



Janmohamed (Suing as the Executrix of the Estate of the Late HE Daniel Toroitich Arap Moi) & another v Lagat & 4 others; Tiony & another (Intended Interested Party) (Petition 17 (E021) & 24 (E027) of 2022 (Consolidated)) [2023] KESC 64 (KLR) (14 July 2023) (Ruling)

Neutral citation: [2023] KESC 64 (KLR)

REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
PETITION 17 (E021) & 24 (E027) OF 2022 (CONSOLIDATED)
MK KOOME, CJ & P, PM MWILU, DCJ & VP, MK IBRAHIM,
SC WANJALA, N NDUNGU, I LENAOLA & W OUKO, SCJJ

JULY 14, 2023

BETWEEN

ZEHRABANU JANMOHAMED SC (SUING AS THE EXECUTRIX OF THE ESTATE OF THE LATE HE DANIEL TOROITICH ARAP MOI) 1ST APPELLANT
RAI PLYWOOD (K) LTD 2ND APPELLANT

AND

NATHANIEL K LAGAT 1ST RESPONDENT
SUSAN CHERUBET CHELUGUI & DAVID K. CHELUGUI (SUING AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE NOAH KIPNGENY CHELUGUI) 2ND RESPONDENT
DISTRICT LAND REGISTRAR UASIN GISHU 3RD RESPONDENT
THE REGISTRAR OF TITLES 4TH RESPONDENT
THE NATIONAL LAND COMMISSION 5TH RESPONDENT

AND

KIMAIYO TIONY INTENDED INTERESTED PARTY
MOSES KINIYA NENE INTENDED INTERESTED PARTY



Agent in a power of attorney could not be joined as an interested party in a suit in which the principal is a substantive party.

In a case in which the agent in a power of attorney sought to be included as an interested party in an appeal before the Supreme Court in which the principal was a substantive party; the court held that a power of attorney could not be activated on behalf of the very person, who had been and remained a party to the proceedings.

Reported by John Ribia

Agency Law – power of attorney – application by a principal to be joined as an interested party in a case in which the agent was a substantive party - whether a holder of a power of attorney could apply to be joined as an interested party in a suit in which the principal was a substantive party to a suit – what conditions should an applicant meet to be admitted as an interested party – rule 24; ; .

Brief facts

The applicants sought leave to be admitted as interested parties in the instant petition. They sought to be allowed to be granted an opportunity to submit written and oral arguments in the petition. The applicants alleged to be holders of a power of attorney of the 1st respondent over land that was allegedly the subject of the instant case.

The respondents opposed the application on grounds that the applicants lacked *locus standi* to approach the court as the 1st respondent was a substantive party to the proceedings and that the land that they referenced in their application was separate and distinct from the suit property.

Issues

Whether a holder of a power of attorney could apply to be joined as an interested party in a suit in which the principal was a substantive party to a suit.

Held

1. In determining applications to be joined as an interested party, the Supreme Court was guided by rule 24 of the Supreme Court Rules 2020, and the principles established in and .
2. The 1st respondent, the alleged grantor of the Power of Attorney to the applicants, was at all times an active party to the proceedings before the trial court and at the Court of Appeal. There was no basis upon which the applicants could be admitted as interested parties.
3. The power of attorney could not be activated on behalf of the very person, who had been and remained a party to the proceedings. The applicants had not set out any personal interest or stake that was clearly identifiable and proximate, or the prejudice they were likely to suffer in case of non-joinder.

Application dismissed.

Orders

Costs were to be borne by the applicants.

Citations

Cases

1. Francis Karioko Muruatetu & Wilson Thirumbu Mwangi v Republic, Katiba Institute, Death Penalty Project, Kenya National Commission on Human Rights, International Commission of Jurists-Kenya Chapter, Legal Resources Foundation & Attorney General (Petition 15 & 16 of 2015; [2017] KESC 2 (KLR))
2. Methodist Church in Kenya v Mohamed Fugicha, Teachers Service Commission, County Director of Education - Isiolo County & District Education Officer - Isiolo Sub-County (Petition 16 of 2016; [2019] KESC 59 (KLR)) — Mentioned
3. Trusted Society of Human Rights Alliance v. Mumo Matemu & 5 Others ([2014] eKLR) — Mentioned



