



**Gatungo Farmers Ltd v Commissioner of Lands & another; Muya &
33 others (Proposed Interested Party) (Environment & Land Case
164 of 2012) [2023] KEELC 21253 (KLR) (2 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21253 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 164 OF 2012**

**LA OMOLLO, J
NOVEMBER 2, 2023**

BETWEEN

GATUNGO FARMERS LTD PLAINTIFF

AND

THE COMMISSIONER OF LANDS & ANOTHER DEFENDANT

AND

ELIUD MUYA & 33 OTHERS PROPOSED INTERESTED PARTY

RULING

1. This ruling is in respect of the Applicant’s Notice of Motion application dated 21st February, 2023 which is expressed to be brought under Section 1A, 1B, 3A of the *Civil Procedure Act*, Order 1 rule 10 (2) of the Civil Procedure Rules 2010 and all other enabling provisions of the law.
2. The application seeks the following orders:
 - a. That the honourable court be pleased to grant leave to enjoin the below listed parties as interested parties/ Defendants in this suit.
 1. Isaac Kibui Mwangi
 2. Eliud Muya Kariuki
 3. David Kiarie Mungai
 4. Susan Wairimu Njaramba
 5. Gabriel Kibe Chiira
 6. James Wahome Imunyo



7. Joseph Mwaura Kamunyi
 8. Martha Muthoni Ndungu
 9. Peris Wanjiru Kariuki
 10. James Kimani Ndungu
 11. Erastus Ndumia Ngujiri
 12. Samuel Kamau Kibebe
 13. Joseph Mukanga Kaberu
 14. Samuel Kagichu Kimani
 15. Agnes Nyokabi Muya
 16. Samuel Karu Nganga
 17. Benson Karori Mwangi
 18. Charles Mugathwa Nganga
 19. Anthony Gachogu Njugi
 20. Stephen Wanjohi Wahome
 21. Veronica Wambui Nganga
 22. Paul Njuguna Ruhiu
 23. Jacob Macharia Rumemo
 24. Eunice Njoki Ndugo
 25. Grace Muthoni Karagu
 26. Hanna Wachu Mukanga
 27. Muturi Mwaniki Wakiiru
 28. James Ngigi Mwangi
 29. John Ngugi Karanja
 30. Silvanus Nyarioko
 31. Trustees African Inland Church Gattongu
 32. Trustees PCEA Church Gattongu
 33. Board of Management Magomano Secondary School
 34. Trustees Maranatha Faith Assemblies Gattongu Church.
- b. That this honourable court be pleased to grant leave to proposed interested party/Defendant to file a defence, witness statement and/or any necessary documents.
- c. That the costs of this application be provided for.



3. The application is based on the grounds on its face and supported by the affidavit sworn on 21st February, 2023 by one Eliud Muya Kariuki, one of the proposed interested parties.

Factual Background.

4. The matter came up in court on 7th February, 2023 and the court directed that the proposed interested parties do file a fresh application to be joined to the suit, considering that Eliud Muya concedes that some of the persons whose names are annexed to the application dated 7th November, 2022 are deceased.
5. The Application dated 7th November, 2022 was marked as withdrawn.
6. On 22nd February, 2022, the counsel for the proposed interested party intimated to court that he needed 7 days to file the joinder application and his notice of appointment.
7. On 6th March, 2023, counsel for the proposed interested party had regularised his appointment and also intimated to court that he had filed and served the application for joinder.
8. The court gave directions for service and the application was slated for hearing on 27th March, 2023.
9. On 27th March, 2023, counsel for the proposed interested parties informed the court that he had received a response from the Plaintiff and that he had since filed a further affidavit without leave. He prayed that the court grants leave, such leave to apply retrospectively and that the further affidavit be deemed duly filed.
10. The Defendants intimated to court that they were not opposed to the application.
11. Directions were issued that the application shall be disposed of by way of written submissions.

The Applicant's Contention.

