



Mid Migori Mining Company v Cabinet Secretary, Ministry of Mining, Blue Economy & Maritime Affairs & 3 others; Global Search Solutions Limited & another (Proposed Interested Parties) (Judicial Review E143 of 2024) [2025] KEHC 10442 (KLR) (Judicial Review) (11 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10442 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW E143 OF 2024**

**JM CHIGITI, J
JULY 11, 2025**

BETWEEN

MID MIGORI MINING COMPANY APPLICANT

AND

CABINET SECRETARY, MINISTRY OF MINING, BLUE ECONOMY & MARITIME AFFAIRS 1ST RESPONDENT

PRINCIPAL SECRETARY, STATE DEPARTMENT OF MINING 2ND RESPONDENT

DIRECTOR OF MINES 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

AND

GLOBAL SEARCH SOLUTIONS LIMITED ... PROPOSED INTERESTED PARTY

HELLEN ADHIAMBO ODIE PROPOSED INTERESTED PARTY

RULING

1. The proposed Interested Parties/Applicants through an Application of Notice of Motion dated 2nd December 2024, have sought to be enjoined in this suit having a clear and identifiable stake in these proceedings and their interests herein being in a position to directly be affected by the Court's ultimate decision.



2. The Proposed Interested Parties/Applicants discovered that there is an ongoing suit involving the Applicant/Respondent's prospecting licenses PL/2018/0XX2 and PL/2018/0XX3. The matter is slated for 28th January, 2025.
3. The 2nd Proposed Interested Party/Applicant is the legal and beneficial owner of land parcel No. SUNA WEST/WASWETA 11/2023 situate in the areas covered by the prospecting licenses PL/2018/0XX2 and PL/2018/0XX3 (the subject of this suit here).
4. The 2nd Proposed Interested Party/Applicant is the sole director and shareholder of the 1st Proposed Interested Party/Applicant — a company that the 2nd Proposed Interested Party uses to trade and process gold.
5. The Proposed Interested Parties' /Applicants' seek to participate in the suit to safeguard their constitutional rights and express their interests in the areas covered by prospecting licenses PL/2018/0XX2 and PL/2018/0XX3.
6. The Proposed Interested Parties/Applicants, having an identifiable stake in the matter, ought to be enjoined as a party to shed more light on the alleged dispute between the parties.
7. Once the Proposed Interested Parties/Applicants application to be enjoined is granted, it fully intends to expeditiously raise critical factual issues during the proceedings, believing it is imperative for the court to address these issues promptly to ensure a fair and just resolution of the case which shall not in any way prejudice the parties
8. In similar fashion, the Applicant/Intended Interested Party seeks for the leave of court to be enjoined in the suit and costs of the application herein.

Applicant / Intended Interested parties Submissions.

9. The intended Interested parties submitted on the question as to whether the application is properly defended. The learned counsel expressed some of the legal provisions on ways of opposing an application is Order 51 rule 14 of the Civil Procedure Rules which provides that;

“ Any respondent who wishes to oppose any application may file any one or a combination of the following documents

 - a) A notice preliminary objection: and/or;
 - b) Replying affidavit; and/or
 - c) A statement of grounds of opposition.”
10. Similarly, the Proposed Interested Parties/Applicants' submitted that Grounds of Opposition should consist solely of general averments that address issues of the law. Such grounds do not engage with, nor do they refute, the specific issues and factual content set forth in an application.
11. In the present scenario, the Applicant/ Respondent filed Ground of Opposition dated 13th December 2024. It is their contention that the filed Grounds of Opposition primarily raises and responds to issues of fact and not law. The Applicant/ Respondent ought to have filed a Replying Affidavit in response to the myriad of issues of fact raised in its response (Grounds of Opposition).
12. The Court of Appeal's decision in the case of Daniel Kibet Mutai & 9 Others vs. Attorney General (2019) eKLR, the Court cited with authority the case of Peter O. Nyakundi & 68 Others vs. Principal



Secretary, State Department of Planning, Ministry of Devolution & Planning & Another (2016) eKLR which stated:

“As stated earlier the Respondents did not file any Replying Affidavit to challenge and/or controvert the sworn averment by the Petitioners that they were victims of the post-election violence. Grounds of Opposition which were filed are only deemed to address issues of law. They are general averments and cannot amount to a proper or valid denial of allegations made on oath”.

