



Kasarani No. 4A Mathare Dancers (Suing Through Its Official Francis Macharia Mwangi) v Agricultural & Industrial Holdings Ltd & 8 others; Seven Self Help Group (Through Its Officials Eliud Mbugua, Peter Muchiri And Moses Muchiri) (Intended Interested Party) (Environment and Land Case E028 of 2024) [2025] KEELC 6767 (KLR) (Environment and Land) (9 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6767 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND CASE E028 OF 2024
MC OUNDO, J
OCTOBER 9, 2025**

BETWEEN

KASARANI NO. 4A MATHARE DANCERS (SUING THROUGH ITS OFFICIAL FRANCIS MACHARIA MWANGI) PLAINTIFF

AND

AGRICULTURAL & INDUSTRIAL HOLDINGS LTD 1ST DEFENDANT

LANDS REGISTRAR, NAIVASHA 2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

AND

GEORGE GACHUHI KARIUKI-SECRETARY ALFRED KINYANJUI-CHAIRMAN JECINTA WAMBUI THIONGO-TREASURER (SUING AS OFFICIALS OF ELMONNA SELF HELP GROUP) 1ST INTENDED DEFENDANT

RUTH WANGECI 2ND INTENDED DEFENDANT

MARK CHEGE 3RD INTENDED DEFENDANT

FREDRICK MACHARIA WAIKAO 4TH INTENDED DEFENDANT

DEREK KIHUGI NGANGA 5TH INTENDED DEFENDANT

SIMON MWITI INOTI 6TH INTENDED DEFENDANT

AND



**SEVEN SELF HELP GROUP (THROUGH ITS OFFICIALS ELIUD MBUGUA,
PETER MUCHIRI AND MOSES MUCHIRI) INTENDED INTERESTED PARTY**

RULING

1. Before me for determination are two Applications, the first one dated 14th May 2025 and the second one dated 16th May, 2025. For ease of reference, the parties herein shall be referred to as they appeared in the suit.
2. The first Application dated 14th May, 2025, is a Notice of Motion Application brought by the Intended Interested Party pursuant to the provisions of Order 1 Rule 10(2) of the Civil Procedure Rules, Section 1A, 1B & 3A of the *Civil Procedure Act*, Cap 21 Laws of Kenya in which it seeks to be joined in the proceedings as an Interested Party. It also sought that the costs of the Application be provided for.
3. The Application was supported by the grounds therein and a Supporting Affidavit of an even date sworn by Eliud Mbugua, its Chairman who deponed that the Intended Interested Party had a direct and identifiable interest in one of the subject parcel of land being Gilgil/Gilgil Block 1/3048 as it was its registered proprietor. That the Plaintiff herein had previously sued it and others in Nakuru ELC Case No. 62 of 2019(OS) as per their annexure "EM1" claiming adverse possession over the said parcel of land. That the case had been concluded as per the judgement dated 30th May 2024.
4. That the orders or reliefs sought in the instant matter, if granted in its absence, were likely to adversely affect its legal rights and interests. That it was a necessary party for the effective adjudication wherein its joinder was crucial for a fair and just determination of the issues in question.
5. The second Application dated 16th May, 2025 is a Notice of Motion brought by the Intended Defendants pursuant to the provisions of Order 1 rule 3, Order 1 rule 10(2), order 53 rule 1, 2, 3, 4, 51 rule 1 of the Civil Procedure Rules 2010, Section 3A of the *Civil Procedure Act*, Article 40, 47, 50 & 159 of *the Constitution*, Section 4 of the *Fair Administrative Action Act* and all enabling provisions of the law in which the Intended Defendants seeks for their joinder to the suit as the 4th to 9th Defendants whereinafter they be granted leave to file their pleadings.
6. This Application was supported by the grounds therein and a Supporting Affidavit of an even date sworn by Derek Kihugi Ng'anga, the 5th Intended Defendant herein who deponed that they were registered owners of land parcels No. Gilgil Block 1/3051, 3053, 3055, 3050, 3054, 3056, 3057, 39768, and 39767 which titles the Plaintiff had sought to be cancelled yet they had been in continuous occupation of the same.
7. They also deponed that the Plaintiff had previously moved the court vide Nakuru Environment and Land Court No. 62 of 2019 (OS) as per the Plaint and judgement herein annexed as GKN 2(a & b) seeking adverse possession of the parcels of land which suit had been dismissed with costs.
8. That their joinder to the suit would enable them to lay their claim and to fully participate during the hearing to shed more light on the suit property. That their deliberate non-joinder by the Plaintiff, was a calculated act of mischief and an abuse of the court process.
9. That since the matter had not proceeded for hearing, their joinder would not prejudice the Plaintiff in any way wherein they were necessary for the effective and eventual adjudication of the same because they were the registered owners of the suit properties and were in possession of valid title deeds.



