giving effect to the will of law.
22. The purpose of joinder of parties as interested parties is not to compel them to produce or adduce evidence before the court. Sufficient legal mechanisms exist for that purpose under the Evidence Act and the *Civil Procedure Rules*. The reasons advanced by the 1<sup>st</sup> Defendant for joinder of the proposed interested parties are not legally valid.
23. Odunga, J in the case of *Gladys Nduku Nthuki v Lestbengo Kenya Limited; Mueni Charles Maingi (Intended Plaintiff)*, (2022) eKLR, while addressing the issue of joinder of a party as an interested party in a suit cited with approval the decision in the case of *Departed Asians Property Custodian Board v Jaffer Brothers Ltd* (1999) 1EA 55 where it was held as follows;

“A clear distinction is called for between joining a party who ought to have been joined as a Defendant and one whose presence before the Court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter...For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders, which the Plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the Court in that suit. Alternatively, a person qualifies, (on an application of a Defendant) to be joined as a co- Defendant, where it is shown that the Defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.” (Emphasis added).
24. The 1<sup>st</sup> Defendant’s application falls short of the threshold to be established to justify joinder of an interested party. It is hereby dismissed to with costs to the Plaintiff and the proposed 1<sup>st</sup> interested party.  
It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF NOVEMBER, 2024.**



**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Kuria for the Plaintiff

Ms. Cherono for the 1<sup>st</sup> Defendant/Applicant

Ms. Bodo for the proposed 1<sup>st</sup> Interested Party

N/A for the 2<sup>nd</sup> Defendant & 2<sup>nd</sup> Proposed Interested Party

Court Assistant: Yvette

**M.D. MWANGI**

**JUDGE**

