



**Chelagat v National Land Commission & 2 others (Environment & Land
Case 12 of 2023) [2024] KEELC 14119 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 14119 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 12 OF 2023
A OMBWAYO, J
DECEMBER 19, 2024**

BETWEEN

ROBERT KIPROP CHELAGAT PLAINTIFF

AND

NATIONAL LAND COMMISSION 1ST DEFENDANT

**BARINGO COUNTY & ANOTHER & ANOTHER &
ANOTHER 2ND DEFENDANT**

RULING

Brief Facts

1. This is a ruling in respect the application dated 26th September, 2023 filed by the Intended Interested party/Applicant which sought the following orders:
 - a) Spent.
 - b) Spent.
 - c. That the Applicant herein be enjoined in these proceedings as an interested party and be granted leave to file necessary pleadings in response to the suit.
 - d. That in the interim the court be pleased to set aside orders emanating from the ruling of Honourable Justice A.O Ombwayo and delivered on 5th May, 2021 by Justice S.M Kibunja and all consequential processes and or subdivisions over land parcel No. SACHO/KABASIS/86 be set aside. The Application was supported by the Affidavit of KENNETH CHELAGAT the proposed interested party herein sworn on 26th September, 2023.
2. It was stated that he is the brother to the Plaintiff herein and one of the beneficiaries to the estate of CHERONO KIPNYINYEI. He stated that on 24th September, 2023 he was served with a letter



from the county surveyor regarding parcel no SACHO/KABASIS/927 which upon advice from his advocates, the same arose from the ruling on 26th April, 2021 by Hon. Kibunja J. He further stated that the ruling had directed that 1 acre be hived from the said parcel as provided for in diagram 3 of the surveyor's report. He stated that the said diagram 3 in the surveyor's report is where his portion of land is situated and that he would be adversely affected since he is not a party to the suit. He stated that he was not heard in the proceedings that led to the orders granted. He went on to state that he has since planted on the said land which the 4th Defendant is seeking to take possession pursuant to the court order and that it would be in the interest of justice that the status quo be maintained. He also stated that the 1-acre portion to be given to the 4th Defendant belongs to Laban Rono which is in a different location from his. He added that the 4th Defendant had built a structure on Laban Rono's portion of land which is where the said 1 acre ought to be excised from. He stated that unless the status quo is maintained he shall suffer irreparable loss since the 4th Defendant shall take occupation and build the school. He also stated that neither the Plaintiff or Defendant would suffer any prejudice.

Response

3. The chairman of the 4th Defendant filed his replying affidavit sworn on 6th October, 2023 by one KIPRUTO LAKTANO where he averred that the Applicant herein was not a beneficiary to the deceased's estate nor beneficially entitled to the suit property. He averred that the Applicant lacks the locus standi. He further averred that on 3rd September, 2019 the Plaintiff entered into a consent which compromised the entire suit directing the Baringo County Surveyor to revisit the suit land for purposes of determining a suitable location for the 1 acre to be excised for the school. He further averred that the court vide its ruling on 5th May, 2021 adopted the surveyor's report and the third sketch plan and directed the Plaintiff to execute the relevant documents. He stated that the Plaintiff having failed to execute the relevant transfer documents the 4th Defendant caused the documents to be executed by the Deputy Registrar. He also stated that the essence of the intended exercise is not to survey the suit land afresh but rather fix boundaries as per the third sketch plan. He stated that the one acre which the 4th Defendant is pursuing originally belonged to Laban Rono.
4. The Land Surveyor Mark Odhiambo filed a supplementary affidavit sworn on 27th October, 2023 where he averred that the court did a site visit on 28th November, 2018 where the Applicant was in attendance and made his sentiments known then. He further averred that after the site visit, the case was heard and on cross examination the Plaintiff agreed to transfer the 1 acre out of the suit property being the portion reserved for Laban Rono. He averred that a consent judgment was entered and he was directed in the presence of the parties to determine a suitable location for the 1 acre to be hived from. He averred that following a successful subdivision of the suit property and registration of the mutations, the school's property became land parcel Sacho/Kabasis/926 and a title issued in the name of the Cabinet Secretary-National Treasury on behalf of the school. He also averred that boundaries of the 1 acre were tampered with when the Plaintiff tilled the land and on 16th October, 2023 he fixed the said boundaries. He averred that he did not allow fencing of a larger parcel then as was required.