10. That their joinder would avert an injustice being occasioned were the Plaintiff to proceed, in their absence, and have their titles cancelled without according them a chance to defend their rights.
11. In response and in opposition to both the Applications, the Plaintiff vide its Replying Affidavit dated 16th June 2025 sworn by Francis Macharia Mwangi one of its officials, deponed that the member who had filed Nakuru ELC No. 62 of 2019 had no authority to bring suit on its behalf. That the instant dispute was purely between it and the 1st and 2nd Defendants where it was claiming against the 1st and 2nd Defendants 18 acres which had been hived from its parcel of land No. Gilgil/Gilgil Block 1/3046 which measured 61.612 acres. That the Applicants herein were not its members to be allotted the suit property and neither had they explained how they had acquired the suit properties herein. That they therefore had a cause of action against the 1st and 2nd Defendants and not the Plaintiff.
12. The two Applications were canvassed by way of written submissions which I shall summarize as hereinunder.

Intended Interested Party's Submissions.

13. The Intended Interested Party vide its submissions dated 26th June, 2025 in support of its Application placed reliance on the provisions of Order 1 Rule 10(2) of the Civil Procedure Rules and the decided case of Kanambiu & another v Muriithi; Kanambiu (Proposed Interested Party) (Civil Appeal 029 of 2022) [2023] KEHC 21818 (KLR) (9 August 2023) (Ruling) to submit that it was the registered owner of land parcel No. Gilgil/Gilgil Block 1/3048 which the Plaintiff/Respondent sought to cancel the title deed among others and therefore it had met the relevant criteria to be joined to the suit as an interested party.

4th to 9th Intended Defendants' Submissions

14. The Intended Defendants vide their submissions dated 30th June, 2025 in support of their application summarized the factual background of the matter before framing two (2) issues for determination as follows:
 - i. Whether their Application dated 16th May 2025 is merited.
 - ii. Who should bear the costs.
15. On the first issue for determination, their submission had been that the cardinal consideration that the court needed to bear in mind in determining a question of whether a party should be joined in the proceedings was whether the presence of such a party was necessary to adjudicate all the questions in the suit or whether a party's interest may be affected by the outcome. That further, it was important ensure that all parties with a direct and/or substantial interest in a case were joined so as to avoid fragmented litigation and inconsistent judgements.
16. They placed their reliance in the case of Kenya Union of Water and Sewerage Employees v Tana and Athi Rivers Development Authority; Union of Kenya Civil Party (Intended Interested Party) (Cause E288 of 2021) [2022] KEELRC 1379 (KLR) (5 July 2022) (Ruling) to submit that the parameters of joinder either as a Defendant or an Interested Party were the same and that in the instant case they had exhibited copies of ownership of the subject properties which the Plaintiff was seeking its cancellation. That they were thus necessary parties because were the orders sought by the Plaintiff granted, they stood to be adversely affected.
17. That since they had demonstrated that they had a legal right to be joined in the proceedings herein, their application be allowed with cost.



Plaintiff's Submissions.

18. The Plaintiff, vide its Submissions dated 2nd July 2025, summarized the factual background of the matter before submitting that a Court may refuse joinder of parties if the intended party's interest in the case was not direct or substantial enough to warrant their involvement. That the interest of such party must be more than just the peripheral or a general concern. That however, if their contribution in the case was unlikely to be unique or substantial, joining a party could sometimes complicate the proceedings, potentially to delay or making the case harder to manage. That indeed, if the court believed that the potential benefit of joinder was outweighed by risk of prejudice or delay, it may refuse the request.
19. That the court may also refuse joinder if it appeared that the interested party was attempting to improperly use the joinder process to advance their own unrelated interests or to circumvent proper legal procedures. That the primary consideration was whether the Intended Party's presence was necessary for a court to fully and finally resolve the issues in the case. That the court should also consider whether joining a party would be fair to all involved, taking into account the potential impact on the existing parties and the overall fairness of the proceedings.
20. That a person who was subject to service of process and whose joinder would not deprive the court of the subject-matter jurisdiction may be joined as a party if in that party's absence, the court could not accord complete reliefs among existing parties. It was thus its submission that the intended parties had not proved that their joinder had any merit in the instant suit hence their applications should be dismissed.

