



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**In re Estate of the Late Waiganjo Muriithi (Deceased) (Succession Cause 13 of 2018) [2025] KEHC 8602 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8602 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
SUCCESSION CAUSE 13 OF 2018**

**EM MURIITHI, J**

**JUNE 19, 2025**

**(FORMERLY NYERI HC SUCCESSION CAUSE NO. 150 OF 1999)  
IN THE MATTER OF THE LATE WAIGANJO MURIITHI (DECEASED)**

**BETWEEN**

**GRACE WAIRIMU NJOGU ..... PETITIONER**

**AND**

**ANTONY MURAGE MUTONGI ..... RESPONDENT**

**AND**

**FRASIAR NYAWIRA NGACHA ..... INTERESTED PARTY**

**PETER MURIITHI KINYUA ..... INTERESTED PARTY**

**JANE WANJIKU MURIITHI ..... INTERESTED PARTY**

**RULING**

1. This is a ruling on an application dated 26/9/2024 for joinder of the applicants as interested parties in this suit.
2. The Court is guided by spirit and letter of the decision of the Supreme Court of Kenya in Petition (application) No 11 of 2020, *Joseph Ombogi Ogentoto v Martha Bosibori Ogentoto; Federation of Women Lawyers; Law Society of Kenya, 1st Intended Amicus Curiae Kenya Legal and Ethical Issues Network on HIV & AIDS (Kelin), 2nd Intended Amicus Curiae Initiative for Strategic Litigation In Africa (ISLA), 3rd Intended Amicus Curiae, Human Rights Watch (HRW), 4th Intended Amicus*



*Curiae*, delivered on 16th July, 2021 which discussed the principles for the joinder of interested parties and amici curie in its court proceedings as follows:

“(14) This Court has laid down the principles for enjoinder as an interested party in the case of *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others*, SC Petition (Application) No 12 of 2013; [2014] eKLR where it was stated:

“[17] Suffice it to say that 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.

(18) 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. 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 Petition (Application) No 11 of 2020 6 cause is to ensure that a legal and legitimate decision is achieved.”

(15) Similarly, in the case of *Francis Kariuki Muruatetu & another v Republic & 5 others*, SC. Petition No 15 as consolidated with SC. Petition No 16 of 2013 [2016] eKLR (Muruatetu Case) at paragraph [37], the Court set out applicable principles where a party seeks to be enjoined in proceedings as an interested party as follows:

“... One must move the Court by way of a formal application. Enjoinder 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 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.”

3. At the Court of Appeal in *Civicon Limited v Kivuwatt Limited & 2 others* [2015] eKLR, it was held:

“From the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”

4. The *Law of Succession Act* allows any person interested to apply under section 76 of the Act for revocation or annulment of grant if the circumstances set out in the section exist as follows:

“76. Revocation or annulment of grant

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—”

5. A person who claims title to the property or part thereof, which the subject of the succession proceedings as an asset of the estate of the deceased is clearly a person with an interest in the estate or an interested party for purposes of this provision. When such party is joined as an interested party he may move the Court for any findings as contemplated under section 76 of the *Law of Succession Act*.

### **The application**

6. The applicants here present their claims as interested parties. The applicant seek joinder to the present proceedings so that as averred in supporting affidavit of Peter Muriithi Kinyua sworn on 26/9/2024 as follows:

- “ 1. That I'm the 2<sup>nd</sup> interested party herein hence competent to swear this affidavit.
2. That this succession cause is in respect to the estate of the late Waiganjo Muriithi who was the owner of land parcel number Inoi/Thaita/548.
3. That on 15/8/2002, land parcel number Inoi/Thaita/S48 was partitioned to parcel numbers Inoi/Thaita/1336, 1337 and 1338.
4. That on 4th September 2003, I together with my wife the 3<sup>rd</sup> interested party herein became the registered owners of land parcel number Inoi/Thaita/1338. Annexed and marked PMK-1 is a copy of the title deed.



5. That on 29th August 2013, land parcel number Inoi/Thaita/1337 was registered in the name of the 1st interested party, Frasiar Nyawira Ngacha. Annexed and marked PMK-2 is a copy of the title deed.
6. That indeed a civil suit was filed for recovery of the said land which case is still pending being Kerugoya ELC No 21 of 2017.
7. That as such it's necessary that we be aware of the progress of this case which is in respect to the same parcels of land as in the pending ELC case.”

