**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**LAND CASE NO. 27 OF 2021**

**FLORENCE NAFULA AYODI..............................................................................................1ST PLAINTIFF**

**MIRIAM JUMBA MUSAMIA...............................................................................................2ND PLAINTIFF**

**CATHERINE NABWALA.......................................................................................................3RD PLAINTIFF**

**MARY NASIMIYU.................................................................................................................4TH PLAINTIFF**

**ELIZABETH MUTENYO MUSAMIA.................................................................................5TH PLAINTIFF**

**JONATHAN AYODI LIGURE................................................................................................6TH PLAINTIFF**

**VERSUS**

**JOHN TABALYA MUKITE...................................................................................................1ST DEFENDANT**

**ELIUD SYANGU MUKITE...................................................................................................2ND DEFENDANT**

**AND**

**BENSON GIRENGE KIDIAVAI & 67 OTHERS....APPLICANTS/INTENDED INTERESTED PARTIES**

**RULING**

**The Application**

1. By way of a Notice of Motion dated **12/8/2021** and filed on **17/8/2021**, sixty-eight (68) proposed interested parties applied to be enjoined in this suit. The Application was brought under **Articles 40, 48** and **50** of the **Constitution**, **Sections 1A, 2B, 3A** and **100** of the **Civil Procedure Act,** Chapter 21 of the Laws of Kenya, **Order 1 rules 5** and **10(2), Order 8 rule 8** and **Order 51** of the **Civil Procedure Rules 2010.** More specifically, the Application sought the following orders:

> **1. …spent**
>
> **2. The Honourable Court be pleased to order that the 68 applicants/interested parties be enjoined in this suit as interested parties.**
>
> **3. That the Honourable Court be pleased to grant leave to the applicants/interested parties to fully participate in the proceedings herein and file such pleadings, affidavits, submissions and other documents subsequent to joinder.**
>
> **4. That the Honourable Court be pleased review or vary the orders made on the 6/8/2021 and grant the interested parties/applicants leave to file their response and written submissions to the plaintiffs' application dated 16/4/2021.**
>
> **5. That costs of the instant application be in the cause.**

2. I will, at this stage, point out that in so far as the Application is concerned, the 68 persons who moved the Court have not been enjoined as

interested parties herein. They are not supposed to be called Interested Parties but either proposed interested parties or Applicants. It would, therefore, be a misnomer and misleading to refer to them as interested parties before it is determined whether or not they are to be enjoined as such. It does not matter whether they believe they are interested parties or not. Their interest in the subject matter is to be ascertained first and they meet the legal criteria of joinder before they are treated and referred to as Interested Parties, and it is not an automatic right. This should be by the permission of the Court upon being satisfied that they can be enjoined. It is immaterial what they refer themselves to by way of their pleadings. And even so, it would be advisable for any counsel or applicant to draw always pleadings bringing out that state of affairs clearly - proposed Interested Party (ies).

3. From what I observed over time as I practiced in courts, this confusion keeps reigning in the practice of this procedure. But for anyone to keep referring to applicants proposing to be interested parties in suits as Interested Parties it is akin to referring to a suiter in a proposed marriage relationship as husband, yet he is not, irrespective of the many things both he and the proposed spouse could have done that resemble activities reserved for married couples.

4. Teachers of law in Law schools as well as counsel in their chambers would do well to remind their students, learners, pupils and drafters of documents respectively of the professional 'sacred duty' of drawing pleadings and documents properly before presenting them in courts. It is not farfetched to remind counsel that many a matter which was otherwise merited has been lost in courts because of poor drafting. Unfortunately, clients have not sought redress over them. There may and is likely to come to a time when counsel may face malpractice suits. Counsel should avoid getting here.

5. That explained and therefore aside, the Application is supported by the affidavit sworn on **12/8/2021** by the proposed first interested party, one **Benson Girenge Kidiavai**. It is sworn on his own behalf and that of all the sixty-seven proposed interested parties. The grounds the Application is based on are listed on its face. They are, in summary, that the interested parties wish to be enjoined in the suit in order to defend their rights and interest in **LR. No. Kiminini/Kinyoro/Block 3/Siuna/60 (the suit property);** that the plaintiffs lay a claim over the suit property; that the applicants are bona fide purchasers for value of parts or portions of the suit property; that they have contributed fees for the survey, sub-division, drawing of plans and mutation forms in respect of the suit property for them to obtain individual titles; that they are captured in the subdivision plan and mutations for the suit property which the plaintiffs want nullified and therefore stand to suffer great prejudice if they are condemned unheard; that they stand to suffer great prejudice if the interlocutory injunction sought by the plaintiffs in their application dated **16/4/2021** is granted to their exclusion; that their inclusion in the suit would enable the court to effectively and completely adjudicate upon and settle the questions in the matter and that the plaintiffs would suffer no prejudice if the application is allowed.

