



Nduulu & 4 others v Government of Makueni County & another; Munyoki (Chairperson), Hamisi (Treasurer), Kimweli (Secretary) Officials of Vinya wa Ziwani Self-Help Group (Interested Party) (Environment & Land Petition 14 of 2019) [2025] KEELC 4185 (KLR) (30 May 2025) (Ruling)

Neutral citation: [2025] KEELC 4185 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND PETITION 14 OF 2019**

**EO OBAGA, J
MAY 30, 2025**

BETWEEN

**PETER NTHULI NDUULU 1ST PETITIONER
STEPHEN NGEI MUSYOKA 2ND PETITIONER
BEATRICE KALUKI NZIOKA 3RD PETITIONER
PETER NJUGUNA 4TH PETITIONER
MICHAEL WAMBUA 5TH PETITIONER**

AND

**THE GOVERNMENT OF MAKUENI COUNTY 1ST RESPONDENT
THE NATIONAL LAND COMMISSION 2ND RESPONDENT**

AND

MWANAISHA ABDALLAH MUNYOKI (CHAIRPERSON), FAUZIA HAMISI (TREASURER), ANTONY KIMWELI (SECRETARY) OFFICIALS OF VINYA WA ZIWANI SELF-HELP GROUP INTERESTED PARTY

RULING

1. Before this court for determination is the Notice of Motion dated 6th June, 2024 filed by the Interested Party. It is brought under the provisions of Article 159 of *the Constitution*, Sections 1A, 1B & 3A of the *Civil Procedure Act* in addition to Order 1 Rules 1, 3 & 10 (2) of the Civil Procedure Rules, 2010.
2. The Interested Party seeks issuance of the following Orders:
 1. Spent



2. Spent
 3. That this Honourable Court be pleased to issue an order of status quo ante to be maintained pending the hearing and determination of the Petition herein.
 4. That this Honourable Court be pleased to issue an order barring the Petitioners/Respondents either by themselves, their servants, agents and/or employees from demolishing structures/houses on the suit property belonging to the members of the Interested Party/Applicant herein.
 5. That the Officer Commanding Police Station at Makindu Police Station to enforce compliance of this order.
 6. That the costs of this application be provided for.
3. The application is premised on the grounds appearing on its face. It is further supported by the affidavit of Mwanaisha Abdalla Munyoki sworn on even date. The deponent, who is the Chairperson of the Interested Party, averred that despite the directions issued by the National Land Commission (Department of Devolution and Public Service and Urban Development) Makueni County, the Petitioners have defied orders halting further developments and have commenced developments in a bid to demonstrate possession of the suit property.
 4. She further averred that the Petitioners are demolishing houses/structures belonging to members of the Interested Party which were in place before the Petition herein was filed. The deponent lamented that due to the Petitioners' actions, members of the Interested Party continue to suffer great loss and damage. That a report was made at Makindu Police Station on malicious damage.
 5. She urged the court to allow the application in the interest of justice.
 6. Opposing the application, Peter Nthuli Nduulu swore a replying affidavit on 25th June, 2024 on his behalf and that of his Co-petitioners. He averred that there was no evidence of the demolitions and or constructions which are purportedly ongoing at the suit property. He added that the Interested Party has failed to point out the exact land parcel numbers where the said works are being done.
 7. The Respondent contended that the Petitioners have been on the suit property since the time of allocation by the Settlement Fund Trustees (SFT) and that it is where they have built their homes. He averred that the application has been made in bad faith in view of the conservatory orders issued by Justice Mbogo C.G. vide the ruling delivered on 31st October, 2022. He added that the Petitioners are also in compliance with the directives that were issued by the National Land Commission, Department of Devolution and Public Service and Urban Development.
 8. The Respondent maintained that the Interested Party had not demonstrated any evidence of proprietary interest in the suit property because some of the Petitioners have title deeds. That by virtue of being Interested Parties, the Applicant cannot get substantive orders from the court. That since the 1st Respondent is also claiming the suit property which the Interested Party claims was allocated to them by the 1st Respondent, they have not demonstrated their proprietary interest thereof.
 9. A plea was made that the application herein be dismissed with costs to the Petitioners.
 10. The 1st and 2nd Respondent did not file their respective replies to the application.
 11. The application was disposed of by way of written submissions.



