



Mwangi v County Government of Nakuru & another (Environment & Land Case 27 of 2020 & Environment & Land Petition 6 of 2020 (Consolidated)) [2023] KEELC 16698 (KLR) (30 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16698 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 27 OF 2020 & ENVIRONMENT
& LAND PETITION 6 OF 2020 (CONSOLIDATED)**

FM NJOROGE, J

MARCH 30, 2023

BETWEEN

LAWRENCE MAINA MWANGI PLAINTIFF

AND

COUNTY GOVERNMENT OF NAKURU 1ST DEFENDANT

NAKURU AUTOMOBILE HOUSE LTD 2ND DEFENDANT

RULING

1. This is a ruling in respect of the 1st defendant's notice of motion dated February 14, 2023 which seeks the following orders: -
 - a) Spent.
 - b) That orders do issue to join the director of land administrator in charge of land administration all over the Republic of Kenya be joined as a 4th defendant in the suit(s) herein.
 - c) That orders do issue to join the director of physical planning in charge of physical planning of land all over the Republic of Kenya be joined as a 5th defendant in the suit(s) herein.
 - d) That orders do issue to join the hon attorney general as a 6th defendant in the suit(s) herein by virtue of being the legal representative of the government the 4th and 5th defendants being government officers.
 - e) That the costs of this application be provided for.
 - f) That any other order the court may deem fit and just to grant.



2. The application is supported by the affidavit sworn by Samuel Mwaura the county secretary and accounting officer of the 1st defendant herein. He deposed that as advised by their advocate it is necessary to join the three defendants in this suit being director of land administration, director of physical planning and the hon attorney general; that the plaintiff and 2nd defendant claim ownership of Nakuru/Municipality/Block 9/110 the suit property herein and either of them have a title registered in their names; that the issue before this court is to determine who is the rightful owner of the suit property; that as advised by their advocate, the suit land was under the jurisdiction of the then commissioner of land and deliberation on its allocation was to be carried out in a manner that inquired with the municipal authority to declare whether it had any interest therein or not; that the suit land was identified as public land irregularly allocated to private citizens; that the suit land was reserved/ planned for use in mortuary extension as allocated by the commissioner of lands hence the said titles should be revoked; that the two directors have the authority and capacity to present the true position of the suit property.

Response

3. The plaintiff filed his replying affidavit dated February 27, 2023 in response to the application. he deposed that the application is misconceived, incompetent, without merit and an abuse of the court process.
4. He stated that the 1st defendant/applicant is misdirecting the court and that the application has been tactfully filed so as to delay the course of justice. He further deposed that he has no claim against the director of land administration, director physical planning or the attorney general. the defendant deposed that he had sued the necessary parties and sees no reason why they ought to be included in his suit as defendants, third/interested parties. He deposed that if the 1st defendant/applicant wishes the proposed 4th, 5th & 6th defendants can testify as its witness as opposed to them being included as defendants which would delay the case further. He further deposed that there is a property set aside for expansion of the public mortuary yet the 1st defendant has never made an application to be allocated the said parcel.
5. The Plaintiff stated that the 1st defendant/applicant failed to provide a legal development plan showing the proposed expansions of the said mortuary. He added that the national land commission is the holder of the register of all land considered to be public land and that the suit land herein did not feature in the said register. He also deposed that various government officials have already testified in the dispute multiple times in court. He deposed that the 1st defendant/applicant has the option of calling necessary witnesses to support its case and urged the court to dismiss the instant application with costs.

Submissions

6. The parties did not file any submissions.

Analysis and determination

7. This court has considered the application, and the issue for determination is whether this court should enjoin the said parties to the suit herein.
8. Order 1 Rule 10(2) provides as follows: -

“The court may at any stage of the proceedings, either upon or without application to 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 be joined whether as plaintiff or defendant, or whose presence before court may be necessary in order to enable court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added”.

9. It is not in dispute that the core issue of this suit narrows down to ownership of the suit property. The plaintiff claims that he was legally allotted the suit property while the 1st Respondent argues that the suit land is actually public land set aside for public use. The plaintiff further argues that there is another land set aside for the said public purpose and that there is ample space between the said mortuary and the suit property.
10. It is also not in dispute that the decision in Nakuru ELC No. 204 of 2014 did not resolve the said issue of ownership. The present matter is yet to be heard and it would be prudent to have all the necessary parties on board before the hearing takes off. The question is therefore whether it is necessary to add the said parties in this suit.
11. It is this court’s view that it would be in the interest of justice to join the said parties in this suit as the issues that arise would be best determined if they are made parties to the suit. I find that their presence is necessary to enable the court effectually and completely adjudicate upon and also settle all questions involving the suit land.
12. In view of the foregoing, the application dated February 14, 2023 has merit and is hereby allowed as prayed. The plaintiff shall amend his plaint to reflect the director of land administration, the director of physical planning and the attorney general as the 3rd, 4th and 5th defendants in that order. I also order that the defendants shall be at liberty to amend their defences to plead against the said new defendants if need be.

The suit shall be mentioned on May 3, 2023 for further directions.

13. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 30TH DAY OF MARCH 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