Determination.

21. I have considered both Applications herein for joinder of the interested party and 4th -9th Defendants herein, the response by the Plaintiff/Respondent, the Parties written submissions, the law and the authorities herein cited.
22. The Applicants' applications seeks to have Elmona self Help Group joined to the proceedings as an interested party while the second application seeks that the 4th -9th intended Defendants be joined to the suit as Defendants, their reason being that they are registered proprietors of the suit properties namely No. Gilgil/Gilgil Block 1/3048, 3051, 3053, 3055, 3050, 3054, 3056, 3057, 39768, and 39767 which properties the Plaintiff seeks have its titles cancelled and which properties they had been in continuous occupation.
23. Attention of the court has been drawn to a judgement dated 30th May 2024 in Nakuru ELC Case No. 62 of 2019 (OS) where the Plaintiff herein had previously sued them jointly with others claiming adverse possession over the same parcels of land, and which case had been heard and dismissed.
24. The Application was opposed by the Plaintiff /Respondents for the reason that the dispute was purely between it and the 1st and 2nd Defendants where it was claiming against them 18 acres of land which had been hived from its parcel of land No. Gilgil/Gilgil Block 1/3046. That the Applicants were not its members to be allotted the suit properties and neither had they explained how they had acquired the suit properties herein therefore their cause of action lay with the 1st and 2nd Defendants and not the Plaintiff. That further the previous case had been filed by persons who had no locus standi to file suit on its behalf.
25. It is trite that where an issue has been raised that seeks to oust the jurisdiction of the court to try the matter before it, such issue must be disposed of in the first instance. Attention of the court having been



drawn to a previous case in Nakuru ELC Case No. 62 of 2019 (OS) whereon there had been a final determination, and being mindful of the principle of Res judicata, which bars or precludes parties from re-litigating a claim or issue that has already been decided by a competent court thus ousting the jurisdiction of the court to try the subsequent matter, I am mindful to make a determination on this aspect in the first instance.

26. Thus, in order therefore to decide as to whether or not this case is res judicata, a court of law should always look at the decision claimed to have been settled, the issues in question and the entire pleadings of the previous case and the instant case to ascertain;

- i. What issues were really determined in the previous case;
- ii. Whether they are the same in the subsequent case and were covered by the decision of the earlier case.
- iii. Whether the parties are the same or are litigating under the same title and that the previous case was determined by a court of competent jurisdiction.

27. The Applicants herein, in their respective applications annexed the pleadings and judgements in respect of the previous suit to enable the court to look at the decision, and the issues in question. I have gained sight of the said suit which was reported as Kasarani No. 4 Mathare Dancers (Suing as Through Its Officials Ndungu Nduati, David Wang'ang'a) v Seven Self Help Group (Through Its Officials Eliud Mbugua, Peter Muchiri and Moses Muchiri) & 7 others [2024] KEELC 4424 (KLR).

28. I have looked at the orders therein sought in the said suit to wit;

Declaring that the Plaintiff herein has acquired an overriding right over Land Parcel Numbers Gilgil/Gilgil Block 1/ 3048, Gilgil/Gilgil Block 1/3051, Gilgil/Gilgil Block 1/3053, Gilgil/Gilgil Block 1/3054, Gilgil/Gilgil Block 1/3055, Gilgil/Gilgil Block 1/3056, Gilgil/Gilgil Block 1/3057 and Gilgil/Gilgil Block 1/39767 (herein after called the suit lands) under the Land Registration Act and Section 37 and 38 of the Limitations of Actions Act.

- b. Injunction to issue against any dealings on the suit lands pending hearing and determination of the Originating Summons herein.
- c. Directing the Land Registrar Naivasha to register the Plaintiff herein as the proprietor of Land Parcel Numbers Gilgil/Gilgil Block 1/3048, Gilgil/Gilgil Block 1/3051, Gilgil/Gilgil Block 1/ 3053, Gilgil / Gilgil Block 1/ 3054. Gilgil/ Gilgil Block 1/3055, Gilgil / Gilgil Block 1/ 3056, Gilgil/Gilgil Block 1/3057 and Gilgil/Gilgil Block 1/39767.”

