



REPUBLIC OF KENYA



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

**Tsangari & another (Both Suing in Their Capacity as Representatives of the Members of the Mwavumbo Group Ranch) v Mwavumbo Group Ranch & 5 others; Zuma & another (Interested Parties) (Environment and Land Case 248 of 2021) [2025] KEELC 6593 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6593 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KWALE**  
**ENVIRONMENT AND LAND CASE 248 OF 2021**

**LL NAIKUNI, J**  
**SEPTEMBER 30, 2025**

**BETWEEN**

**RICHARD MENZA TSANGARI ..... 1<sup>ST</sup> PLAINTIFF**  
**KOMBO MWAKUMBO ..... 2<sup>ND</sup> PLAINTIFF**  
**BOTH SUING IN THEIR CAPACITY AS REPRESENTATIVES OF THE**  
**MEMBERS OF THE MWAVUMBO GROUP RANCH**

**AND**

**MWAVUMBO GROUP RANCH ..... 1<sup>ST</sup> DEFENDANT**  
**MOHAMED KHAMISA ..... 2<sup>ND</sup> DEFENDANT**  
**MOHAMED SHEIKH AYUB KHAMISA ..... 3<sup>RD</sup> DEFENDANT**  
**MOHAMED SHEIKH ABDULAH I ..... 4<sup>TH</sup> DEFENDANT**  
**SANABIL AGENCIES CO. LTD ..... 5<sup>TH</sup> DEFENDANT**  
**CHASE BANK (K) LTD ..... 6<sup>TH</sup> DEFENDANT**

**AND**

**BAYA MKAHA ZUMA ..... INTERESTED PARTY**  
**RASHID MWADIGA ..... INTERESTED PARTY**



## RULING

### I. Introduction

1. Before the Honorable Court for its determination is the Notice of Motion application dated 24<sup>th</sup> October 2024. It was brought to court by ‘Baya Mkaha Zuma and Rashid Mwadiga’, the Interested Parties/Applicants herein. The application was under the dint of Order 1 Rules 8, 10 and 14 of the Civil Procedure Rules 2010 and Sections 1A, 3B of the *Civil Procedure Act*, Cap. 21.
2. Upon Service the Defendants/Respondents in opposition of the application filed grounds of opposition dated 29<sup>th</sup> May 2025.

### II. The Interested Parties/Applicants’ Case

3. Through the said application the Interested Parties/Applicants sought for the following orders: -
  - i. That Baya Mkaha Zuma And Rashid Mwadiga be joined to these proceedings as Plaintiffs.
  - ii. That costs of the Application be provided for.
4. The application is based on the grounds, testimonial facts and averments made out under the contents of the 13 Paragraphed Supporting Affidavit of Baya Mkaha Zuma And Rashid Mwadiga sworn jointly and dated on 24<sup>th</sup> October 2024 together with two (2) annexures marked as “M - 1 (a) and (b)” annexed thereto. They averred as follows that:-
  - a. The Applicants were both adult males of sound mind and competent to swear the affidavit in support of the present application.
  - b. Save where otherwise indicated, the Applicants deposed that the contents of the affidavit were within their own knowledge. To the extent that any statements were made on information or belief, they disclosed the source of such information and verily believed the same to be true.
  - c. They averred that the affidavit was sworn in support of their application for joinder to the suit, to enable the Court to proceed with the hearing and determination of the matter.
  - d. The Applicants stated that at the inception of the proceedings, they were aware of the suit, but granted authority to the Plaintiffs to prosecute it on behalf of the group.
  - e. They contended that the current suit was a representative action, and that the Plaintiffs had been duly authorized to file and pursue it in protection of the collective interests of the entire group.
  - f. They further deposed that sometime in the year 2022, the 2<sup>nd</sup> Plaintiff passed away, leaving the 1<sup>st</sup> Plaintiff as the sole remaining Plaintiff in the matter.
  - g. According to the Applicants, on several occasions when the matter was scheduled for hearing, the 1<sup>st</sup> Plaintiff, for one reason or another, failed to attend Court to prosecute the suit.
  - h. They asserted that it was not until 8<sup>th</sup> October, when the advocates then on record served a Notice to Act in Person and a Notice of Withdrawal, that they came to the realization that the 1<sup>st</sup> Plaintiff was no longer interested in pursuing the matter or protecting the interests of the group. They annexed copies of the said documents, marked “M-1 (a) & (b).”



