



Lemashisha & 2 others (Suing on their behalf and on behalf of 443 members of the Olongonot Community) v Kiambu Nyakinyua Farmers Co. Ltd & 2 others; Sonneh Ruuh Limited & 21 others (Intended Interested Party) (Environment and Land Case Civil Suit 199 of 2012) [2023] KEELC 15698 (KLR) (23 February 2023) (Ruling)

Neutral citation: [2023] KEELC 15698 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE CIVIL SUIT 199 OF 2012
FM NJOROGE, J
FEBRUARY 23, 2023**

BETWEEN

**DANIEL LEMASHISHA 1ST PLAINTIFF
MURE PARSITAUU SAYO 2ND PLAINTIFF
MOSES JONG OLE KIPISHIAN 3RD PLAINTIFF
SUING ON THEIR BEHALF AND ON BEHALF OF 443 MEMBERS OF THE
OLONGONOT COMMUNITY**

AND

**KIAMBU NYAKINYUA FARMERS CO. LTD 1ST DEFENDANT
LAND REGISTRAR NAIVASHA 2ND DEFENDANT
NATIONAL LAND COMMISSION 3RD DEFENDANT**

AND

**SONNEH RUUH LIMITED INTENDED INTERESTED PARTY
KIWAKA GENERAL MERCHANTS LTD INTENDED INTERESTED PARTY
VALLERIE ZOLA ANYANGO INTENDED INTERESTED PARTY
DAVID KAMAU KIMANI INTENDED INTERESTED PARTY
PETER GITHIRWA WAWERU INTENDED INTERESTED PARTY
SUSAN WAMBUI BIZER INTENDED INTERESTED PARTY
CHRISTOPHER KANAI KAMAU INTENDED INTERESTED PARTY
JECINTA WAMBUI KIMANI INTENDED INTERESTED PARTY**



DAVID KAMAU KANAI INTENDED INTERESTED PARTY
 LUCY WARIGIA GITHIRWA INTENDED INTERESTED PARTY
 STEPHEN KIMANI KAMAU INTENDED INTERESTED PARTY
 JOSEPH NJUGUNA KANAI INTENDED INTERESTED PARTY
 TRACY YVONNE AKOTH INTENDED INTERESTED PARTY
 STEPHEN KINORO KAMAU INTENDED INTERESTED PARTY
 FRANCIS GIKONYO INTENDED INTERESTED PARTY
 TERESIA NJOKI KIMANI INTENDED INTERESTED PARTY
 CAROLINE WATHITHI INTENDED INTERESTED PARTY
 JOHN KANGETHE INTENDED INTERESTED PARTY
 RACHEL WANJIRU KIMANI INTENDED INTERESTED PARTY
 TERESIA NJOKI KANAI INTENDED INTERESTED PARTY
 PETER GAITHO KIMANI INTENDED INTERESTED PARTY
 MARY WANGARI KANAI INTENDED INTERESTED PARTY

RULING

1. This ruling is in respect of the intended interested parties notice of motion application dated 9/01/2023. The said application is expressed to be brought under rule 7 (1) of the *Constitution of Kenya (Protection of rights and fundamental freedoms) practice and procedure rules, 2013* and order 51 rules 1 & 13 of the *Civil Procedure Rules 2010*, sections 1A, 1B, 3A and 68(e) of the *Civil Procedure Act*. The application seeks the following orders;
 - a. That this honorable court be and is hereby pleased to enjoin and/or admit the 1st to 22nd intended interested party/applicants herein as interested parties and/or defendants in the proceedings herein.
 - b. Any other or further orders and/or directions as this honorable court deems just and expedient.
2. The application is supported by the supporting affidavit sworn by Christopher Kanai Kamau the 7th intended interested party on 9/01/2023. The grounds on the face of the application and the supporting affidavit are that the intended interested parties came to know that the plaintiff herein had instituted the present suit against the defendants claiming adverse possession over land reference number 11191/2; that the intended interested parties are among many people who own individual parcels in the suit property which in no longer known as land reference number 11191/2; that the intended interested parties bought portions of the suit property from the 1st defendant and other members of the 1st defendant; that the intended interested parties are registered proprietors of several parcels that form part of the suit property; that they are bonafide purchasers for value; that the plaintiffs have tried to forcefully evict the intended interested parties and put up shanties on their properties; that the intended interested parties have a substantive interest in the present proceedings and seek that they be made substantive parties; that their presence in the suit is necessary to enable the court to effectually and completely adjudicate upon all issues and that it is only fair and just that the orders sought herein be granted.