12. The Applicant contends that he is one of the proposed interested parties and has the authority of his co-Applicants hence competent to swear this affidavit.
13. The Applicant contends that they own parcels of land that are resultant of subdivision of Kabazi/ Kabazi Block 1 (Gatongu).
14. The Applicant further contends that the parcels of land were allocated to them by the Plaintiff after paying the requisite fees and they were subsequently issued with title deeds.
15. It is his contention that this suit was instituted by some directors of the Plaintiff without consultation and/or resolution of the members of the Plaintiff and also after one of the members sitting at the land control board brought it to their attention.
16. The Applicant also contends that through an application dated 11th November, 2019 they sought to be joined in this suit as Gattungo Farmers LTD and that by consent of all parties the said application was allowed as prayed and were joined in this suit as Gattungo Farmers LTD.
17. The Applicant contends that through an application dated 12th April, 2021 the Plaintiff sought to have the said consent order set aside but their application was dismissed vide a ruling dated 21st October, 2021.
18. The Applicant contends that when the matter came up for hearing, the court directed that the matter would not proceed because the Plaintiff and the interested party are the same person but representing competing interests.



19. The Applicant contends that the court directed that they are at liberty to join this suit in their individual capacity.
20. The Applicant contends that they filed an application dated 7th November, 2022 seeking to be joined as interested parties in their individual capacity.
21. The Applicant contends that in the said application they included over 35 members who had been issued with title deeds by the Plaintiff.
22. The Applicant contends that when the said application came up for hearing the court directed they withdraw the names of the 100 members as some of them were deceased.
23. The Applicant contends that the interested parties are opposing this suit as the same was instituted without their knowledge and/or authority.
24. The Applicant contends that the Plaintiff/Respondent is seeking cancellation of their titles and they as members of the Plaintiff who were issued with the title deed by the company and add that will be greatly affected by the decision of the court.
25. The Applicant contends that if this suit is allowed to proceed without their participation the Plaintiff and Defendant are not going to articulate their interest and it is only fair and just that they are given an opportunity to champion their cause.
26. The Applicant contends that the members live harmoniously on their respective parcels and the self-appointed directors of the Plaintiff want to take advantage of the fact that most original members are deceased and grab their parcels of land.
27. The Applicant contends that they will be greatly prejudiced if they are not joined in this suit as they have buried their family member in their respective parcels and carried out significant developments.
28. It is the Applicant's contention that they have substantial interest in the suit parcel and therefore it is only fair that they be joined as interested party/Defendants.

Plaintiff/ Respondent's Response.

29. In response to the application, the Plaintiff filed a Replying Affidavit sworn by one Mary Wanjiru Njenga on 20th March, 2023. She describes herself as the secretary of the Plaintiff/Respondent's board of directors.
30. It is her contention that the application is fatally and/or incurably defective and grossly incompetent and should not be entertained by this Honourable Court.
31. She contends that the Applicants herein are not necessary parties to the instant suit and their inclusion will only cloud these proceedings and in the process disorient the real issues in dispute as between the Plaintiff and the Defendants herein.
32. She further contends that that the Applicants have not produced and/or attached any evidence to demonstrate that they have any stake in this suit.
33. She deposes that the Applicants beside just saying that they are members/shareholders of the Plaintiff have terribly failed in demonstrating through documentary evidence such as availing share certificates or payment receipts for shares in the Plaintiff's company and as the said Applicants are just strangers and busy bodies and ought not to be enjoined in these proceedings.