13. It was their submission that the High Court has affirmed that Grounds of Opposition merely state legal issues but is not a sufficient response to an application as seen in the case of Kennedy Otieno Odiyo & 12 Others vs. Kenya Electricity Generating Company (2010) eKLR, the Court opined as follows:

“The respondents only filed grounds of opposition to the application reproduced elsewhere in this ruling. Grounds of opposition addresses only issues of law and no more. The grounds of opposition aforesaid are basically general averments and in no way respond to the issues raised by the applicant in its supporting affidavit. Thus, what was deponed to was not countered nor rebutted by the respondents. It must be taken to be true. In the absence of the replying affidavit rebutting the averments in the applicant’s supporting affidavit, means that the respondents have no claim against the applicant. In this regard, the court held in Kipyator Nicholas Kiprono Biwott. v. George Mbuguss and Kalamka Ltd Civil case no. 2143 of 199 “..... From the facts and the law, I have analyzed in this case, I do find the Defendants have no defence to this suit.....having filed no replying affidavit to rebut the averments in the plaintiff’s affidavit in support of the application. I therefore have no alternative but to strike out paragraphs 3,4,5,6 and 10 of the defence and enter judgment for the plaintiffs on liability...”

14. The Proposed Interested Parties/Applicants secondly submitted they have a clear and identifiable stake in these proceedings and their interest will directly be affected by the Court’s ultimate decision herein. The Constitutional of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 [“The Mutunga Rules”] defines the word Interested Party 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.

15. The Supreme Court of Kenya in the case of Francis Kariuki Muruatetu & Another vs. Republic & 5 Others [2016]eKLR emphasized the principle of identifiable interest by outlining the following criteria in which Courts should consider:

- 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.



16. The Proposed Interested Parties/Applicants submitted that they have identifiable interests in the matter for the following reasons:
 - a. The 2nd Proposed Interested Party/Applicant is the legal and beneficial owner of the land parcel No. SUNA WEST/WASWETA II/2023 situate in the areas covered by the prospecting licenses PL/2018/0XX2 and PL/2018/0XX3 which are the subject of this suit herein.
 - b. She is the sole director and shareholder of the 1st Proposed Interested Party/Applicant which she uses to trade and process gold.
17. Furthermore, the 2nd Interested Party/ Applicant has massively invested in a gold processing plant to the tune of Kshs. 500 Million situate on the land where the prospecting licenses in this suit cover.
18. The Intended Interested party/ Applicant rely on the various considerations that the Court has to consider on whether it should exercise its discretion to confirm joinder, adding or striking out a party in a suit as in the case of Justin Kithinji Nderi & 2 others vs Director of Public Prosecutions & another; Njiru Micheni Nthiga (interested party) [2020] eKLR where the Court relied on the case of SKOV Estate Limited & 5 others v Agricultural Development Corporation & Another where the J. Munyao held that:

“A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant...”
19. The Proposed Interested Parties/Applicants submit that they seek to safeguard their interests in the areas covered by the prospecting licenses, following the legitimate interest in the area’s natural resources, including gold.
20. Their participation in the suit will not prejudice any of the other parties in the ongoing suit. Rather, their intervention will provide the Honourable Court with a full understanding of the various interests involved, ensuring that justice is done and that all relevant perspectives are considered.
21. The Proposed Interested Parties/Applicants; therefore, pray for costs.
22. The Proposed Interested Parties/Applicants in addition to having significant constitutional, legal, and economic interests in the suit herein, respectfully request that the Honourable Court grant them leave to be enjoined in the ongoing suit to safeguard their interests, which are directly affected by the subject matter of the suit.

Applicant/ Respondent’s Submissions.

23. The Applicant/Respondent in their Grounds of Opposition state that the proposed interested parties have no plausible legal interest/ identifiable stake in the Judicial Review Application currently before this Honourable Court.
24. The Applicant/Respondent further stated that in the matter whereas the instant case is an attempt by the Exparte Applicant to safeguard its prospecting licenses namely: PL/2018/0XX2 and PL/2018/0XX3 from the unfair, illegal and procedural revocation and/removal from the online mining cadastre; the proposed interested parties' on the other hand, intend to protect their MINERAL DEALERS (PROCESSING) LICENCE REG no. MDL/[P DPL/2024/2480](#) and their interests in the land parcel registration No. SUNA WEST/WASWETA 11/2023.