12. In the Interested Party's submissions dated 15th January, 2025, Counsel identified the sole issue for determination as whether the orders sought herein can be granted.
13. Counsel contended that most of the Petitioners herein held irregular documents in reference to the verification report that was compiled by the National Land Commission and the County Government of Makueni. That the issuance of status quo orders is paramount for the purpose of preserving the subject matter of the property.
14. Counsel argued that the Interested Party had established a legitimate interest in the suit properties which has been infringed and that they continue to suffer great prejudice. It was urged that the application ought to be allowed as prayed.
15. In the Petitioners' submissions dated 4th November, 2024, the sole issue identified by Counsel was whether an order of status quo ante can issue pending the hearing and determination of the Petition herein.
16. It was Counsel's contention that even if the orders of status quo ante are issued to the Interested Party, it would mean that the Petitioners would still maintain occupation of the suit property since they have stayed therein from the time the land was allocated to them by the Settlement Fund Trustees and having also been issued with title deeds.
17. It was further contended that the Interested Party has never filed for eviction nor sought orders that would see the Petitioners being dispossessed of the suit property. That the Interested Party has no proprietary interest which needs to be preserved pending determination of the petition.
18. Counsel submitted that this court issued conservatory orders on 31st October, 2022 which the Petitioners continue to comply with hence the present application is frivolous and a waste of the court's time. That the Interested Party had not clearly described the state of affairs that was existing and which should be preserved and hence, there is no merit in the application. Counsel urged the court to dismiss the application with costs.
19. The only issue for determination is whether the Interested Party is entitled to the orders of status quo ante and to injunctive orders against the Petitioners.
20. Although the Interested Party has invoked the inherent powers of this court pursuant to the [Civil Procedure Act](#), it is manifestly apparent that they are not a primary party to the suit. An order of status quo ante is a substantive order just like an order of injunction which should only be confined to the substantive parties to a suit and upon merited facts that can be ascertained from pleadings.
21. In this instance, the proceedings herein were commenced by way of a petition dated 4th October, 2019 in which alleged violations to [the Constitution](#) were levelled against the Respondents. The Interested Party does not have a substantive claim before this court on which substantive orders can be maintained.
22. In the case of Francis Kariuki Muruatetu & Another v. Republic & 5 others, SC Petition 15 & 16 of 2015 (consolidated); [2016] eKLR, the Supreme Court aptly held as follows: -

“Having carefully considered all arguments, we are of the opinion that any party seeking to join proceedings in any capacity, must come to terms with the fact that the overriding interest or stake in any matter is that of the primary/principal parties' before the Court. The determination of any matter will always have a direct effect on the primary/principal parties. Third parties admitted as interested parties may only be remotely or indirectly affected, but the primary impact is on the parties that first moved the Court...



Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed by the Court from the pleadings and submissions of the principal parties.”

23. From the above excerpt, it can be deduced that the Interested Party in this suit wishes to champion its proprietary interest to the suit property against the Petitioners’ opposing rights. Nonetheless, their claim is not readily identifiable within the context of the pleadings filed by the primary parties herein.
24. The Interested Party’s stake in the proceedings has throughout remained peripheral and cannot override the stake of the primary parties. That would only muddle and confuse the proceedings going forward when the grievances of the primary parties are yet to be heard.
25. In *Mumo Matemu v. Trusted Society of Human Rights Alliance & 5 Others*, Civil Appeal No. 290 of 2012; [2013] eKLR, the Court of Appeal held that: -

“A suit in Court is a ‘solemn’ process, ‘owned’ solely by the parties. This is the reason why there are laws and Rules, under the Civil Procedure Code, regarding Parties to suits, and on who can be a party to a suit. A suit can be struck out if a wrong party is enjoined in it. Consequently, where a person not initially a party to a suit is enjoined as an interested party, this new party cannot be heard to seek to strike out the suit, on the grounds of defective pleadings.”
26. Ultimately, it is the view of this court that the Interested Party cannot overstep into the arena of the primary parties in an attempt to seek substantive orders as that would override the primary pleadings in this suit.
27. The Interested Party does not have the requisite locus standi to bring the instant application. I find that the application is devoid of merit. The same is dismissed with costs to the Petitioners/Respondents.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 30TH DAY OF MAY, 2025.

In the presence of:

Mr. Muthiani for Petitioners.

Mr. Onyancha for Interested Party.

Mr. Masila for 1st Respondent.

Court assistant – Steve Musyoki

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