34. She deposes that the Applicants herein are not necessary parties to this suit and that no adverse order shall be made against them since the Plaintiff suit seeks to ensure all its genuine members of the Plaintiff benefit from the suit property as rightful owners.
35. It is her contention that the Applicants herein themselves concede to the fact that their claim can only be entertained on the basis of being members of the Plaintiff herein and as such it was incumbent on them to prove the fact that they are members and which fact has not been proved.
36. She contends that as can be proved through the plethora of applications filed by ELIUD MUYA these purported/proposed interested parties are ready to mislead the Honourable Court. She states that previously the Applicants have included deceased person in the application for joinder.
37. It is her contention that if the proposed interested parties are indeed members of the Plaintiff each of them should avail the share certificate, which is the only acceptable evidence, to demonstrate that they are members of a company.
38. She contends that as ably demonstrated in their application dated 31st October, 2022 that Eliud Muya Kariuki has on numerous occasions been found by this Honourable Court to have engaged in fraud, forgery and at one point was even imprisoned but it seems he never learns from his mistakes and wants to drag the Plaintiff to its knees and to ensure the Plaintiff and its hundreds of members never get justice. She asks this Honourable Court ought to stop him forthwith and permanently.
39. It is her contention that an application to be enjoined as an interested party in a suit is not automatic nor is it as of right but rather a discretionary one and which requires the party seeking to be enjoined to prove that it is a necessary party.
40. She deposes that this has not been proved by the proposed interested parties and she doubts they will be able to surmount this threshold and demonstrate that they meet the criteria for enjoinder.
41. She makes reference to the judicial decision of Francis Kariuki Muruatetu & Another v Republic & 5 others [2016] eKLR the Supreme Court of Kenya set out the elements to be proved for one to be enjoined as an interested party.
42. It is her deposition that Eliud Muya in his supporting affidavit claims that the instant suit was instituted by directors of the Plaintiff but without resolution or consultation of the members of the Plaintiff then such an issue is being raised in the wrong forum, in a wrong application for enjoinder as interested parties and in a court without jurisdiction.
43. She contends that if the proposed interested parties believe that this suit was instituted by the directors of the Plaintiff without their proper input or consultation of the members then it is only the High Court as per Section 3 of the [Companies Act](#) that can hear and determine such an issue and not this Honourable Court and the said issue just like the instant application are just misplaced.
44. It is her contention that the suit has been in the court corridors for over a decade and the instant application has been filed too late and such delay is inordinate and, on that basis, the same ought to be dismissed for being a mere afterthought.
45. She deposes that the instant application is just but another ploy by Eliud Muya Kariuki in ensuring the Plaintiff herein and its members never get back their parcel of land which the said Eliud Muya Kariuki had fraudulently sold to third parties as was held in Nakuru HCC NO 368 OF 1997.



Applicant's Further Affidavit.

46. The Further Affidavit by the Proposed interested party is sworn by Eliud Muya Kariuki. He contends that he is one of the proposed interested parties and has authority of his co-applicants hence competent to swear the affidavit.
47. He deposes that he and the co-applicants are not mere busy bodies but are necessary parties who have a stake in the subject matter in this suit.
48. He contends that he and his co-applicants are members/shareholders of the Plaintiff who own parcels of land that are resultant of subdivision of Kabazi/Kabazi Block 1 (Gatongu)
49. He contends that the suit parcel was subdivided among all members of the Plaintiff and they have been residing harmoniously on their respective parcel.
50. He contends that they will be greatly prejudiced if they are not joined in this suit as they have buried their family members in their respective parcels and carried out significant developments.
51. He further contends that the Plaintiff instituted this suit without their knowledge and issued a notice of suit via daily nation advertisement dated 14th February, 2019 instead of effecting personal service upon them.
52. It is his contention that the Plaintiff through its purported directors are the ones not interested in having this matter determined expeditiously and on merit as they have at every opportunity opposed their inclusion as interested party or defendants.
53. He also contends that on or about 20th November, 2019, the Plaintiff consented to them being joined as interested party in this suit.
54. He further contends that vide an application dated the 12th April, 2021, the Plaintiff sought to have the said orders set aside, reviewed and/or varied however their application was dismissed vide ruling dated 21st October, 2021.
55. He also contends that the Plaintiff's directors do not want him to be joined as an interested party or this suit as he is a former director of the Plaintiff who has the history of how the suit property was acquired and subsequently sub-divided among its members.
56. He also contends that all members of the Plaintiff were allocated land save for some few members who refused to pay surveyor fee and their titles are still in the names of the company and can always get their title after paying the requisite fees.
57. He contends that the only members who refused to pay the said survey fee is the purported secretary of the Plaintiff Mary Wanjiru Njenga who has sworn the replying affidavit dated 20th March, 2023.
58. He contends that the said Mary Wanjiru Njenga resides in her parcel of land and she has built a bungalow and fenced the suit parcel and cannot claim that the members are living without any known boundary.
59. He contends that the Plaintiff has since 2019 frustrated their effort to be joined as interested party or Defendants in this suit so as to grab their parcels of land.
60. He also contends that the Plaintiff's directors have been selling public utilities under the name of the Plaintiff to unsuspecting third parties who are not members of the Plaintiff.