6. The affidavit of **Benson Girenge Kidiavai** reiterates the contents of the grounds that are on the face of the Application. He further avers that the 1st Defendant was appointed the sole administrator of the **estate** of the late **Joseph Musamia Mukite** which forms **part of the suit property** which later devolved unto **Esta Namawanja.** He further depones that **Esta Namawanja** was to hold the suit property as a tenant for life and upon her death the property was to devolve unto her sons being the **1st, 2nd, 3rd** and **4th defendants** in equal share; that the said **Esta Namawanja** together with her sons sold part of the suit property to the proposed interested parties and that they have been in continuous and uninterrupted possession of the suit land for more than **25 years** and have developed and improved the portions of the parcels of land which they are occupy.

**<u>The Response</u>**

7. In opposing the Application, the **1st** Plaintiff/Respondent filed a replying affidavit sworn on **27/8/2021** on her behalf and that of the **2nd** to **5th** plaintiffs/respondents. Their response is that the applicants do not meet the criteria of being enjoined as interested parties; that their enjoinment will only overcrowd the proceedings and overshadow the real issues presented by the Respondents in their claim; that the participation of the proposed interested parties would add no value to the proceedings; that the proposed interested parties have no claim against the Respondents; that the interests of the proposed interested parties in the suit land shall be well articulated by the 1st Defendant; that the evidence of the proposed interested parties would be a replica of the evidence of the defendants; that the fact of the applicants being purchasers does not warrant them to be enjoined and that the Plaintiffs are seeking orders directed to the Defendants alone.

8. The 6th plaintiff/respondent filed a replying affidavit sworn on **26/8/2021.** He concurs with the deposition contained in the Replying affidavit sworn by the 1st Plaintiff on **26/8/2021.**

**<u>Submissions</u>**

9. On **21/9/2021** the parties agreed to dispose the application by way of written submissions which they have filed. The proposed intended interested parties filed theirs on **28/9/2021** while the Respondents filed theirs on **30/9/2021.** At this initial point, even before proceeding with the determination of the issues before it, the court agrees with the submissions by counsel for the Respondents that enjoinment of a party to a suit is not a right or so to say a matter of course. One has to satisfy the requirements of the law in that regard. These will be discussed at the stage of making the determination herein.

**<u>Determination</u>**

10. I have carefully considered the Application, the supporting affidavit thereof; the replying affidavits, the submissions filed herein and the case law relied on by the respective parties. I have also given due consideration of the law. I find the following <u>issues</u> for being determination before me:

> **a. Whether the intended interested parties have sufficiently demonstrated that they have met the prerequisites of being considered interested parties.**
>
> **b. Whether the proposed interested parties should be enjoined in this suit**

**c. Whether the orders issued on 6/8/2021 should be reviewed or varied.**

**a. Whether the intended interested parties have sufficiently demonstrated that they have met the prerequisites of being considered interested parties**

11. The starting point in determining this Application is the definition of an interested party. Who is such a person? It is noteworthy that there is no definition of an Interested Party in any of the parent enactments in Kenya except in the **Supreme Court Act, No. 7 of 2011.** It is given also in the **Supreme Court Rules of 2012** made under the Act as they provide for the practice in that apex Court. I will turn to these provisions shortly. In regard to legislation that creates the other courts below the Supreme Court, there is none that has the term but there is only one definition thereof that has been captured in subsidiary legislation: ***The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013***, which I will hereafter refer to as the "***Mutunga Rules*****". The Rules were Gazetted on 28th June, 2013 vide Legal Notice No. 117. It would appear that the wisdom of the Committee that made the Rules was to minimize the injustice that had, for long before the promulgation of the 2010 Constitution, permeated the justice system in Kenya by way of denying persons who had interest in judicial or tribunal proceedings, the right to be enjoined thereto through the bar of lack of *locus standi*.**