Submissions

5. Counsel for the 4th Defendant filed its submissions on 22nd March, 2024 where he identified four issues for determination. The first was whether the Applicant is a necessary party in these proceedings under Order 1 Rule 10(2) of the Civil Procedure Rules or whether he has the requisite locus standi. While submitting in the negative, he relied on the case of Joseph Leboo & 2 Others V Director Kenya Forest Services & Another [2013] eKLR and submitted that the Applicant is not a beneficiary to the deceased estate and therefore he has no personal interest or stake in the matter. He further submits that the Applicant admits that the 4th Defendant is entitled to 1 acre of the suit land from which



Laban Rono would have gotten. He submits that the Applicant was never granted any portion from the suit land. He added that the Applicant could not confirm that he was acting on behalf of any of the beneficiaries listed in the grant and therefore, he stands to suffer no prejudice. Counsel submits that the Applicant is a total stranger to the suit land with no claim against the 4th Defendant but a trespasser on public land.

6. The second issue was whether the threshold for setting aside the judgment has been met. While submitting in the negative, he relied on the case of Isaac Kamau Ndirangu V Commercial Bank of Africa [2002] eKLR and the Court of Appeal case in Broke Bond Leibig Ltd V Methya (1975) EA 266 and 269. He submits that there is no basis to set aside the consent judgment since the Applicant has not demonstrated any error, fraud or mistake between the Plaintiff and 4th Defendant. He submits that the consent judgment remains valid and the court can enforce it.
7. The third issue is whether the identification of a suitable location for hiving the 1 acre out of parcel Sacho/Kabasis/86 for the 4th Defendant should be disturbed. He submits that the Applicant did not avail evidence of prior survey to ascertain that the said 1 acre fell in a different location. He also submits that there were no physical boundaries on the suit land to designate Laban Rono's portion from the other beneficiaries. He further submits that the process of identifying the suitable location of the 1 acre was not secretive as the Plaintiff was involved and at no point did he suggest that the Applicant had an interest on the land or the location of Sacho/Kabasis/927.
8. On the final issue, counsel submits that the present application is without merit and ought to be dismissed with costs. He added that the status quo orders in force be set aside.

Analysis and Determination

9. This court has considered the application, replying affidavit, supplementary affidavit and submissions and is of the view that the main issue for determination is whether the intended interested party ought to be joined to this suit
10. Order 1 rule 10(2) of the Civil Procedure Rules provides as follows:

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.

11. In the case of Muruatetu & another V Republic; Katiba Institute & 5 others (Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2 (KLR) (14 December 2017) (Judgment), the court laid down the guiding principles applicable in determining an application to be joined as an interested party. In its judgment under paragraph 37, it held as follows:

“The following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party: One must move the court by way of a formal application. Enjoinment is not as of right, but 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.”
12. It is the Applicant’s case that he is a necessary party to the suit since he has since planted maize on the suit land. The 4th Defendant on the other hand opposed the said joinder on the basis that the Applicant is not a beneficiary to the suit land since his name was not in the confirmed grant. He argued that the consent was between the Plaintiff and the 4th Defendant and that the Applicant is just a trespasser. The surveyor also confirmed that the process of excising the 1 acre was done with the Plaintiff’s knowledge and thus was proper.
13. This court has keenly perused the court record and it is not in dispute that the Applicant has not established that he has an identifiable stake in the matter. It is noteworthy that the letter dated 20th September, 2023 by the surveyor which the Applicant relies on, invited the Plaintiff and Laban Rono for the boundary establishment. In addition, it is not in dispute that the certificate of confirmation of grant of the deceased’s estate issued on 29th July, 2002 only listed Laban Rono and not the Applicant as a beneficiary. Therefore, in light of the principles set out in Order 1 Rule 10 of the Civil Procedure Rules as well as the case of Muruatetu (supra), it is this court’s view that the Applicant fails to meet the requirements as set out above.
14. The upshot of the foregoing is that the Applicant does not have an identifiable stake in the suit and therefore not a necessary party to enable this court reach a just determination.
15. The application dated 26th September, 2023 is therefore dismissed with costs. It is so ordered.

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

THE JUDICIARY OF KENYA.

NAKURU ENVIRONMENT AND LAND COURT

ENVIRONMENT AND LAND COURT DATE: 2024-12-19 11:26:55