3. In response to the application, the plaintiffs filed a replying affidavit sworn by Saitoti Ole Suwakei on January 25, 2023. He deposed that he is the current chairman of the elders of the Maasai Olongonot community resident in land parcels No's LR 378/2 and 1119/2; that the 1st defendant had previously filed Nakuru ELC 85 of 2017 (formerly Nairobi High Court ELC Suit No 76 of 2014) which was dismissed by want of prosecution on 8/01/2020; that the present case was filed in the year 2001 at the High Court in Nairobi and the 1st defendant and its membership have known of its existence all along; that the present application is an afterthought and is only meant to delay the claim of the plaintiffs; that the Olongonot community has been in occupation of the suit property for a period of over 6 decades; that the alleged transactions by the intended interested parties were done without their knowledge and in their continued undisturbed possession of the suit land.
4. In response to the plaintiff's replying affidavit, the intended interested parties filed a supplementary affidavit sworn by Christopher Kanai Kamau on January 31, 2023. He deposed that the intended interested parties own parts of the vast suit property and are directly affected by the present proceedings and are therefore necessary parties to be enjoined in the proceedings; that they have demonstrated in their application that they have sufficient interest in the suit herein and therefore their presence is necessary to enable the court effectually adjudicate upon and settle all questions involved in the suit and to avoid multiplicity of suits and that the intended interested parties were neither parties nor were they involved in Nakuru ELC 85 of 2017.
5. Neither of the parties filed their submissions to the application.

Analysis and Determination

6. After considering the application, the replying affidavit and the supplementary affidavits the only issue that arises for determination is whether the 1st to 22nd intended interested parties should be joined in the present proceedings.
7. Order 1 rule 10(2) of the [Civil Procedure Rules](#) provides as follows:
 - (2) 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.
8. The Supreme Court set out the following guidelines for determining whether a party is qualified for admission as an interested party in the case of [Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 others](#) [2014] eKLR as follows:
 - (22) In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this court's ruling in the Mumo Matemo case where the court (at paragraphs 14 and 18) held:

“ [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...”



- (23) 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 questions 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.”
- (24) We ask ourselves the following questions: (a) what is the intended interested party’s stake and relevance in the proceedings? and (b) will the intended interested party suffer any prejudice if denied joinder?
9. The intended interested parties herein are seeking to be joined in the present suit as interested parties. They allege that they own individual parcels in the suit property formerly known as Land Reference Number 11191/2. They claim that since the plaintiffs are seeking for orders of adverse possession in respect to the suit property, which portions they own, they should be joined in the proceedings. In support of their allegations they have annexed copies of title deeds.
10. The title deeds annexed are as follows:
- a. Title deed for land parcel number Longonot/Kijabe Block 6/788(Kiambu Nyakinyua) registered in the name of Christopher Kanai Kamau issued on January 10, 2013.
 - b. Title deed for land parcel number Longonot/Kijabe Block 6/1824 (Kiambu Nyakinyua) registered in the name of Kiwaka General Merchants Ltd issued on January 10, 2013.
 - c. Title deed for land parcel No Longonot/Kijabe Block 6/2579 (Nyakinyua) registered in the name of Tracy Yvonne Akoth Rado and Vallerie Zola Anyango issued on March 19, 2013.
11. The plaintiffs opposed their joinder to the suit as interested parties and argued that their application was an afterthought. It is my view that out of the twenty-two intended interested parties, only Christopher Kanai Kamau the 7th intended interested party, Kiwaka General Merchants Ltd the 2nd intended interested party, Tracy Yvonne Akoth Rado the 13th Intended interested party and Vallerie Zola Anyango the 3rd intended interested party have demonstrated that they have an interest in the suit property since they have annexed copies of their title deeds. They therefore have a stake in the proceedings.
12. That being the case, the intended interested parties’ application dated 9/01/2023 partially succeeds and I hereby order that only Christopher Kanai Kamau, Kiwaka General Merchants Ltd, Tracy Yvonne Akoth Rado and Vallerie Zola Anyango can be joined in the present suit as interested parties pursuant to that application and that they be so joined as the 1st, 2nd 3rd and 4th interested parties in that order.
13. The plaintiffs shall on the basis of the disclosures and claims made by the interested parties now joined to the suit amend their originating summons and serve it on the interested parties within 21 days of this order and the interested parties shall file their documents in response to the suit within 15 days of that order. The matter will be mentioned on 30/3/2023 to ascertain compliance. There will however be prior mention on 2/3/2023 for directions as to the hearing of the remaining notice of motion dated November 11, 2022.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 23RD DAY OF FEBRUARY 2023.



MWANGI NJOROGE
JUDGE, ELC, NAKURU