- i. The Applicants further contended that it had since become apparent to them that the Plaintiff was currently acting in a manner adverse to the interests of the group.
- j. They averred that from the Plaintiff's unilateral actions, it was evident that he did not have the interests of the group at heart.
- k. They further maintained that the Plaintiff had failed to acknowledge that, this being a representative suit, he had no authority to withdraw the suit at his own whims.
- l. In the circumstances, they urged that in order to safeguard the suit premises and the interests of the members, it was fair, just, and necessary that they be joined to the proceedings so that the Court could hear and determine the matter effectively.
- m. They therefore prayed that, in the interest of justice, the Court allows the application as sought.
- n. To them, the proper course was for the Court to allow their joinder to the proceedings, as this would safeguard the interests of all members represented in the suit.
- o. They contended that their participation was necessary to ensure that the matter was prosecuted diligently, and that the rights of the group was not compromised by the unilateral actions of the Plaintiff.
- p. Therefore, the Applicants averred that their inclusion was essential for the Court to effectively and conclusively adjudicate upon the dispute and arrive at a just and fair determination.
- q. They accordingly prayed that the application be allowed.

### **III. The Grounds of Opposition by the Defendants/Respondents**

5. As indicated, upon service with the application the Defendants/Respondents filed Grounds of Opposition dated 29<sup>th</sup> May 2025 dated even date. It stated as follows: -
  - a. The application was misconceived and incompetent in law.
  - b. The two Interested Parties/Applicants namely: Baya Mkaha Zuma and Rashid Mwadiga had not demonstrated that there were members of Mwavumbo Group Ranch. They were mere busy bodies without legal capacity or interest in the suit or locus standi.
  - c. The 1<sup>st</sup> Defendant named herein was Mwavumbo Group Ranch and the two Interested Parties/Applicants cannot institute a suit against themselves.
  - d. The 1<sup>st</sup> Plaintiff having died (admitted by all parties) and the 2<sup>nd</sup> Plaintiff having withdrawn this suit on 20<sup>th</sup> September 2024 by filing a Notice of Withdrawal under the provision of Order 25 Rule 1 of the Civil Procedure Rules, 2010 on even date this suit was terminated and extinguished. The Parties/Applicants could not therefore join in a non-existence suit. The affidavit jointly sworn by the Interested Parties/Applicants in support of the application dated 24<sup>th</sup> October 2024 was incompetent and fatally defective.
  - e. Hence, the Defendants/Respondents prayed for the application to be dismissed with costs.

### **V. Submissions**

6. On 10<sup>th</sup> March, 2025 while all the parties were in Court, they were directed to file their written submissions. However, by the time the court was penning down this Ruling only the Interested



Parties/Applicants had filed its written submissions. By and large, the Honorable Court will proceed to make the Ruling on merit thereof.

#### **A. The Written Submissions by the Interested Parties/Applicants**

7. The Learned Counsel for the Interested Parties/Applicants – the Law firm of Messrs Oduor Simiyu & Company filed the written submissions dated 30<sup>th</sup> May 2025. Mr. Siminyu Advocate commenced the submission by stating that the current application was for joinder to a representative suit. It was necessitated by the 1<sup>st</sup> Plaintiff's attempt to withdraw the action unilaterally. They argued that the Notice of Withdrawal was invalid because the suit had been set down for hearing on multiple occasions. The Counsel contended that under the provision of Order 25 Rule 1 of the Civil Procedure Rules, 2010, withdrawal after such a stage required either the consent of all parties or the leave of the Court.
8. To buttress on this legal point, the Learned Counsel placed reliance on the Court of Appeal decision in the case of:- “Beijing Industrial Designing & Research Institute – Versus - Lagoon Development Ltd [2015] eKLR, the Applicants outline three scenarios for discontinuance or withdrawal of suits:
  - a. Where the suit has not been set down for hearing, the Plaintiff has an absolute right to withdraw by notice.
  - b. Where the suit has been set down for hearing, withdrawal requires written consent from all parties.
  - c. Where no such consent is obtained, leave of the Court must be sought, and such leave is granted on terms to ensure justice.
9. Thus, the Applicants argued that this case fell under the latter two scenarios. This was because the suit was set down for hearing several times, and no consent was obtained from other parties or group members. They emphasized that the 1<sup>st</sup> Plaintiff lacked authority to withdraw a representative suit at whim, as it prejudices the interests of the group members he represented.
10. Further, the Applicants highlight subsisting Court orders dated 14<sup>th</sup> January 2019, which temporarily lifted restrictions on the suit land to allow subdivision while preserving the disputed 20-acre leases for determination in this suit. Allowing unilateral withdrawal would render these orders otiose, undermine the rule of law, and defeat the ends of justice. They assert that the Court should not permit abuse of process and must sanction any withdrawal in a representative action involving protected interests.
11. On costs, the Applicants submitted that they should follow the event, with the 1<sup>st</sup> Plaintiff bearing the costs of the application, as he is the architect of the current impasse through his unilateral actions.