**12. The above notwithstanding, it is common sense to expect that for one to be enjoined in certain proceedings, those proceedings have to be pending before the court. In *Leonard Kimeu Mwanthi v Rukaria M'twerandu M'iringu; Nathaniel Kithinji Ikiugu & 4 others (Intended Interested Parties) [2021] eKLR,* Justice L. Mbugua stated that "A party claiming to be enjoined in proceedings must have an interest in the pending litigation…" In other words, the proceedings should still be alive in the court: they could be at the nascent or other stages but must be alive. In** ***CENTRAL KENYA LTD. V. TRUST BANK & 4 OTHERS, CA NO. 222 OF 1998*** *the Court, in discussing the issue of joinder of parties, held that* ***"We would however agree with the respondent that Order 1 Rule (10)(2) contemplates an application for amendment or joinder of parties where proceedings are still pending before the Court. Sarkar's Code, (supra) quoting as authority, decisions of Indian Courts on the provision, expresses the view that an application for joinder of parties can be filed only in pending proceedings… that it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable; and that a party can even be added at the appellate stage.".*** **Thus, where litigation has come to an end or put in another way, the court has become *functus officio*, a person wishing to be enjoined to the proceedings will not succeed in his quest.**

**13. The meaning of (a court becoming) *functus officio* has been rendered in *Telkom Kenya Limited vs John Ochanda (suing on his own behalf and on behalf of 996 former employees of Telkom Kenya Limited) (2014) eKLR* as follows "***The doctrine is not to be understood to bar any engagement by a court with a case that it has already decided or pronounced itself on. What it does bar is a merit based decisional re-engagement with the case once final judgment has been entered and a decree there on issued….". Therefore, where a party seeks to alter the merits of the judgment of the court with issues that are sought to be introduced by the proposed interested party, the court will be extremely hesitant to venture into that 'mine' field. Thus, it will not grant the proposed party opportunity to be part of the long gone proceedings because its purpose shall have been served.*

14. 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*." It also gives the definition of a person to mean both a natural and juristic person. It does so by defining that person as "*an individual, organisation, company, association or any other body of persons whether incorporated or unincorporated*." It means that by the reference to an "individual" in the definition, which term by the ordinary grammatical meaning is rendered a single human being as distinguished from a group, it therefore includes adults and children. But one should not ignore the procedure of how children are represented in suits if they are (to be) parties.

15. The definition above should be looked at widely as to encompass anyone including governments both central and county ones, and any statutory bodies since they fall under the last category of the laundry list given in the definition. The list is not exhaustive: for one to fit in it only behooves him to satisfy the criteria for enjoinment to any proceedings as an interested party. The determining basis for joinder would be the establishment of a link between the substratum or subject matter of the proceedings at hand and a direct interest by and prejudice to a person seeking leave of the court to be enjoined as an interested party.

16. The **Cambridge Dictionary** (online) defines an interested party as "any of the people or organizations who may be affected by a situation." The term is defined in the **LexisNexis Website** as "any person (other than the claimant and defendant) who is directly affected by the claim." It has been stated further in the Website that a person will be directly affected by the claim if he or she will be affected by the grant of a remedy in the proceedings. The **Black's Law Dictionary 9th Edition** at Page **1232** defines an interested party as **"***A party who has a recognizable stake (and therefore standing) in the matter."* It also defines a **"**Necessary Party" as *"a party who being closely connected to a lawsuit should be included in the case if feasible but whose absence will not require dismissal of proceedings.***"**

17. In ***Judicial Service Commission v Speaker of the National Assembly & another [2013] eKLR***, the High Court stated that the interested party *"…is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to urge the Court to make a determination favourable to his stake in the proceedings*." In ***Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others [2014] eKLR***, at Para 18, the Supreme Court defined the term as "*…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*."

18. The above definition has the same import and content as the definition in the **Supreme Court Act, Act No. 7 of 2011** and the Rules made thereunder. **Section 23** of the Act provides that:

> **"(1) Any person entitled to join as a party or liable to be joined as a party in any proceedings before the Court may, on notice to all parties, at any stage of the proceedings, apply for leave to intervene as a party.**

**“(2) An application under this Rule shall contain information on-**

**(a) the identity of the person interested in the proceeding;**

**(b) a description of that person’s interest in the proceeding;**

**(c) any prejudice that the person interested in the proceeding would suffer if the intervention were denied; and**

**(d) the grounds or submissions to be advanced by the person interested in the proceeding, their relevance to the proceeding and the reasons for believing that the submissions will be useful to the Court and different from those of the other parties”.**

**19. Rule 25** of the **Supreme Court Rules, 2012** then provides that:

**“(1) A person may at any time in any proceedings before the Court apply for leave to be joined as an interested party.**