61. He deposes that the said directors have brought this suit in order to sanitize their illegal sales by having the suit parcel resurveyed so that they can allocate the said individuals title deeds.
62. He deposes that the purported directors of the Plaintiff who have instituted this suit are taking advantage of the fact that most members of the Plaintiff are deceased.
63. It is his contention that he included the deceased members in his application dated 7th November, 2022 as they have left behind family members who are in occupation of their respective parcels and are interested in being joined in this suit.
64. He contends that they have substantial interest in the suit parcel and therefore it is only fair that they be joined as interested party or defendants.

Submissions.

Proposed Interested Parties Submissions.

65. The proposed interested parties filed their submissions on 19th May, 2023 and they identify the following issue for determination:
 - a. Whether the applicants should be joined as interested parties/Defendants in this matter?
66. They submit that the above should be in the affirmative and they rely on Rule 2 of *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 which defines an interested part to mean a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation.
67. The proposed interested parties rely on the judicial decision of Communications Commission of Kenya and 4 others Vs Royal Media Services Limited & 7 others Petition No 15 of 2014 eKLR.
68. The proposed interested parties also rely on Order 1 Rule 10 (2) of the Civil Procedure Rules and submit that the applicants are members/shareholders of the Plaintiff who own parcels of land that are resultant of subdivision of KABAZI/KABAZI BLOCK 1 (GATONGU) and further submit that the suit parcel was subdivided among all members of the Plaintiff and they have been residing harmoniously on their respective parcel.
69. They submit that they have carried out significant development on their respective parcel and have interred the remains on their loved ones on the suit parcel.
70. They submit that it is worth noting that the Applicant's parcels were allocated to them by the Plaintiff who now seeks to cancel their title and have the suit parcel resurveyed. They submit that the Applicants should be accorded an opportunity to be heard and articulate their interest in this suit.
71. It is their submission that the directors of the Plaintiff want to take advantage of the fact that most original members are deceased to grab their parcels of land.
72. They submit that the Applicants have proved their identifiable interest and stake in this suit by annexing the R.I.M map of KABAZI/KABAZI BLOCK 1 (GATONGU) showing the subdivisions of the suit parcel.
73. They submit that they have also annexed some of the title deeds of their respective parcel of land that the Plaintiff seeks cancellation.



74. They submit that the Applicants have also annexed the register of the Plaintiff showing they are members and the acreage of their respective parcels. They also submit that the court record has numerous documents by the Applicants showing their interest in the suit parcel.
75. It is the proposed interested parties' submission that on or about the 20th November, 2019 when the Applicants appeared in court the Plaintiff consented to the Applicants being joined as interested party in this suit. They submit that vide an application dated the 12th April, 2021, the Plaintiff sought to have the said orders set aside, reviewed and/or varied however their application was dismissed vide ruling dated 21st October, 2021.
76. They further submit that on 3rd October, 2022 when the matter came up for hearing, the court directed that the matter would not proceed as it is as the Plaintiff and the interested party were the same person.
77. The proposed interested parties submit that the court directed that applicants join this suit in their individual capacity and in compliance with the said orders the applicants who were acting in person filed an application dated 7th November, 2022 where they sought to be joined as interested parties. They submit that in the list of Applicants, they included some deceased members of the Plaintiff who own parcels of land in the suit parcel.
78. They further submit that in the said application, they annexed Ariel view of the suit parcel showing the numerous developments thereon. They submit that the court directed them to leave out the names of the deceased members hence necessitating this application.
79. It is their submission that the Plaintiff cannot seek to oppose inclusion of the Applicants as interested parties having consented to the same on 20th November, 2019.
80. They submit that the directors of the Plaintiff have brought this suit in order to sanitize their illegal sales by having the suit parcel resurveyed so that they can allocate the said individuals title deeds.
81. They pray that the application dated 21st February, 2023 be allowed.

Plaintiff/ Respondent's Submissions.