25. They further alluded that the mineral rights and obligations conferred by the Exparte Applicant's prospecting licenses are totally different from those of the proposed interested parties' mineral dealers license. Furthermore, the said rights and obligations, as well as the application and the renewal process for the two cadres of licenses are governed by distinct sections of the law.
26. On that, the Applicants/Respondents emphasize that the proposed interested parties have not demonstrated the relevance and nexus between their mineral dealers license and the Exparte Applicant's prospecting licenses. Therefore, the grounds upon which the proposed interested parties seek to join the instant suit are totally irrelevant and without any probative worth in respect of the matters in dispute in the instant suit.
27. The Applicant/Respondent proposed interested parties have failed to demonstrate how their interests in the land parcel registration No. SUNA WEST/WASWETA 11/2023 will be affected by the outcome of the instant suit, positive or negative.
28. The Applicant/Respondent submits that the foregoing Grounds of Opposition did not delve into the factual disposition in the Proposed Interested Parties' supporting affidavit and further affidavit both sworn by Hellen Adhiambo Odie on 2nd December 2024 and 11th March 2025, respectively. We therefore submit that the Proposed Interested Parties' arguments are not only unfounded and baseless, but are meant to deliberately mislead the court.
29. To further buttress the foregoing, they submitted that the grounds of opposition were merely a restatement of the law, to wit, the mineral rights and obligations conferred by the Exparte Applicant's prospecting licenses are totally different from those of the Proposed Interested Parties' mineral dealers license. Furthermore, the grounds of opposition merely restated that rights and obligations, as well as the application and the renewal process for the two cadres of licenses are governed by distinct sections of the law.
30. In further demonstration that the grounds of opposition are merely a restatement of the law, submissions were made that whereas prospecting licenses are issued under Sections 72-84 *Mining Act*, mineral dealer's licensees are issued under Sections 158-170 *Mining Act*.
31. As following that the mineral rights conferred by the two cadres of licenses are totally distinct to this end, they restate the law Section 2 *Mining Act* defines prospecting as follows:

“prospecting license” means license relating to large scale operations which authorizes the holder to carry out prospecting operations;
32. Further to the above, the Counsel referred to Section 75 *Mining Act* enumerates the rights conferred by prospecting license, as follows:

“

“75. Rights conferred by prospecting licence

 - (1) The holder of a prospecting licence shall enjoy exclusive rights to carry out prospecting operations in the area covered by the licence in accordance with the provisions of this Act.
 - (2) The holder of a prospecting licence may, in the exercise of the rights conferred under subsection (1)—(a) demarcate the areas that fall within the licence area; (b) enter the area of land specified in the licence and take all reasonable



measures on or under the surface of the land to carry out prospecting operations; and(c)erect equipment, plant and buildings necessary to carry out the prospecting operations.

(3)A person appointed by the holder of a prospecting licence to act as an agent of the holder may exercise the rights of the holder of the licence under the licence, subject to any limitations on the powers of the agent contained in the instrument of appointment.

(4) In the event of change of land rights, a prospecting licence holder shall maintain mineral rights over the licence area unless fully compensated by the new land rights holder.

33. The other hand leads the court to Section 2 *Mining Act* provides that:

“mineral dealer” means any entity or person licensed to carry out mineral dealings;

“mineral dealings” means—

(a)buying minerals;

(b)selling minerals;

(c)bartering minerals;

(d)depositing or receiving minerals as a pledge or security; or

(e)cutting, polishing, processing, refining and treating minerals;

34. In a similar fashion, Section 162 *Mining Act* enumerates the rights/obligations conferred by a mineral dealer’s license, as follows:

“

“162. Obligations under mineral dealer’s license

The holder of a mineral dealer’s license shall not—

(a)deal in minerals otherwise than in accordance with the conditions set out in the license; or

(b)engage in mineral dealings permitted under the license with a person who has not acquired the minerals lawfully or is otherwise not lawfully entitled to deal in the minerals.”

35. On the second issue on whether the intended interested party should be enjoined, the courts rely on the provisions of the Civil Procedure code as the *Civil Procedure Act* is silent on the concept of “interested party”. Order 41 Rule 5 of the Civil Procedure Rules 2010, makes a reference to the phrase “interested party” and states thus:

“The court either on its own motion or on application by any interested party, remove a receiver appointed pursuant to this order on such terms as it thinks fit”

36. The Black’s Law Dictionary [9th Edition, page 1232] defines an interested party as a party who has a recognizable stake (and therefore standing) in the matter.



37. Your Lordship, in the same breath, Rule 2 of *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2(13) defines an interested party as follows: -

“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...”