**“(2) An application under this rule shall include-**

**(a) a description of the interested party;**

**(b) any prejudice that the interested party would suffer if the intervention was denied; and**

**(c) the grounds or submissions to be advanced by the person interested in the proceeding, their relevance to the proceedings and the reasons for believing that the submissions will be useful to the Court and different from those of the other parties”.**

20. The provisions cited above rhyme well with the definition in **Rule 2** and process contemplated by **Rule 7** of the ***Mutunga Rules***. They (the numerous definitions above) lay the basis for this court determining whether or not the Applicants in the present Motion have brought themselves within the ambit of making a successful application for joinder as interested parties. In ***Joseph Njau Kingori vs. Robert Maina Chege & 3 others [2002] eKLR*** Nambuye J (as she then was), gave the guiding principles to be followed where there is an application to enjoin an intending interested party in a suit. They are that:

“............ (1) He must be a necessary party; (2) He must be a proper party; (3) In the case of the Defendant there must be a relief flowing from that Defendant to the Plaintiff; (4) The ultimate order or decree cannot be enforced without his presence in the matter; (5) His presence is necessary to enable the Court to effectively and completely to adjudicate upon and settle all questions involved in the suit”. The features given by Justice Nambuye fuse into the definitions given. The definitions and provisions sit well with the principles that were set out by the Supreme Court in the ***Muruatetu Case*** (referred to below) regarding the what a party has to satisfy in order for him to be enjoined as an interested party in any proceedings.

21. For clarity purposes, this court refers to the case of ***Baluram vs P. Chellathangam & Ors on 10 December, 2014*** where the Supreme Court of India defined both a “necessary party” and “proper party.” It stated as follows:

“A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made.”

22. This court proceeds now to consider the second issue for determination before it in order to answer fully the first one.

**(b) Whether the proposed interested parties should be enjoined in this suit**

23. There is a difference between the meaning, process and act of joining a party to a suit whether as plaintiff or defendant from that of joining an Interested Party to an existing suit. The former is the only one governed by most of the first part of **Order 1 Rule 10(2)** of the **Civil Procedure Rules**. At the relevant part the Sub-rule provides that:

“**The court may at any stage of the proceedings, either upon or without the application of either party,…order 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.**”

24. It is this court’s opinion that the term “addition” herein referred to relates to only to where the court issues an order to have that person included as a plaintiff or defendant. This is because an interpretation of the phrase when read disjunctively imports the idea. In that case, a party can apply for leave to add such persons whose presence will be vital in order to determine effectually the real issues in controversy. But the part of the provision that extends to cover the enjoinment of persons as interested parties is the last part of the phrase thereof that states “…**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."** This phrase gives the court a wide path to including persons as interested parties in suits. Moreover, the learned authors of ***Sarkar's Code of Civil Procedure (11th Ed. Reprint, 2011, Vol. 1 P. 887),*** making reference to Order 1 Rule 10(2) of the Indian Civil Procedure which is similar in all fours with Kenya's, state that:

> "The section should be interpreted liberally and widely and should not be restricted merely to the parties involved in the suit, but all persons necessary for a complete adjudication should be made parties." The Court of Appeal has agreed with this interpretation in the case of **JMK v MWM & another [2015] eKLR**. This has also been followed by the persuasive authority of **Temple Point Resort Limited v Accredo A G & 5 others [2018] eKLR**.

24. The phrase is (to be) governed by a special procedure whose legal stem is the ***Mutunga Rules*** of **2013**. Were the two processes similar, there would have been no need to give the definition of an Interested Party in **Rule 2** and the procedure in the provision in **Rule 7** of the said Rules to amplify how a proposed interested party can be brought into proceedings.

**26. Rule 7** provides for two ways in which a person may be enjoined in proceedings as an interested party. **Sub-rule 1** envisages a situation where the person moves the court. The said sub-rule provides as follows: "*A person, with leave of the Court, may make an oral or written application to be joined as an interested party.*" In that case, he has to be granted leave of the court first before applying to be enjoined. **Sub-rule 2** refers to where the court is of the view that it would be in the interest of an individual that he be enjoined to proceedings as an interested party. In that case the court will, *suo motto*, make an order for the person to be enjoined.

27. It should not be lost to anyone that for a proposed interested party to actively participate in proceedings, **Rule 7 Sub-rule 1** envisages a two-tier process. First, the proposed interested party should seek leave of the court. Although the **Rule** provides for an application of such nature being made orally or writing, the Supreme Court has held, and for good reason, that the Application should be made formally. This was stated by the Court in the ***Muruatetu case*** (referred to hereinbelow).