82. The Plaintiff filed its submissions on 23rd May, 2023. The following issues were identified for determination:
 - a. Whether the application has merit
 - b. Who should bear the costs of this application?
83. The Plaintiff submits that the Black's Law dictionary defines an interested party (at p1232) as:

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

The Plaintiff relies on the judicial decision of Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others, Supreme Court Petition No 12 of 2013, [2014] eKLR.
84. It is the Plaintiff/Respondent's submission that the Applicants herein are not necessary parties to the instant suit and their involvement in these proceedings will only cloud the issues for determination and disorient the real issues in dispute as between the Plaintiff and the Defendants herein.
85. The Plaintiff/Respondent submits that *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (the “Mutunga Rules”) speaks on who is an interested party and provides: “Rule 2 of the Mutunga Rules defines an interested party as a person



or entity that has an identifiable stake or legal interest or duty in the proceedings before the Court, but is not a party to the proceedings or may not be directly involved in the litigation.”

86. It is also the Plaintiff/REspondent’s Submission that any person who wishes the court to make a determination on the existence or absence of facts, they have to prove the same. The Plaintiff submits that the Applicants have not produced and or attached any evidence to demonstrate that they have any stake in this case.
87. The Plaintiff/Respondent submits that the Applicants ought to demonstrate through documentary evidence such as availing share certificates or payment receipts for shares in the Plaintiff’s company and as such the said Applicants are just strangers and busy bodies who ought not to be enjoined in these proceedings. The Plaintiff relies on Section 107 of the Evidence Act.
88. It is the Plaintiff/REspondent’s submission that the purported register of members produced before this Honourable Court annexed EMK2 in the Applicants’ further supporting affidavit dated 27th March, 2023 is not proof of the Applicant’s membership to the Plaintiff since the same is not a register of members but according to its title it is a register for subdivision of land.
89. The Plaintiff/Respondent submits that the purported register of members does not meet the legal requirements provided in the repealed companies Act, (Cap 486). The Plaintiff relies on Section 112 of the Companies Act and submits that the Plaintiff has shown that one of the main proposed interested party who has purportedly been given authority to swear affidavits on behalf of the others is a recurrent operator in shady dealings with the aim of frustrating these proceedings.
90. The Plaintiff/Respondent submits that in its replying affidavit at annexure MWN 1, it demonstrated in its application dated 31st October, 2022 that the said ELIUD MUYA KARIUKI was on numerous occasions found by this Honourable Court to have engaged in fraud, forgery and at one point imprisoned in NAKURU CM CRIMINAL CASE NO 3045 OF 2005.
91. The Plaintiff/Respondent further submits that if the proposed interested parties are indeed members of the Plaintiff, then each of them ought to avail a share certificate which, according to it, is the only acceptable evidence to demonstrate that one is a member of a company. The Plaintiff relies on regulation 8 in the Regulations for Management of a company Limited by Shares.
92. The Plaintiff/Respondent submits that without evidence, the Applicants herein are busy bodies and who are determined at halting the expeditious determination of this suit and this Honourable Court ought to see through them and find that the proposed interested parties herein are not necessary parties as no adverse order shall be made as against them since the Plaintiff suit seeks to ensure all its genuine members benefit from the suit property.
93. The Plaintiff/Respondent submits that the Applicants have come to court with unclean hands and should not be given audience by this court. The Plaintiff submits that ELIUD MUYA, one of the applicants herein misled this Honourable Court as he has previously included deceased individuals to be joined to this suit.
94. The Plaintiff submits that from a list of more than 100 proposed interested parties, the same came down to only 34 parties and that is a red flag which the court should not ignore. The Plaintiff/Respondent relies on the judicial decision of Siteyia v Gitome & 3 others [2015] eKLR.
95. The Plaintiff/Respondent submits that an Application to be enjoined as an interested party in a suit is not automatic but discretionary. It submits that the party seeking to be enjoined has to prove that it is a necessary party and that all elements required to be enjoined are present. It relies on the judicial decision of Francis Kariuki Muruatetu & another v Republic & 5 others [2016] eKLR.