#### **VI. Analysis and Determination**

12. I have keenly considered all the issues raised from the application dated 24<sup>th</sup> October 2024 by the Applicants, the filed pleadings, the written submissions by the Applicants, the myriad of authorities cited herein, the relevant provisions of *the Constitution* of Kenya 2010 and statutes.
13. In order to arrive at an informed, just fair and reasonable decision the Honorable Court has framed the following three (3) issues for its determination. These are:-
  - a. Whether the 1<sup>st</sup> Plaintiff can withdraw the suit without leave of the Court?
  - b. Whether the Notice of Motion application dated 24<sup>th</sup> October 2024 by the Interested Parties / Applicants seeking to have parties joined in the suit has any merit.



- c. Who will bear the costs of the Notice of Motion application dated 24<sup>th</sup> October 2024?

**ISSUE No. (a) Whether the 1<sup>st</sup> Plaintiff can withdraw the suit without leave of the Court?**

14. This is a court of law and justice. In determining the matters before it, it is guided by *the Constitution* of Kenya, 2010 the provisions of law and equity and the principles of natural justice. Given these legal principles, the Court is enjoined to give effect to the overriding objective both Sections 3(1) of the Environment and *Land Act*, No. 19 of 2011 and 1A (1) of the *Civil Procedure Act*, that it to say, to facilitate “... the just, expeditious, proportionate and accessible resolution of disputes”. That has to be done without procedural technicalities, as contemplated under the provision of Article 159 (2) (d) of *the Constitution* of Kenya 2010.
15. The provision of Order 25 of the Civil Procedure Rules, 2010 provides for withdrawal of suits as follows: -
- (1) At any time before the setting down of the suit for hearing, the Plaintiff may by notice in writing, which shall be served on all parties, wholly discontinue his suit against all or any of the Defendants or may withdraw any part of his claim, and such discontinuance or withdrawal shall not be a defence to any subsequent action.
- (2)
- (1) Where a suit has been set down for hearing it may be discontinued, or any part of the claim withdrawn upon the filing of a written consent signed by all the parties.
- (2) Where a suit has been set down for hearing, the court may grant the Plaintiff leave to discontinue his suit or to withdraw any part of his claim upon such terms as to costs, the filing of any other suit and otherwise, as are just.”
16. The right to withdraw a suit under the provision of Order 25 Rules 1 and 2(1) is not fettered by any conditions and a party who intends to withdraw their suit, has an absolute right to do so. However, under Order 25 Rule 2 (2), withdrawal of a suit requires permission of the court and the withdrawal may be subject to terms that the court considers just, including payment of costs or filing of any other suit.
17. In the case of “Nicholas Kiptoo Arap Korir Salat – Versus - IEBC & 7 Others, Supreme Court Application No. 16 of 2014”, the Supreme Court stated as follows: -
- “a party’s right to withdraw a matter before the court cannot be taken away. A court cannot bar a party from withdrawing his matter. All that the court can do is to make an order as to costs where it is deemed appropriate.”
18. Additionally, in the case of “Beijing Industrial Designing & Researching Institute (Supra)”, the Court of Appeal stated as follows: -
- “As a general proposition, the right of party to discontinue a suit or withdraw his claim cannot be questioned. There are many circumstances when a Plaintiff may legitimately wish to discontinue his suit or withdraw his claim. The Supreme Court of Nigeria in *Abayomi Babatunde vs. Pan Atlantic Shipping & Transport Agencies Ltd & Others SC 154/2002* identified those circumstances to include where;
- (i) A Plaintiff realizes the weakness of his claim in the light of the defence put up by the Defendant.