28. The principles set out in **paragraph 37** of the case of ***Francis Karioki Muruatetu & Another v Republic & 5 Others,*** **Petition 15** as **consolidated with 16 of 2013 [2016] eKLR** form the gravamen of the elements applicable where a party seeks to be enjoined in proceedings as an interested party. They are that the Applicant(s) must show:

> (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.

29. Have the Applicants met the above conditions? First, the court needs to determine whether they have a direct interest or stake in the proceedings. It is not in dispute that the interested parties are purchasers of a portion of the suit property. They aver that they purchased the land from the defendants and they are in the advanced stage of acquiring individual titles of their respective titles. They have annexed a Members Register marked as "**BD 2"** showing the names of the members who are required to receive individual titles once processed. They have further upon payment of survey fees, carried out survey and the land has already been subdivided in readiness for transfer. It is this subdivision that the Plaintiffs in their pleadings (the plaint) allege that the defendants have unlawfully prepared a sub-division plan and mutation forms for the suit land in respect to their (the plaintiffs'') entitlement. It is this mutation and the sub-division plan that the Plaintiffs pray that it be cancelled. The Plaintiffs are not in dispute that the defendants sold the land to the intended interested parties. However, they aver that the interests of the proposed interested parties have adequately been protected and represented by the defendants and that the addition of the interested parties would amount to a replication of evidence in court. I do not agree with the Plaintiffs in this regard. What the Applicants have in the outcome of the proceedings, if it is anything to go by, is a serious stake.

30. In the case of ***Judicial Service Commission -vs-Speaker of the National Assembly & Another*** **[2013] eKLR** the court, referring to the definition as given in the ***Mutunga Rules*** and reproduced above stated that:

> **"…an interested party …… is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to urge the court to make a determination favourable to his stake in the proceedings."**

31. From the foregoing, it is definite that an interested party is a person or a legal entity that is would be directly affected by the decision of a case either determined before a tribunal or a court of law especially if it is determined in favour of the adversary.

32. Have the interested parties demonstrated that they have an **identifiable stake** in these proceedings? The interested parties aver that they are purchasers of portions of the suit land and are in occupation thereof for a period more than **25** years now and are only waiting for titles to be processed in their favour. They allege that they have spent much money in terms of developments and survey fees contributions in relation to the parcels they occupy. In my considered view therefore, that the interested parties have first proved that they have a legal stake in the suit. For this case, each of them would to be ***dominus litis*** because they are likely to be adversely affected by the final orders of this Court.

33. A cursory perusal of the members list confirms that the intended interested parties appear in the list. This clearly indicates that they have a legal stake in these proceedings since they have a duty to protect their proprietary interests over the suit land. Indeed the Plaintiffs acknowledge that the proposed interested parties have interests in the property in dispute. Their point of departure is that these interests

would be protected by the defendants.

34. Perchance that the Defendants are granted the sole right to proceed with the case, or so to say, to the exclusion of the proposed interested parties and they fail to adduce evidence or conduct their case properly and they lose, what shall happen to the proposed interested parties' interests? They will go up in flames with the inadequacies of the Defendants. Therefore, this court is of the view that there will be real prejudice that the proposed interested parties stand to suffer should they not be enjoined. This court is duty bound to, in the interest of justice, offer a chance to persons, however many they be, to be heard. This is in line with the principles of natural justice. Their joinder would enable them have their day in court to ventilate their issues.

35. Further, the orders sought in the Plaint if allowed as against the defendants will adversely affect the interests of the proposed interested parties. These parties might not have the chance to be heard if they are not enjoined at this stage. The plaintiffs on the other hand have not demonstrated any prejudice they would suffer if the orders sought are not granted.

36. Lastly, the next issue is whether or not the Applicants have set out their case and/or submissions it intends make before the Court and shown that their case is not replica of what other parties have before the Court. The Applicants argue that they intend to urge a case in court that they purchased parcels of land from the Defendants and that they await issuance of titles thereto. They thus allege having proprietary interests in the suit land. Their ownership of the parcels they occupy, if any and if proved to be true, is not subsumed in the proprietary rights of the parties in the suit. This is a case set out clearly.

37. I have noted that the case is at the preliminary stage. It has neither been heard nor have parties complied with **Order 11** (so to say, the pleadings have not been closed). Even so, I have noted above that enjoinment of parties to proceedings can be ordered at any stage before the court becomes *functus officio*.

