



Odida v County Director of Housing, Homabay County & 2 others (Environment & Land Petition E004 of 2022) [2024] KEELC 13241 (KLR) (13 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13241 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT & LAND PETITION E004 OF 2022
GMA ONGONDO, J
NOVEMBER 13, 2024**

BETWEEN

CHRISTOPHER OTIENO ODIDA PETITIONER

AND

**COUNTY DIRECTOR OF HOUSING, HOMABAY COUNTY 1ST
RESPONDENT**

COUNTY GOVERNMENT OF HOMABAY 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. By a Notice of Motion application dated 19th June 2024, the 1st and 2nd respondents/applicants through Otieno Yogo Ojuro and Company Advocates, are seeking the orders infra;
 - a. That the Petitioner/Respondent's petition against the 1st and 2nd respondent be struck out.
 - b. That the costs of this application be provided for.
2. The application is anchored upon grounds 1 to 6 set out on its face and the supporting affidavit of ten paragraphs sworn by George Illah, County Attorney of the 2nd respondent. Briefly, the 1st and 2nd respondents asserted that they do not have any interest in the suit land reference number Kasipul/Kamuma/5770. That the houses constructed and or demolished thereon belong to the National Government and not the 2nd respondent as discerned in the letter marked as 'G1-1' annexed to the supporting affidavit. That therefore, the petitioner's grievance should be against the National Government and not the 1st and 2nd respondents who are improperly joined herein.
3. The petitioner/respondent through Olel Onyango Ingutya and Company Advocates, opposed the application and termed it bad in law, aimed at delaying this petition and an abuse of the process of the court. That the 1st and 2nd respondents are necessary parties in this petition as per a letter (COO-1)



from the Director of Housing of the 2nd respondent on restriction registered against title of the suit land annexed to the replying affidavit.

4. Learned counsel for the 1st and 2nd respondents filed submissions dated 1st August 2024 and stated, inter alia, that the said respondents who have zero interest in the suit land as per the replying affidavit, are improperly joined to this petition. Reference was made to the application, the replying affidavit, Order 1 Rule 10 (2) of the Civil Procedure Rules 2010, Werrot and Company Ltd & others-vs-Andrew Douglas & others (1998) eKLR and Kizito M. Lubano-vs-Kenya Medical Research Institute Board of Management & others (2015) eKLR, to fortify the submissions.
5. By the submissions dated 7th October 2024, learned counsel for the petitioner referred to the application, the replying affidavit and framed three issues for determination including whether the 1st and 2nd respondents are necessary parties whose presence and participation in these proceedings is necessary to effectively dispose of this matter. It was submitted in part that the letter (COO1) shows that the respondents are necessary party to these proceedings. That the rules that apply to Constitutional petitions are *the Constitution* of Kenya (Practice and Procedure Rules 2013, 'The Mutunga Rules') and not the Civil Procedure Rules 2010. Counsel relied on Evangeline Karugwata Gikono-vs-Joyce Nkuene Cypriano and another (2022) eKLR and Deepack Nichani-vs-Kenya Revenue Authority & another (2022) eKLR as regards Article 159 (2) (d) of *the Constitution* of Kenya 2010 and the 'Mutunga Rules.'
6. In the foregone, are the 1st and 2nd respondents improperly joined in this petition to prompt the court to grant the orders sought in the application?
7. The applicants have questioned their joinder herein. Black's Law Dictionary 10th Edition at 965 and 1151 defines the following terms; 'Joinder' as the uniting of parties or claims in a single lawsuit while 'Misjoinder' as the improper union of parties in a civil case.
8. Further, this court is conscious of the definition of the term 'suit' in Black's Law Dictionary (supra) and section 2 of the *Civil Procedure Act* Chapter 21 Laws of Kenya. Order 1 Rule 10 (supra) provides for substitution and addition of parties in a suit.
9. Notably, inherent and special powers of this court are stipulated under sections 3 and 3A of the *Civil Procedure Act* Chapter 21 Laws of Kenya. The same are discretionary and invoked to meet the ends of justice.
10. It is noted that the letter (G1-1) annexed to the affidavit in support of the application and another letter (COO1) accompanying the replying affidavit alongside the documents in support of the petition and replying affidavit, reveal that the respondents are necessary parties herein; see also Andrew Douglas case (supra)
11. Section 19 (2) of the *Environment and Land Court Act* 2015 (2011) provides for undue regard to procedural technicalities in the administration of justice. More fundamentally, this court is guided by Article 159 (2) (d) (supra) on administration of substantive justice. As such, the instant petition has to be decided on merit taking into account Gikono case (supra) and other pronouncements.
12. In the premises, the application dated 19th June 2024 is not meritorious. The same is hereby disallowed.
13. Costs of the application to abide the outcome of the petition.
14. It is so ordered.

DATED AND DELIVERED AT HOMA BAY THIS 13TH DAY OF NOVEMBER 2024.



G.M. A ONG'ONDO

JUDGE

In the presence of;

Fiona Owino instructed by Onyango learned counsel for the petitioner

Ida Anyango learned counsel for the 1st and 2nd respondents

Kajo learned counsel for the 3rd respondent

F. Mutiva, court assistant