38. On what amounts to “an identifiable stake”, the Applicant/Respondent Counsel submitted that it must be proximate enough and not merely peripheral or fanciful. Heavy reliance is on Francis Kariuki Muruatetu & another v Republic & 5 others [2016] eKLR, where the Supreme Court in its ruling delivered on 28th January 2016, partly held at paragraph 37, thus:

“... 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 nonjoinder, 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.” (Emphasis added).

39. In their submissions, the counsels also relied on the case of Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others [2014] eKLR, the Supreme Court whilst considering an application for joinder by a proposed interested, at paragraph 24 of the ruling dated 25th July, 2014, posed the following pertinent questions: •

“We ask ourselves the following questions: (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?”

40. The Applicant/Respondent submits that the Intended Interested party has failed in demonstrating how the outcome of the instant suit will affect the Kshs. 500 Million that they have allegedly invested in mineral processing and therefore has failed to meet the threshold enunciated in the cases above.

Analysis and Determination.

41. The court in this matter will limit itself to addressing the pertinent issue herein that is as follows;

Whether the intended interested party has proved their interest in the suit

42. In determining the issue above, the parties will be able to move forward with the suit addressing the issues that go to the heart of the suit.

43. The burden of proof in the matter at hand lies on the one who alleges, as seen in the case of Bingwa Sacco Society Limited v Ngatia (Civil Appeal E318 of 2023) [2024] KEHC where the court took a similar position to that as alluded to in the following;

“In Anne Wambui Ndiritu –vs- Joseph Kiprono Ropkoi & Another [2005] 1 EA 334, the Court of Appeal held that: “As a general proposition under Section 107 (1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law



and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.”

27. The question then is what amounts to proof on a balance of probabilities. Kimaru, J in *William Kabogo Gitau –vs- George Thuo & 2 Others* [2010] 1 KLE 526 stated that: “In ordinary civil cases a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely that not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegations that he made occurred.”

28. Similarly, Lord Nicholls of Birkenhead in *Re H and Others (Minors)* [1996] AC 563, 586 held that; “The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the even was more likely than not. When assessing the probabilities, the court will have in mind as a factor, to whatever extent is appropriated in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability....”

44. In *Evans Nyakwana –vs- Cleophas Bwana Ongaro* [2015] eKLR it was held that;

“As a general preposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107 (i) of the *Evidence Act*, Chapter 80 Laws of Kenya. Furthermore, the evidential burden... is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of law that proof of that fact shall lie on any particular person...The appellant did not discharge that burden and as Section 108 of the *Evidence Act* provides the burden lies in that person who would fail fi no evidence at all were given as either side.”

45. It is therefore on the part of Intended Interested Parties/Applicant to prove that they have a stake in the matter. A burden they have discharged following the evidence they have presented before court as per the provisions of section 107 of the *Evidence Act*

“107. Burden of proof.

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

46. It would be contrary to the principles of natural justice, on the limb of the right to a Fair Hearing (*Audi alteram partem*): where the principle emphasizes the importance of giving all parties involved in a case a fair opportunity to present their case and be heard before a decision is made.



47. Similarly, *the Constitution* of Kenya 2010, in its article 48 and 50, cause for rights important to the dispensation of Justice as to the mandate of this court as prescribed by article 159, to say;

“ Access to justice. 48.

The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.....

Fair hearing. 50.

(1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”

48. The court then in fulfillment of its mandate sees that the burden of proof has been satisfied by the Intended Interested Party/Applicant herein.

49. Mineral rights on private land;

- (1) A prospecting and mining rights shall not be granted under this Act with respect to private land without the express consent of the registered owner, and such consent shall not be unreasonably withheld.
- (2) For the purpose of subsection (1), consent shall be deemed to be given for the purposes of this Act where the owner of private land has entered into—
 - (a) a legally binding arrangement with the applicant for the prospecting and mining rights or with the Government, which allows for the conduct of prospecting or mining operations; or
 - (b) an agreement with the applicant for the prospecting and mining rights concerning the payment of adequate compensation.
- (3) Where consent is granted prior to any change in land ownership, such consent shall continue to be valid for as long as the prospecting and mining rights subsists.

Order;

50. The Application by the Intended Interested parties/Applicants dated 2nd December 2024 is allowed.

51. The Parties to serve and furnish the Intended Interested Parties/Applicants with the necessary pleadings.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF JULY 2025.

.....
J. CHIGITI (SC)

JUDGE