38. I am satisfied that the proposed interested parties have met the threshold set out in the ***Muruatetu case*** **(Supra).** In considering whether or not to allow the prayers sought, this Court is enjoined to consider whether the prayers are couched in the manner that they would, if granted, give the proper result and finding of the Court. I have considered the wording of **prayers 2** and **3** of the Notice of Motion. In my view, one replicates the other in part while the other one is mixed up with obvious processes which if blanketly ordered by this Court as sought presently or prayed would easily distort the entire litigation process in this suit. At this point I once more reiterate, as I have stated in other decisions elsewhere, that counsel and drafters of pleadings would do well to pay singular attention to the manner in which they draft their documents. This seems not to be the case in regard to the prayers I have considered above, and they have presented difficulty to me. Ordinarily, it is not the duty of the court to craft prayers, that is to say, the final orders or decree for parties, especially where they are represented by counsel.

39. I therefore, in the interest of justice, proceed to allow the Application in terms of the two prayers (summarized) that the law permits me at this stage to do. Thus, **I grant leave to the Applicants to be enjoined as Interested Parties in this suit**. As to whether they decide to participate in the proceedings fully (as prayer 3 is crafted by the Applicants) or not it is not a matter of the court to order or enforce. It is up to them. Similarly, subsequent filing of pleadings and documents by the parties is dependent on many factors which are not open to the Court to assess compliance thereof at this stage. As I have said, I found great difficulty in the manner in which the prayers in the Application were drafted. But in the interest of justice I have granted the prayer that aptly fits the occasion. That is why it is in bold above, lest someone misunderstands the end result of the Application that was before me.

**(c) Whether the orders issued on 6/8/2021 should be reviewed or varied**

40. This Court having allowed **Prayer 2** and **3** of the Application dated **12/8/2021** in the manner stated immediately above, it now considers **Prayer 4** thereof. The prayer is to the effect that the Orders of this Court issued on **06/8/2021** be reviewed and that the Court grants the (proposed) Interested Parties a chance to file their response to the Application dated **16th April, 2021** and written submissions thereto. One would have to first understand what the Orders of **06/8/2021** were. On the said date this Court delivered a ruling which was in relation to an Application dated **07/6/2021**. The said Application had sought for orders of review of orders made on **27/5/2021**. By the said orders, the Application the Plaintiffs/Applicants' Notice of Motion dated **12/5/2021** had been dismissed.

41. Without going to the merits or otherwise of the **prayer**, this court needs first to determine whether or not the prayer is competently before it. This is because once the competency of a party to move the Court is established it gives the basis for the court to exercise the jurisdiction that both the Constitution and statute give it. It is upon that that the merits will be the next issue to go into. The prayer was made at the same time the proposed interested parties sought to be given leave to be enjoined in the suit. That is un-procedural. No legal cure, including **Articles 40, 48** and **50** of the **Constitution** that the Applicants called to their aid, and **159 (2) (d)** which parties often resort to when they gasp for breath in the weakness of their cases and arguments, or **Sections 1A, 1B, 3A** and **100** of the **Civil Procedure Act** can be of any avail. Praying for anything more than seeking leave to be enjoined is putting the cart before the horse. Before leave is granted to a party to be enjoined, one has no more to say or pray to a court than that "I need leave".

42. This Court finds that the prayer was sought by a stranger to the proceedings as at the time the prayer was made. It has been pointed out at **Paragraph 26** above that for a proposed interested party to participate in any proceedings in a suit he has to make three pertinent steps which arise from a two-tire process: he has to seek leave of the court first which, if granted; he then files the requisite documents to come on record as an interested party, and then make the necessary applications or motions that he would like the court to hear him on.

43. In the instant case, the proposed interested parties filed an application for joinder. Before being enjoined they sought the prayer in question. This prayer was sought prematurely and is therefore incompetent before the Court. Supposing the court were to grant this prayer at this stage, on whose account other than a stranger in the proceedings or on what basis? By granting leave, the Court has only pronounced itself in a manner similar to saying thus "*you are free to be enjoined in the suit*." Have they been enjoined? Certainly not. Granting such a prayer would be taking a step in a vacuum. What if they do not take the step to be enjoined yet the court shall have granted the prayer? I therefore decline to allow the prayer.

44. This matter shall be mentioned virtually on **02/11/2021** to confirm the steps the Applicants shall have taken, and for further orders and directions.

45. The costs of this Application shall be in the Cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 18TH DAY OF OCTOBER, 2021**

**DR. *IUR* FRED NYAGAKA**

**JUDGE, ELC, KITALE.**