96. The Plaintiff further submits that in the event the Applicants/proposed interested parties have a dispute with the current directors of the Plaintiff and/or its operations then they can approach the High Court appropriately but not making frivolous applications to be enjoined as interested parties in these proceedings.
97. The Plaintiff also submits that it will suffer prejudice as this suit has been in the corridors of justice for over a decade and that the instant application has been filed too late and such delay is inordinate and on that basis the same ought to be dismissed for being a mere afterthought.
98. The Plaintiff submits that the instant application is just but another ploy by Eliud Muya Kariuki in ensuring the Plaintiff and its members never get back their parcel of land which the said Eliud Muya Kariuki fraudulently sold to third parties as was held in the suit serialized as Nakuru HCC NO 368 OF 1997 and illustrated in the judgment and decree annexed and marked “MWN 2 a & b” in the replying affidavit of Mary Wanjiru Njenga dated 20th March, 2023.
99. The Plaintiff also relies on Section 27 of the [Civil Procedure Act](#) and the judicial decision of Republic vs Rosemary Wairimu Munene, Ex- Parte Applicant Vs Ihururu Dairy Farmers Co-operative Society Ltd as cited in Cecilia Karuru Ngayu V Barclays Bank of Kenya (2016) eKLR and submits that the applicants/proposed interested parties should bear the costs of this application.
100. The Plaintiff submits that the application dated 21st February 2023 by the proposed interested parties is made in bad faith and it is in the interest of justice that the orders sought are declined.

Analysis and Determination.

101. After considering the supporting affidavit, replying affidavit and their annexures plus the rival submissions filed by the parties, the following issues arise for determination:
 - a. Whether the Applicants should be joined to this suit as interested parties.
 - b. Who should bear the costs of this application?

A. Whether the Applicants should be joined to this suit as interested parties.

102. The Applicants seeks to be joined to this suit as interested parties. In determining this application, I shall consider the definition of an interested party and whether the Applicants have met the criteria for joinder as an interested party.
103. The law on joinder of parties is found in Order 1 Rule 10(2) of the Civil Procedure Rules 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 or settle all questions involved in the suit, be added.”



104. Rule 2 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 defines an interested party thus;

“Interested party” means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation;

105. Black’s Law Dictionary defines an Interested Party as;

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

106. In *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others* [2014] eKLR, the Supreme Court in defining an interested party stated thus;

“...while an interested party has a ‘stake/interest’ directly in the case, an amicus’s interest is its ‘fidelity’ to the law: that an informed decision is reached by the Court, having taken into account all relevant laws, and entertained legal arguments and principles brought to light in the Courtroom. ‘Consequently, an interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause (Emphasis mine). On the other hand, an amicus is only interested in the Court making a decision of professional integrity. An amicus has no interest in the decision being made either way, but seeks that it be legal, well informed, and in the interest of justice and the public expectation. As a ‘friend’ of the Court, his [or her] cause is to ensure that a legal and legitimate decision is achieved.”

107. Having defined an interested party, the next question is whether the Applicants have satisfied the criteria for joinder as an interested party. The Supreme court of Kenya in *Francis K. Muruatetu and another v. Republic & 5 others* (2016) eKLR after on an analysis of legal provisions and case law set out factors for consideration in an application for joinder as an Interested Party. The Learned Judges held as follows;

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:

- I. 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.
- II. 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.
- III. Lastly, a party must, in its application, set out the case and/or submission 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.”



108. In *Skov Estate Limited & 5 others v Agricultural Development Corporation & another* [2015] eKLR the Learned Judge in dealing with the question of an Interested Party seeking to be joined in a suit stated as follows;

“In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party.

...The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.”