Statutes

1. Civil Procedure Act (cap 21) — Section 1A, 1B, 3A — Interpreted
2. Civil Procedure Rules, 2010 (cap 21 (Sub leg) — Order 1; Rule 10; Order 51; Rule 1 — Interpreted
3. Constitution of Kenya, 2010 (2010) — Article 50 (1), 159 (2) (a) — Interpreted
4. Supreme Court (General) Practice Directions, 2020 (Act No 7 of 2011 (Sub leg) — Rule 24 — Interpreted

Advocates

None mentioned

RULING

(Being an application for joinder as interested parties)

Representation:

Kimaiyo Tiony & Moses Kiniya Nene

(Intended interested parties, acting in Person)

Mr Julius Kemboy..... for the 1st appellant

(Kemboy Law Advocates)

Mr. Kibe Muigai..... for the 2nd appellant

(Kinoti & Kibe Company Advocates)//

Mr. Ahmednasir M. Abdullahi SC..... for the 2nd respondent

(Ahmednasir Abdullahi Advocates LLP)//

Mr Odongo, Advocate..... for the 3rd and 4th respondents

(State Counsel)

Mr. Niuster, Advocate..... for the 5th respondent

(National Land Commission)

1. Upon reading the motion by the applicants dated January 17, 2023 and lodged on January 24, 2023, pursuant to articles 50(1) and 159(2)(a) of the *Constitution*, sections 1A, 1B and 3A of the *Civil Procedure Act*, orders 1 rule 10 and 51 rule 1 of the *Civil Procedure Rules 2010* and rule 24 of the *Supreme Court Rules*, seeking the following orders, that: leave be granted to Tiony Kimaiyo and Moses Kiniya Nene to be admitted as interested parties in the petition; the intended interested parties be granted an opportunity to submit written and oral arguments in the petition; the intended interested parties be allowed to submit, with leave of court any other information they may deem important and relevant to allow for the just disposition of this matter; any further orders necessary to achieve the ends of justice; and there be no orders as to costs in this application;
2. Upon examining the grounds on the face of the application, supporting affidavit jointly sworn by Tiony Kimaiyo and Mose Kiniya Nene on January 17, 2023, and the applicants' written submissions dated January 22, 2023, and filed on January 24, 2023, wherein the applicants urge that they are holders of a Power of Attorney granted by Nathaniel Kiptalam Lagat over LR 10492/2 DP 106636; that this property is the subject of an ongoing case at the Environment Land Court at Eldoret being No 916B of 2012, *Kimaiyo Tony and Moses Kiniya Nene Rai Plywood (K) Ltd & 3 others* (ELC No 916B of 2012)