### **The responses**

7. The Petitioners [really objector and petitioner] Grace Wairimu and John Muriithi Njogu in similar language oppose the application by a replying affidavit and statement respectively dated 13/3/2025 and 30/4/2025, as follows:

#### Grace Wairimu Njogu's Replying affidavit

- “1. That I am a female adult of sound mind and the petitioner in this matter thus competent to swear this statement.
2. That I have read and understood the content of the application dated. 26th September 2024.
3. That I vehemently oppose the said application dated 26th September 2024.
4. That the application is waste of this court precious time and the same should be dismissed with cost.
5. That it's true that there is another matter proceeding at Kerugoya a Land and Environment Court being ELC Cause No 21 of 2017 and ELC 38 of 2001 and the interested parties herein are parties in the suit. "Attache herein is a copy tile Order".
6. That the matter before this court is purely on the estate of the Late Waiganjo Muriithi and the interested party herein are not beneficiaries of this estate.
7. That their interests are well covered in the Kerugoya Land and Environment Court matter which is still pending determination.
8. That the interested parties herein don't indicate how the said portion were transferred to them by the deceased and that the issue of determination by the Kerugoya Land And Environment Court.
9. That the said transfers were done on 30th January 19% which was 29 day after the death of my husband. "Attache herein is a copy the greencard".
10. That that there is no way my late husband transferred his land to the interested parties after his demise. "Attache herein is a copy the mutation forms.”

#### John Muriithi Njogu Statement

- “1. That I am a male adult of sound mind and the petitioner in this matter thus competent to swear this statement.
2. That its true that there is another matter proceeding at Kerugoya Land and Environment Court being ELC Cause



No 21 of 2017 and ELC 38 of 2001 and the interested parties herein are parties in the suit.

3. That the matter before this court is purely on the estate of the late Vaiganjo Muriithi and the interested party herein are not beneficiaries of this estate.
4. That their interests are well covered in the Kerugoya Land and Environment Court matter which is still pending determination.
5. That the interested parties herein don't indicate how the said portion were transferred to them by the deceased and that the issue of determination by the Kerugoya Land And Environment Court.
6. That the said transfers were done on 30th January 1996 which was 29 day after the death of my grandfather.
7. That that there is no way the land could have been transferred by my grandfather while he was demise.
8. That I pray the application be dismissed with cost”

### **Mediation attempt**

8. The Court notes that the succession matter went before the Mediator and the report date stamped 15/8/2024 clearly shows that the Petitioners in this suit John Muriithi Njogu and Grace Wairimu Njogu and the applicant Peter Muriithi Kinyua were among the participants. The report indicates that the mediator was refereeing the case back to court to have the judge determine the process used in subdivision. The report notes that “the interested party have a different view from the earlier agreement. The land 548 has dispute. John Muriithi is for the opinion that the land was not subdivided. The parties who bought the land are for the opinion that the land was divided into three portions.”
9. The applicants are already participating in this suit through the mediation and, it would appear, that the application for joinder is merely a formality, which is made necessary by the failure in the mediation attempt.

Sufficient interest as a registered owner of the parcels of land subject of the succession proceedings
10. The applicants claim, as registered owners, the title to two parcels land created by subdivision of the parcel of land claimed herein by the petitioners as part of the estate of the deceased. The petitioners have objected to the joinder of the applicants and asserted in same language that “the interested parties herein don't indicate how the said portion was transferred to them by the deceased and that [is] the issue of determination by the Kerugoya Land and Environment Court.”
11. The registration of the subdivisions of the estate property presupposes the interest of the applicants as respondents in the matter of title to the land under dispute herein on the fair hearing principle of law that no person shall be condemned unheard. This succession court cannot proceed to determine the issue of succession of the estate property which is now already subdivided into subdivisions and titles issued to the applicants, without granting them an opportunity to be heard. It may be that their



acquisition of the property was fraudulent as claimed by the petitioners herein but that is a matter for the trial court to determine at the hearing.

### **Sufficient interest need not succeed at trial**

12. As held in *Civicon Limited, supra*, of an applicant's sufficient interest in the case, "the interest need not be the kind that must succeed at the end of the trial."
13. The applicants have demonstrated sufficient interest as registered owners of the subdivisions created out the parcel of land plot Inoi/Thaita/548 which is the subject of this succession proceedings.
14. Despite the fact strongly urged by the petitioners that the issue of the applicants' title to the suit property is subject of the trial court in Environment and Land Court, their registration as title holders of the portions subdivided out of the parcel of land LR No Inoi/Thaita/548 which is herein claimed in whole as the estate of the deceased, gives them an interest capable of being protected until it is defeated in appropriate court proceedings. Any attempt to deal with the parcels of land in a manner adverse to their interest as registered owners when their interests have not been declared to be fraudulently acquired in terms of Article 40 (6) would be a violation of their right to protection of property under Article 40 (1) of the *Constitution*.
15. If this Succession Court were to order distribution of the asset subject of this succession cause without hearing the persons who are registered owners of subdivisions of the suit property, the said registered owners will have suffered prejudice and denial of the right to be heard under Article 50 (1) as well as access to justice under Article 48 of the *Constitution*, in addition to deprivation of their Article 40 right to property, and who better make their case than the registered proprietors themselves!

### **Orders**

16. Accordingly, for the reasons set out above, the Court finds merit in the application for joinder of the applicants as intended parties in this succession cause.
17. Further directions in the matter to be taken on when parties will report on the progress in the related civil suit before the Environment and Land Court.

Orders accordingly.

**DATED AND DELIVERED THIS 19<sup>TH</sup> DAY OF JUNE 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Kagio for the Interested Parties

Petitioners in person.