- (ii) A Plaintiff's vital witnesses are not available at the material time and will not be so at any certain future date,
  - (iii) Where by abandoning the prosecution of the case, the Plaintiff could substantially reduce the high costs that would have otherwise followed after a full-scale but unsuccessful litigation, or
  - (iv) A Plaintiff may possibly retain the right to relitigate the claim at a more auspicious time if necessary.
19. From the court record the matter was last before court on 13<sup>th</sup> September 2024 before the Hon. Deputy Registrar for the Environment and Land Court, Kwale. On that occasion, the Hon. Deputy Registrar gave directions as follows:
- Matter shall be heard on 10<sup>th</sup> March 2025. Hearing shall be hybrid. Hearing notice to be issued to other parties within 30 days.
20. Thereafter, the parties appeared before me on the said 10<sup>th</sup> March 2025 where parties highlighted the fact that the application before court was filed and the Notice of Withdrawal was also filed on 20<sup>th</sup> September 2025. Clearly the leave of court was neither sought nor granted at any point. For the Notice of withdrawal to be effected there should have been either the consent of the parties or leave of court. Certainly, the leave of court was not a formality. Undoubtedly, it is a legal requirement.
21. Accordingly, the Notice of Withdrawal filed by the 1<sup>st</sup> Plaintiff on 20<sup>th</sup> September 2024 is ineffective without leave of the Court, and such leave is not granted in the present context to safeguard the group's interests.

**ISSUE No. (b) Whether the Notice of Motion application dated 24<sup>th</sup> October 2024 by the Interested Parties /Applicants seeking to have parties joined in the suit has any merit.**

22. The Honourable Court opines that Joinder of parties is governed by the provision of Order 1 of the Civil Procedure Rules, 2010. In law, joinder should be permitted of all parties in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally; or in the alternative, where if such persons brought separate suits, any common question of law of fact would arise. See also the provision of Order 7 Rule 9 of the Civil Procedure Rule, 2010. The court may even in its own motion add a party to the suit if such party is necessary for the determination of the real matter in dispute or whose presence is necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit.
23. Therefore, joinder of parties is permitted by law and it can be done at any stage of the proceedings. But, joinder of parties may be refused where such joinder: will lead into practical problems of handling the existing cause of action together with the one of the party being joined; is unnecessary; or will just occasion unnecessary delay or costs on the parties in the suit. In other word, joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible to or totally different from existing cause of action or the relief. The determining factor in joinder of parties is that a common question of fact or law would arise between the existing and the intended parties. This is the test I shall apply in this case.



24. Under the provision of Order 1 Rule 10 (2) of the Civil Procedure Rules, 2010 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.”

25. In saying so, I wish to refer to the case “Pravin Bowry – Versus - John Ward and Another [2015] eKLR” the Court of Appeal considered the principles to be considered in an application for joinder of parties to a suit. The court referred to the Ugandan case of “Deported Asians Custodian Board – Versus - Jaffer Brothers Ltd [1999] 1 E.A. 55 (SCU)” where the court stated as follows:

“A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. A party may be joined in a suit because the party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the cause or matter.....

For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the court in that suit. Alternatively, a person qualifies (on an application of a defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.” (Emphasis by underline)

26. Additionally, the Court of Appeal in the case of:- “JMK – Versus - MWM & another [2015] eKLR” while speaking to the principle of joinder of a party in a proceeding noted as follows:

“This Court adopted the same approach in CENTRAL KENYA LTD - Versus - TRUST BANK & 4 OTHERS, CA NO. 222 OF 1998, when it affirmed that the guiding principle in amendment of pleadings and joinder of parties is that:

“all amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs.”

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.....”



