



Igainya Limited v National Land Commission & 2 others; County Government of Machakos (Interested Party); Garissa Nursing Home Limited (Proposed Interested Party) (Petition 2 of 2024) [2024] KELAT 532 (KLR) (24 April 2024) (Ruling)

Neutral citation: [2024] KELAT 532 (KLR)

**REPUBLIC OF KENYA
IN THE LAND ACQUISITION TRIBUNAL
PETITION 2 OF 2024
NM ORINA, CHAIR & G SUPEYO, MEMBER
APRIL 24, 2024**

BETWEEN

IGAINYA LIMITED PETITIONER

AND

THE NATIONAL LAND COMMISSION 1ST RESPONDENT

KENYA NATIONAL HIGHWAY AUTHORITY 2ND RESPONDENT

HON ATTORNEY GENERAL 3RD RESPONDENT

AND

COUNTY GOVERNMENT OF MACHAKOS INTERESTED PARTY

AND

GARISSA NURSING HOME LIMITED PROPOSED INTERESTED PARTY

RULING

1. On 13th April 2024, the Proposed Interested Party in this case Garissa Nursing Home Limited filed an Application dated 12th April 2024 under Certificate of Urgency seeking to be joined in these proceedings (hereinafter, the “first application”). The said Application was premised on the grounds that the Applicant is the registered proprietor of all that parcel of land known as L.R. No. 7815/8 original number 7816/6/1 which is the subject suit property in the existing proceedings that concern impugned compulsory acquisition proceedings that culminated in the issuance of a revised award to the Petitioner.
2. The Applicant through the Affidavit of Mohamed Dahir Duale, its Managing Director, states that it came to learn that the Petitioner in this case, Igainya Limited, was laying claim to the suit property



- and had been given an award by the National Land Commission for compensation for part of the suit property that had been subject to compulsory acquisition.
3. When this matter came up for a mention on 15th April 2024, the Tribunal directed that the Petitioner and Respondents be served with the Applicant's application dated 12th April 2024 by close of day. The Petitioner and Respondents were also directed to file their responses by 18th April 2024 and all the parties to thereafter file brief submissions by 23rd April 2024. A ruling on the application was reserved for today. This was necessitated by the stage of the proceedings which were pending the taking of evidence from the last witness.
 4. However, on 22nd April 2024 at 4:32pm, the Applicant / now proposed Respondent filed another Application (hereinafter, the "new application") seeking a stay of further proceedings, that the proposed Respondent be joined as the 4th Respondent forthwith, that the Tribunal refers the matter back to the National Land Commission for determination of ownership and the amount of compensation upon hearing all parties herein, and in the alternative to referring the matter back to the National Land Commission, the Tribunal do issue orders setting aside the proceedings herein so far and to grant leave to the proposed Respondent to file a substantive response to the Petition.
 5. The Proposed Respondent in the new Application largely relied on the same grounds as those in the first Application.
 6. The Proposed Interested Party and now Proposed Respondent's Counsel informed the Court today when the matter was mentioned that the Applicant had abandoned/withdrawn the first application. However, we note that there is no document filed to support the position that the Applicant had sought to withdraw the application. Counsel proceeded to make an oral Application for withdrawal of the first Application and a consideration of the new Application.
 7. Counsel for the Petitioner, Ms. Akello, objected to the Application for withdrawal and informed the Court that the Applicant had failed to comply with the directions of the Tribunal and was engaged in an abuse of the court process by filing a multiplicity of applications. Counsel also informed the Tribunal that the Petitioner had filed a Preliminary Objection to the Applicant's application on 22nd April 2024. She urged the Tribunal to dismiss both applications.
 8. We note that both parties have not complied with directions issued by this Tribunal in regard to the first application. Nevertheless, due to the strict timelines required for resolving disputes filed before the Tribunal, we have considered the substance of both applications filed by the Applicant and render ourselves as follows: -
 9. On the face of it, the Applicant's Applications relate to a dispute over ownership of the suit property. The Applicant contends that it is the rightful owner of property known as L.R. No. 7815/8. In support of this claim, the Applicant has annexed a copy of title to the two applications. A quick perusal of the title shows that the same was issued on 8th April 2022 which was approximately two years after the process of compulsory acquisition had been commenced and an award issued in favour of the Petitioner in respect of the suit property.
 10. We also note that a transfer in favour of the Petitioner was registered on 19th December 2002. There's no doubt then that at the time the impugned award was issued to the Petitioner, the Applicant did not possess a certificate of title in respect of the suit property. There is also no evidence to show that the Applicant participated in the enquiry conducted by the National Land Commission to determine the interests over the suit property before an award was issued.