109. The Plaintiff seeks the following the following orders as set out in their plaint;
- a. A declaration that there was no lawful surrender of Title No 6208/5 by the Plaintiff to the 1st Defendant and that all the consequential steps taken by the District land Registrar to issue title deeds on the basis of this surrender are null/void.
 - b. An order compelling the 1st Defendant to return the original title for LR NO 6208/5 to the Plaintiff company and a further order compelling him to revoke and nullify the title deeds issued by the Nakuru District Land Registrar in respect of the subdivisions made.
 - c. LR 6208/5 be resurveyed and titles be issued to genuine members only considering the current settlement.
 - d. The rocky/hilly area in LR 6208/5 be surveyed, subdivided and titles be issued to the genuine members of the Plaintiff.
 - e. Costs of this suit.
 - f. Any other or further relief as the court deems fit to grant.
110. As can be seen from the prayers in the plaint, the Plaintiff claim is that there was no lawful surrender of the suit parcel and that the title deeds issued by the 1st Defendant on the basis of this surrender are null and void. Consequently, the Plaintiff seeks an order compelling the 1st Defendant to return the original title of the suit property to it, that they 1st Defendant be compelled to nullify and revoke title deeds issued on account of subdivisions made on the suit parcel. They also want the suit parcel resurveyed and titles issued to genuine members.
111. The Applicants have approached this court as members/shareholders of the Plaintiff company. They depose that they are owners of parcels of land that are resultant of subdivision of Kabazi/Kabazi Block 1 (Gatongu). They state that their occupation and ownership is on account of their membership in the Plaintiff Company.



112. They depose that they have been residing harmoniously on their respective parcels and argue that as members of the Plaintiff, their interest will not be properly represented and taken into account by the Plaintiff. They allege that there has been illegal sale of the suit parcel and that the directors of the Plaintiff have brought this suit in order to sanitize the alleged illegal sales by having the suit parcel resurveyed so that they can allocate land to third parties who are beneficiaries of the alleged illegal sale.
113. Attached to the Further Affidavit is a copy of the member's register of the Plaintiff company. The register contains names of the proposed interested parties and is meant to prove their membership in the Plaintiff company.
114. Attached to the further affidavit is copy of an advertisement placed in the Daily Nation Newspaper of 14th February, 2019. The said notice is published by the Plaintiff Company. It brings to the attention of the public the existence of this suit and calls on all person holding titles to parcels of land Kabazi/ Kabazi Block 1/ (Gatongu) to Kabazi/ Kabazi Block 1/867 (Gatongu) being subdivisions of LR. No. 6208/5 currently known as Kabazi/ Kabazi Block 1/ Gatongu to apply to the court within a reasonable time to be made a party to this suit.
115. The said notice goes on to tell the concerned persons that should they fail to make the said application, the Plaintiff shall proceed with the suit and that judgement shall be delivered their absence notwithstanding.
116. My view is that this annexure is an acknowledgement by the Respondents that there may be persons who have a stake in this suit and has therefore invited them to make necessary applications for joinder.
117. The Applicants are such person who have heeded to this call. It is beats logic that the Respondent should now object to an application that has been made by persons in answer to the said invitation as set out in the notice.
118. On the basis of this annexure, I am constrained to find in favour of the applicants.
119. Secondly, there is on record a consent allowing Gattongu farmers company limited to join this suit as an interested party. When this suit came up for hearing this court noticed that if the matter proceeded with the Plaintiff and the interested party as the same person but with competing interests, it would pose a problem in the determination of this suit.
120. The court on interviewing the parties appearing noted that the Plaintiff is a legal person and the interested parties are aggrieved members of the legal person. On account of this legal absurdity that had presented, the applicants filed this application to join the suit in their private capacities. I doubt that I would be meeting the ends of justice if I now deny them the opportunity to regularise this absurdity that the present application seeks to surmount.

B. Who should bear the costs of this application?

121. Section 27 (1) of the [*Civil Procedure Act*](#), Cap. 21 provides that costs shall follow event.

Disposition.

122. I find that the Applicants have demonstrated that they have a clear and identifiable interest and stake in the present suit as persons in occupation of the suit parcel.
123. I also find that they are likely to suffer prejudice considering that Plaintiff seeks an order of cancellation of titles held by them. This interest in my opinion goes further than being merely affected by the judgment or order.



124. Finally, I find that the presence of the Applicants before this court is necessary and will enable the court to effectually and completely answer, among other questions, the question of acquisition and ownership of the suit property.
125. Consequently, the Application dated 21st February, 2023 is hereby allowed with costs to the Applicants.
126. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 2ND DAY OF NOVEMBER, 2023

L. A. OMOLLO

JUDGE

In the presence of:

Miss Kinuthia for Mwangi for Plaintiff/Respondent

Mr. Njoroge for the proposed interested parties

No appearance for Defendants