27. Further, the Court of Appeal in the case of “EG – Versus - Attorney General; David Kuria Mbote & 10 others (Interested Parties) [2021] eKLR” shedding more light on the application of this principle held as follows:

“(1) The core of the court’s power to join a party to any proceedings including at the appellate stage, as aptly discussed in Hamisi Yawa & 36,000 others – Versus - Tsangwa Ngala Chome & 19 others [2018] eKLR, is to bring on board a necessary party for purposes of determining the real issue(s) in dispute. Also, a joinder of a party is not an automatic right, but one which is granted upon exercise of the discretion of the court concerned. Nonetheless, the court exercises such discretion under defined parameters, that is, it must be satisfied that: -

- i. The intended party has a personal interest or stake in the matter in question; and that interest is clearly identifiable and proximate enough and not merely peripheral.
- ii. The intended party’s presence would enable court to resolve all the matters in the dispute.
- iii. The intended party would suffer prejudice in case of non-joinder.
- iv. The joinder of the intended party will not vex the parties or convolute the proceedings with unnecessary new matters and grounds not contemplated by the parties or envisaged in the pleadings.”

28. Similarly, in the case of “Meme – Versus - Republic, [2004] 1 EA 124”, the High Court observed that a party could be enjoined in a matter for the reasons that:

“

“(i) Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;

(ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;

(iii) Joinder to prevent a likely course of proliferated litigation.

We ask ourselves the following questions: a) what is the intended party’s state and relevance in the proceedings and b) will the intended interested party suffer any prejudice if denied joinder.?”

29. The principles objectives for joinder are enunciated in the case of “Joseph Njau Kingori – Versus - Robert Maina Chege & 3 others [2002] eKLR” that:-

“... that the guiding principles when an intending party is to be joined are as follows:

- (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.”
30. Although joinder as a party is not an automatic right, a party who is desirous to have a party enjoined in the suit can do so at any time in an ongoing proceeding through an application. The Court will then consider it and in its discretion decide on the suitability of such an addition. In making this determination the Court is accordingly guided by the principles set out in the cited authorities.
31. Applying the above legal principles to the instant case, the Applicants through their notices of motion application seek to be enjoined as Plaintiffs because;
- i. the suit herein is a representative suit and the Plaintiffs were authorized to protect the interest of the entire group.
  - ii. sometimes back in 2022 the 2<sup>nd</sup> Plaintiff went to be with his maker leaving the 1st Plaintiff as the sole Plaintiff.
  - iii. for several occasions the Plaintiff has failed to attend court due to one reason or the other.
  - iv. on the 20<sup>th</sup> September, 2024 the Plaintiff without consultation filed both a Notice to Act in person and a Notice of withdrawal of the entire suit.
  - v. it is now very clear that the Plaintiff either has been compromised or does not act in the best interest of the group.
  - vi. in the circumstances and to protect the suit premises it is only fair and just to join the Interested party/Plaintiff to this suit to enable the court have full and final determination of this matter.
  - vii. it is in the interest of justice that the orders sought be granted.
32. Under the contents made out in Paragraph 1 of the Plaintiff dated 19<sup>th</sup> February 2016, while instituting this suit it states that:
1. The Plaintiffs are male adults of sound mind and residents of Mwavumbo, Kwale County. The Plaintiffs bring this suit on their own behalf and on behalf of the members of the Mwavumbo Group Ranch, some of whom have given them authority and/or consent, which authority and/or consent has been filed. The Plaintiffs hand the entire membership of the Mwavumbo Group Ranch are hereinafter collectively referred to as the Plaintiffs. Their address of service for the purposes of this suit shall be care of Oduor Siminyu & Company Advocates, Legal Mansion, 1st Floor, P.O Box 2992-80100mombasa.
33. In the Affidavit dated 19<sup>th</sup> February 2016 accompanying the Notice of Motion filed together with the Plaintiff the Plaintiff sworn that:-
1. That We Richard Menza Tsangari And Kombo Mwakumbo male adults of sound mind both of P.O BOX NUMBER 516 Mariakani and residents of Mwavumbo in Kwale County within the Republic of Kenya are the Plaintiffs herein and duly authorized to swear this Affidavit and thus competent to swear it. Annexed hereto and marked 'RT KM-1' is a copy of the letter of authority.