- in which injunctive orders were issued against Rai Plywood (K) Ltd, barring them from continuing to build a perimeter wall; that they were surprised to learn that another suit was instituted at the Environment and Land Court between the same parties, over the same subject matter but to their exclusion; that the decision of the Court of Appeal affected them adversely as they were neither party to the proceedings, nor were they informed of the same, but only learned of the present petition from the media;
- 3 Further, noting the intended interested parties' submission, in which they argue that ELC No 916B of 2012, focuses on the title from which the suit property was carved namely, Eldoret Municipal Block 15/10/10492; that the property was irregularly and fraudulently subdivided into Eldoret Municipal Block Nos 21 and 23 and the resultant titles issued without due process or permission from the original owners. Furthermore, that if the award granted by the superior courts below is maintained, the rightful owners of the property will be denied possession and the Kenya National Police Service will lose a 10-acre parcel of land that it purchased to use as a shooting range; that the proceedings at the Court of Appeal were a sham as critical evidence including original documents demonstrating the historical background of the suit property, were concealed from the court leading to an unfair judgment;
 - 4 Upon reading the 2nd appellant's replying affidavit sworn on February 10, 2023 and submissions dated February 23, 2023 wherein the application is opposed, on grounds *inter alia* that, the applicants lack *locus standi* to approach this court for any orders as Nathaniel K Lagat is a substantive party to proceedings before this court and the superior courts below; that the applicants' grievance against the 2nd appellant must be fully addressed in ELC Suit No 916B of 2012; that the suit property they wish to address the court over, ie, LR 10492/2 is separate and distinct from the suit property which is the subject matter of this petition namely, Eldoret Municipality/Block 15/239; that the applicants are disingenuously attempting to raise new facts in this appeal that were not in dispute before the superior courts below; and that this court can only deal with issues presented by the principal parties in the petition and not from parties wishing to be joined, in line with this court's holding in [Methodist Church in Kenya v Mohamed Fugicha & 3 others SC Petition No 16 of 2016](#) [2019]eKLR;
 - 5 Upon considering the 2nd respondent's replying affidavit sworn on February 9, 2023, and submissions dated February 23, 2023, on the basis of which they are largely in agreement with the 2nd appellant, in opposing the application for joinder; that the power of attorney presented by the applicants does not confer the right of ownership over the suit property; that the 2nd respondent is not a party to the applicants' suit in ELC, No 916 B of 2012, since it is only defending the judgments of the trial court and Court of Appeal giving rise to the present petition;
 - 6 Further, noting the 2nd respondent's submission to the effect that Nathaniel Kiptalam Lagat is the 1st respondent herein, having participated in the Court of Appeal proceedings as the appellant in Civil Appeal No 254 of 2019; that the Court of Appeal was informed that Nathaniel Kiptalam Lagat had applied to be joined to the trial court proceedings in [Susan Cherubet Chelugui & another v Daniel Toroitich Arap Moi & 5 others](#) ELC Petition No 9 of 2014 [2019] eKLR, which application was dismissed; that the 1st respondent has all along litigated on his own behalf without reference to the applicants; that the 1st respondent did not prefer an appeal against the decision of the Court of Appeal or participate in the petition before this court in whatever capacity; and that the applicants have not adduced any evidence demonstrating the alleged fraud;
 7. Upon noting further submissions by the 2nd respondent that the applicants have not met the requirements under rule 24 of the [Supreme Court Rules 2020](#), and that they have not demonstrated any stake or interest in the matter; or that they stand to suffer prejudice should they not be joined; and that they will advance arguments relevant to the petition as was determined in [Trusted Society](#)



of Human Rights Alliance v Mumo Matemu & 5 others, SC Petition No 12 of 2013; [2014] eKLR (Mumo Matemu Case) and *Francis Kariuki Muruatetu & another v Republic & 5 others*, SC Petition No 15 & 16 of 2015 (consolidated); [2016] eKLR (*Muruatetu* case);

8. Noting that the Court of Appeal, in making a determination as to whether Civil Appeal No 254 of 2019 lodged by Nathaniel K Lagat was meritorious, observed that both the District Land Registrar and Registrar of Titles clarified that the suit property was not the subject of any pending suits before other courts; that the proper recourse for Nathaniel K Lagat would have been to file an appeal against the decision of the trial court;

9. We now determine as follows:

Having carefully considered the application, responses thereto, and submissions by the parties; and guided by the provisions of rule 24 of the *Supreme Court Rules 2020*, and the principles established by this court in the *Mumo Matemu* and *Muruatetu* cases, we find that Nathaniel K Lagat, the alleged grantor of the Power of Attorney to the applicants, was at all times an active party to the proceedings before the trial court and at the Court of Appeal. As such, we do not see any basis upon which the applicants, can be admitted as interested parties. The Power of Attorney cannot be activated on behalf of the very person, who has been and remains a party to these proceedings. The applicants have not set out any personal interest or stake that is clearly identifiable and proximate, or the prejudice they are likely to suffer in case of non-joinder.

10. We therefore make the following orders:

- a. The notice of motion dated January 17, 2023 and lodged on January 24, 2023, is hereby dismissed;
- b. The costs of this application shall be borne by the applicants.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 14TH DAY OF JULY 2023.

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M. K. KOOME

CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT

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P. M. MWILU

DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE SUPREME COURT

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M. K. IBRAHIM

JUSTICE OF THE SUPREME COURT

.....

S. C. WANJALA

JUSTICE OF THE SUPREME COURT

.....

NJOKI NDUNGU



JUSTICE OF THE SUPREME COURT

.....

I. LENAOLA

JUSTICE OF THE SUPREME COURT

.....

W. OUKO

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR,

SUPREME COURT OF KENYA

