



REPUBLIC OF KENYA



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**Simba v Mutiso & 4 others; Mutavi (Interested Party) (Environment & Land
Case E057 of 2023) [2025] KEELC 3537 (KLR) (6 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3537 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E057 OF 2023**

AY KOROSS, J

MAY 6, 2025

BETWEEN

BONIFACE NDOLO SIMBA PLAINTIFF

AND

JAMES MOSES MUTISO 1ST DEFENDANT

REBECCA MUKONYO MAUNDU 2ND DEFENDANT

COUNTY LAND SURVEYOR 3RD DEFENDANT

COUNTY LAND REGISTRAR 4TH DEFENDANT

THE HON ATTORNEY GENERAL 5TH DEFENDANT

AND

DAVID NDOLO MUTAVI INTERESTED PARTY

RULING

1. This ruling seeks to determine the notice of motion dated 9072024 filed by the intended IP, and he seeks the following reliefs from this court: -
 - a. That David Ndolo Mutavi be joined as an interested party in this suit.
 - b. That the costs of this application be in cause.
2. The motion is supported by the grounds set out in the body thereof and the supporting affidavit of the intended IP, sworn on the same date.
3. In brief, he states he was the initial proprietor of the mother parcel MachakosMua Hills157 ('mother parcel'), and he sold a subdivision thereof, being land parcel no. MachakosMua Hills159 ('1st defendant's land') to the 1st defendant.



4. He contended that after this subdivision, his land now became MachakosMua Hills400, which he divided severally and gave some portions of it to his children, including the plaintiff, and all of them had since sold their subdivided portions to 3rd parties. It was stated that some of these 3rd parties had even resold their parcels of land.
5. Moreover, he was apprehensive that several purchasersbeneficiaries of various parcels of land, including those of land parcels nos. 770, 793, 936, 1045, 1080 and 1081 would seek compensation from him.
6. In rebuttal to the contents of the 1st defendant's affidavit, the intended IP filed a supplementary affidavit, which he swore on 30012025.
7. Of particular interest, he stated the 1st defendant was compensated for the shortfall of the 3 acres by the registration of MachakosMua Hills794 in his name, which he had since sold to a 3rd party.

1st defendant's case.

8. The motion was opposed by the 1st defendant's affidavit, which he deposed on 24092024. In summary, he stated that when he realised his land had been encroached upon, he sought fixation of his boundary from the land registrar.
9. He maintained the intended IP had no interest in the suit as he had long subdivided the various parcels of land, and the intended IP did not border the 1st defendant's land, and thus, none of his parcels of land would be affected by the outcome of the suit. He urged the court to dismiss the motion.
10. As for the other parties, Mrs Nzilani for the plaintiff and Mr. Kuria for the 3rd – 5th defendants, whose brief was held by Ms. Momanyi all stated they did not oppose the motion. The 2nd defendant did not participate in these proceedings.

Parties' submissions.

11. The motion is canvassed by written submissions, and this court is greatly indebted to the submissions filed by the law firms of Ms. M.K. Chebii & Co. Advocates dated 4022025 and those by Ms. Isika & Associates dated 16122024.
12. Therefore, upon identifying and considering the issues for determination, this ruling shall later on in its analysis and determination, consider the arguments contained on the particular issue in the rival submissions and also bear in mind the law and judicial precedents.

Issues for determination.

13. I have carefully considered the motion; its grounds and affidavits, and the following issues arise for resolution: -
 - a. Whether the intended IP should be joined as a party to these proceedings.
 - b. What orders should be issued, including an order as to costs?

Analysis and Determination.

14. Since the outcome of the first issue will determine the nature of the disposal orders, this court will deal with the 2 issues conjunctively.
15. Order 1 Rule 10(2) of the Civil Procedure Rules (CPR) has largely been interpreted to mean that the party who ought to be joined or added to civil proceedings as a party to the suit either as a defendant,



plaintiff or interested party whose presence in the proceedings would be necessary to assist the court determine the matter effectually and completely should be joined to the proceedings.

16. This proviso, which has been relied upon by the intended IP states 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.”

17. The Black’s Law Dictionary, 11th Edn, page 1351 has defined an interested party in the following terms:

“A party who has a recognizable stake (and therefore standing) in a matter.”

18. The meaning of this definition was resounded in the Supreme Court of Kenya’s decision of *Trusted Society of Human Rights Alliance v Matemo & 5 others* [2014] KESC 32 (KLR) in the following words: -

“3. An interested party was one who had a stake in the proceedings, though they were not initially a party to the cause. Such a person felt that their interest would not be well articulated unless they personally appeared in the proceedings, and championed their cause.”

19. When considering a motion for joinder, the court exercises judicious discretion which is anchored on law and reason and therefore, this court adopts the guiding principles established in *Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae)* [2016] KESC 12 (KLR) in the following words: -

“37. From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party: One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements: The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.”

20. In the circumstances of this case, the 1st defendant and intended party are at opposing ends, with the former contending the motion has not met the threshold, whilst the latter says he has.



21. Therefore, it calls upon this court to exercise its discretion and consider whether the intended IP has met the threshold.
22. Now, in considering the documents before this court, the court to an extent, concurs with the 1st defendant that since the dispute at hand questions the implementation of the 3rd and 4th defendants' reports and the intended IP's land is not disputed, then he should not be joined to the proceedings.
23. Nevertheless, the 1st IP has presented another argument that as a vendor, he was aware the 1st defendant's parcel of land had a shortfall of 3 acres and he compensated him with MachakosMua Hills794. Put another way, a boundary dispute could not suffice as it had long been resolved by way of compensation.
24. It is this court's humble view this argument by the intended IP shows he has an interest in the matter since if it is demonstrated that such a deficit of land was resolved, then it has an impact on the outcome of the suit which orbits around the subdivision of parcels of land that emanated from the mother parcel.
25. Hence, this court is satisfied that the intended IP has a stake in the matter and he will be prejudiced if he is not joined to the proceedings. Thus, this court finds that the intended IP has met the tests of Muruatetu (Supra).
26. Although the intended IP has sought to be joined as a mere IP and his participation in the proceedings will be peripheral as the issues this court will determine will principally be drawn from the pleadings and submissions of the primary parties, this court hereby invokes the provision of Order 1 Rule 10(2) of the CPR and joins him as a defendant.
27. At last, this court hereby finds the notice of motion merited, and since it is trite law that costs follow the event, costs shall be in the cause. Having so found and held, as above, this court hereby issues the following disposal orders: -
 - a. That the intended interested party be joined to these proceedings as a defendant.
 - b. The plaintiff is directed to serve all pleadings on the intended interested party within 14 days hereof.
 - c. That upon being served, the intended interested party shall file responses to the pleadings within 21 days of service, and he shall serve his filings on all the parties hereto.
 - d. That the defendants are directed to file responses to the pleadings within 21 days hereof, and they shall serve their filings on all the parties hereto.
 - e. That this matter is referred to court-annexed mediation.
 - f. That, from now henceforth, no other or further applications shall be entertained by the court unless with leave.
 - g. That strict timelines shall apply.

Orders accordingly.

DELIVERED AND DATED AT MACHAKOS THIS 6TH DAY OF MAY, 2025.

HON. A. Y. KOROSS

JUDGE