11. The Applicant asserts that it was not aware of the gazette notices issued by the National Land Commission in regard to the intention to acquire part of the suit property and the subsequent notices of inquiry.
12. Our duty at this stage is, however, limited as we are not seized with jurisdiction to determine the ownership dispute that is apparent in the Applicant's Applications. Our duty is to find whether the applicant has shown sufficient interest that warrants their inclusion in the proceedings. In that regard, we are guided by Order 1 Rule 10 (2) of the Civil Procedure Rules which relates to joinder. The same 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.”
13. The import of this rule was expounded by Nambuye, J (as she then was) in *Kingori vs. Chege & 3 Others* [2002] 2 KLR 243, where she set the following guiding principles on the question of joinder:

“...parties cannot be added so as to introduce quite a new cause of action or to alter the nature of the suit. Necessary parties who ought to have been joined are parties who are necessary to the constitution of the suit without whom no decree at all can be passed. Therefore, in case of a defendant two conditions must be met: (1) There must be a right to some relief against him in respect of the matter involved in the suit. (2) His presence should be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit being one without whom no decree can be made effectively and one whose presence is necessary for complete and final decision on the questions involved in the proceedings. A proper party is one who has a designed subsisting direct and substantive interest in the issues arising in the litigation which interest will be recognisable in the Court of law being an interest, which the Court will enforce. A person who is only indicated or commercially interested in the proceedings is not entitled to be added as a party. But a person may be added as a defendant though no relief may be claimed against him provided his presence is proper for a complete and final decision of the question involved in the suit and such a person is called a proper party as distinguished from a necessary party... Order 1 rule 10 allows the Court to add a defendant on its own motion or upon application by either party either orally or formally by summons in chambers under Order 1 rule 22. Here the party has not moved on its own but has been moved by the intending party on its own formally. The use of the words “either party” denotes that the formal move has to be made by a party already participating in the proceedings and it would mean that an intending party cannot come on his own and choose which position he wants.” (Emphasis ours)
14. Our duty, therefore, is to determine if the Applications before us meet the two tests identified in the *King'ori vs. Chege* case. On the first test, is there a right to a certain relief due to the Applicant in these proceedings. To our mind, the Applicant is contesting ownership of the suit property and whereas the instant proceedings relate to the suit property, the same are not determining ownership but are in relation to compensation arising out of the process of compulsory acquisition.
15. It is clear to us, therefore, that the Applicant seeks to be joined in these proceedings in order to introduce a new cause of action or to alter the nature of the suit beyond its current scope.



16. For the purposes of the impugned award issued to the Petitioner by the National Land Commission, the Tribunal does not have Jurisdiction to determine if the Applicant had interests over the suit property as that jurisdiction lies elsewhere. As the Applicant was not a project affected person at the time the impugned award was issued to the Petitioner, the Applicant would not have a right to intervene in the present proceedings that are in regard to the award that was issued to the Petitioner.
17. Is the presence of the Applicant required, in any case, in order for the Tribunal to determine the matter before us? We find in the negative. The question before us relates to whether the Petitioner's rights were violated by the actions of the Respondents and it is a question that would not require the participation of the Applicant for its resolution.
18. The Applicant has, nevertheless urged us to refer the question of ownership back to the National Land Commission for resolution before we can determine the Petition before us. We decline this request. As we have held elsewhere in Registered Trustees of Ruiru Sports Club Vs National Land Commission and another, the National Land Commission becomes functus officio upon issuance of a final award to a project affected person unless there is an error on the face of the record or in a case of ascertainable fraud. The Applicant has not placed before us any material to warrant the prayers sought to direct the National Land Commission to make a determination on ownership which would be tantamount to setting aside its earlier determination. We believe the Applicant has a proper avenue for determination of its interests before the Environment and Land Court.
19. The upshot of the above analysis is that the Applicant's applications dated 12th April 2024 and 22nd April 2024 are hereby dismissed with costs to the Petitioner.

Dated And Delivered Virtually At Nairobi This 24th Day Of April 2024.

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Dr. Nabil M. Orina Mr. George Supeyo

Chairperson Member

Before: -

Ms. Akello for the Petitioner

Ms. Aiyabei for the 1st Respondent and h/b for Mr. Maruti for the 2nd Respondent

Mr. Koskey h/b for Mr. Odhiambo for the Applicant

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