



**Salim & 3 others v Pasta; Takaungu Beach Management Unit
(Intended Interested Party) (Environment & Land Case 165 of 2018)
[2023] KEELC 22528 (KLR) (13 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22528 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 165 OF 2018
EK MAKORI, J
DECEMBER 13, 2023**

BETWEEN

RASHID MOHAMED SALIM 1ST PLAINTIFF

AHMED MOHAMED SULEIMAN 2ND PLAINTIFF

**MOHAMED SULEIMAN SHAQSY (SUING AS TRUSTEES OF THE MAZRUI
COMMUNITY DEVELOPMENT AND WELFARE) WAKF LANDS TRUST AND
MEMBERS OF THE MAZRUI COMMUNITY) 3RD PLAINTIFF**

MOMBASA CEMENT 4TH PLAINTIFF

AND

ABDULGAFFUR PASTA DEFENDANT

AND

**TAKAUNGU BEACH MANAGEMENT UNIT INTENDED INTERESTED
PARTY**

RULING

1. The applicants seek that they be joined in this matter to protect their interests as fishermen on the riparian land they use as fishermen which is adjacent to the suit property herein Title No. 722 Takangu. Oral submissions were taken in this matter.
2. The applicant argued that they have no interest in the suit property Title No. 722 Takangu in Kilifi County. However, they have been in use of the site-riparian land as a landing site. They have constructed temporary structures for changing clothes, sorting out fish, and storing their fishing equipment.



3. That they have been provided construction materials by Mombasa Cement Ltd - the 4th defendant to improve their lot. Upon delivery of the materials on site, a complaint was raised they were not observing the status quo orders in place hence they want to be joined to protect their rights.
4. The application is opposed. The 4th and 5th respondents contended that the interested parties have no interest in the suit property herein. They are illegally in use of the adjacent land which is riparian land protected by law. Hence there will be nothing which they will bring in this matter or nothing has been shown that judgment or decree that may arise in this matter will affect them.
5. The issue which falls for the determination in this suit is whether to join the interested parties in these proceedings.
6. The factors to consider before ordering for joinder of a party in civil proceedings are as held by Onyango J. in the case of [*Kenya Union of Water and Sewerage Employees v Tana and Athi Rivers Development Authority; Union of Kenya Civil Party \(Intended Interested Party\)*](#) (Cause E288 of 2021) [2022] KEELRC 1379 (KLR) (5 July 2022) (Ruling):

“Joinder of parties is provided for in Order 1 Rule 10(2) of the [*Civil Procedure Rules*](#) 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.
27. In the case of *Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others* [2014] eKLR the Supreme Court set out the factors to be considered for joinder of Interested parties as follows –
 - (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?
28. Again, in *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others* [2017] eKLR Mativo J. observed as follows: -

“The test is not whether the joinder of the person proposed to be added as an interested party would be according to or against the wishes of the petitioner or whether the joinder would involve an investigation into a question not arising on the cause of action averred by the petitioner. It is whether the intended interested party has an identifiable stake or a legal interest or duty in the proceedings. In determining whether or not an applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party the true test lies not so much in an analysis of what are the constituents of the applicant's rights, but rather in what would be the result on the subject-matter of the action if those rights could be established. It is a mandate of the court



that as far as possible all matters in controversy between the parties should be completely and finally determined and all multiplicities of legal proceedings concerning any of the matters be avoided. In this regard, it would be appropriate and in the interest of justice that all matters touching and concerning the subject matter of the suit in the case at hand be determined finally and completely to avoid litigating over the same matters again.”

7. This court is dealing with land comprising title Plot No. 722 Takaungu in Kilifi County and not the riparian land the applicants are talking about. If the interested parties have issues or rights on the riparian land (which is not subject to this matter), they can raise the same in a separate forum and not in this suit. If admitted, it will convolute the suit because the issue of the riparian land will not arise for discussion and determination. They have no interest or identifiable stake in the current suit. They will add nothing to the present cause. Application dated 26th October 2023 is at this moment dismissed with costs.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN ON THIS 13TH DAY OF DECEMBER 2023.

E. K. MAKORI

JUDGE

In the Presence of:

Ms Meeme for the Applicants

Mr. Oluga for the 4th and 5th Respondents.