34. In light of the foregoing principles and upon careful consideration of the Applicants' Notice of Motion, the supporting affidavits, and the circumstances of this case, I find that the Applicants have demonstrated a clear and direct interest in the subject matter of the suit. As members of the Mwavumbo Group Ranch, their rights and those of the wider group are intrinsically linked to the outcome of these proceedings, which were instituted as a representative action to protect collective interests. The apparent inaction, non-attendance, and unilateral steps taken by the sole remaining Plaintiff— including the filing of a Notice to Act in Person and a Notice of Withdrawal without consultation—raise legitimate concerns that the suit may not be pursued in the best interests of the group, potentially leading to prejudice against the Applicants and other members.
35. Further, applying the test under Order 1 Rule 10(2) of the Civil Procedure Rules, 2010, and guided by the authorities cited, including “Pravin Bowry (Supra), JMK – Versus - MWM & Another [Supra], and Joseph Njau Kingori – Versus - Robert Maina Chege & 3 Others [Supra]”, the Applicants qualify as necessary parties. Their joinder is essential to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit, prevent proliferated litigation, and ensure the protection of the group's rights. It will not occasion undue delay, prejudice to the existing parties, or introduce incompatible causes of action, as the relief sought aligns with the original plaint.
36. Consequently, the Applicants' application is allowed. It follows that the Applicants are hereby enjoined as the 3<sup>rd</sup> and 4<sup>th</sup> Plaintiffs in this suit.

**ISSUE No. c). Who will bear the costs of the Notice of Motion Application dated 24<sup>th</sup> October 2024?**

37. It is now well established that the issue of costs is at the Courts discretion. Costs mean the award a party is awarded at the conclusion of a legal action or proceedings in any litigation. The Black Law Dictionary defines cost to means:-
- “the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other”
38. The proviso of Section 27 of the *Civil Procedure Act*, Cap. 21 grants the High Court discretionary power in the award of costs which ordinarily follow the event unless the Court for good reasons orders otherwise. Section 27 (1) provides as follows:-
- “(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”
39. A careful reading of Section 27 indicates that it is considered trite law that costs follow the cause/event unless the court, for some good reasons, orders otherwise.
40. In this case, as this Honourable Court has opined above, and as the matter is still proceeding on, the Costs of these applications shall be in the cause.



## VII. Conclusion and Findings

41. Consequently after causing an in-depth analysis of the framed issues, the court on preponderance of probabilities holds and specifically order as follows:-
- a. That the Notices of Motion application dated 24<sup>th</sup> October 2024 be and is hereby found to have merit and hence allowed in terms of prayer 1.
  - b. That the Notice of Withdrawal filed by the 1<sup>st</sup> Plaintiff on 20<sup>th</sup> September 2024 is hereby set aside.
  - c. That the Interested parties/Applicant in the said application are hereby enjoined as the 3<sup>rd</sup> and 4<sup>th</sup> Plaintiffs in this suit.
  - d. That the Plaintiff shall be amended accordingly within 14 days from the date of this ruling, and the amended Plaintiff served upon all parties. The Defendants to amend their Statement of Defences.
  - e. That for the sake of expediency there shall be a mention on 20<sup>th</sup> Nov..... For purposes of conducting Pre – Trial Conference to confirm compliance and further directions being that this is a fairly old matter and should have been concluded by now. There shall be a hearing on 12<sup>th</sup> March, 2026
  - f. That the cost of the Notice of Motion application dated 24<sup>th</sup> October 2024 to abide the outcome of the main suit.

It Is So Ordered Accordingly.

**RULING DELIVERED VIA MICROSOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2025.**

.....  
**HON. JUSTICE MR. L. L. NAIKUNI**

**ENVIRONMENT AND LAND COURT AT KWALE**

Ruling delivered in the presence of:

- a. Mr. Daniel Disii, Court Assistant.
- b. Mr. Siminyu Advocate for the Interested Parties/Applicants.
- c. Mr. Asige Advocate for the 2<sup>nd</sup>, 3<sup>rd</sup> & 5<sup>th</sup> Defendants.
- d. No appearance for the 6<sup>th</sup> Defendant.