29. I have also considered the parties involved in the said suit to wit;

The Plaintiff, Kasarani No. 4 Mathare Dancers (Suing as Through Its Officials Ndungu Nduati, David Wang'ang'a) versus Seven Self Help Group (Through Its Officials Eliud Mbugua, Peter Muchiri and Moses Muchiri), the 1st Defendant

-Elimona Self Help Group (Through Its Officials George Gichuki, Gachuhi Kariuki and Alfred Kinyanjui) the 2nd Defendant

-Derek Kihugi Nganga the 3rd Defendant

-Mark Wagathiru Chege the 4th Defendant



- Fredrick Macharia Waikao the 5th Defendant
- Agricultural & Industrial Holdings Limited the 6th Defendant
- Land Registrar, Naivasha as the 7th Defendant
- And the Attorney General as the 8th Defendant”

30. It is not in contention that the matter was heard and determined wherein vide its judgement dated the 30th May 2024 the court had dismissed the Originating Summons (OS) for reason that the Plaintiff had not proved its case on adverse possession.
31. It its judgement at para 52 the court had held as follows;
- “I therefore find that David Wangángá is indeed an official of the Plaintiff’s group with the requisite locus standi to institute the present suit.”
32. At paragraph 56 of the said judgement, the court had held as follows;
- “It was also the Plaintiffs case that it has been in peaceful possession of the suit property for more than 12 years and that disputes begun in 2019 when they were evicted by the owners. The defendants demonstrated through oral evidence and documents that the Plaintiffs members were charged in a court of law for trespass and therefore their occupation cannot be described as quiet and peaceful.”
33. And lastly at para 61 the court had held as follows;
- “The plaintiff failed to prove that the property was used to the exclusion of the defendants and the defendants demonstrated that they occupied parts of the property but were in constant fights with the plaintiffs.”
34. The question to ask ourselves herein is whether upon the dismissal of the Plaintiff’s suit seeking adverse possession of land it could file a subsequent suit now seeking proprietorship and cancellation of the titles to the same land. The answer, I find, would largely depend on the specific grounds for the dismissal and the principle of Res Judicata which prevents a court from trying any suit or issue that has been directly and substantially in issue in a former suit between the same parties and has been heard and finally decided by a competent court.
35. The former suit on adverse possession was a suit for title based on the extinguishment of the true owner’s right due to the Plaintiff’s alleged possession for the statutory period of 12 years wherein the same had been dismissed on merit meaning that the court had finally decided that the Plaintiff had failed to prove the essential elements of adverse possession and which included a finding that the Plaintiff did not acquire title.
36. Since the core issue in both the adverse possession suit and the subsequent suit for proprietorship/ cancellation of title is essentially the Plaintiff’s title to the land, the subsequent suit was barred by Res Judicata, the former suit having determined that the Plaintiff had no title. That finding was to the effect that the true owner’s title was never extinguished and was binding unless overturned on Appeal.
37. If the Plaintiffs sought that they had had a superior title and the registered title was bad, they had been obliged to put forward all grounds of attack to their claim of title in the first suit as a subsequent suit on those new grounds was barred as the issue of its title had been “finally decided.” The dismissal



conclusively established that the Plaintiff had not acquired title and, therefore, it was not entitled to any proprietary rights or the cancellation of the registered owner's title.

38. The Supreme Court in the case of *John Florence Maritime Services Ltd & Another v Cabinet Secretary Transport and Infrastructure & 3 Others*, Petition 17 of 2015 (2021) KESC 39 KLR (Civ) 6 August 2021 (Judgement) at paragraph 59 held as follows:

“For res judicata to be invoked in a civil matter the following elements must be demonstrated:

- a) There is a former Judgment or order which was final;
- b) The Judgment or order was on merit;
- c) The Judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and
- d) There must be between the first and the second action identical parties, subject matter and cause of action.”

39. Now the Plaintiff has brought the current suit vide its Plaint dated the 11th July 2024, seeking for judgment to be entered against the Defendants and thereafter an order be directed to the 2nd Defendant to cancel the titles to land parcels No. Gilgil/Gilgil Block 1/3048, 3050, 3051, 3053, 3054, 3055, 3056, 3057, 39768 and 39767. The Plaintiff has sued the same parties being the Agricultural & Industrial Holdings Limited, the Land Registrar and the Attorney General over the same parcels of land, ingeniously leaving out parties who hold titles to the suit land they seek to be cancelled and which persons had been parties in the previous suit.

40. Section 7 of the *Civil Procedure Act* Cap 21 which provides that:

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court”

41. It is therefore a finding of this court that the Plaintiff's suit was not only an abuse of the court process but was also Res judicata Nakuru ELC Case No. 62 of 2019 (OS) the issue of its title having been heard and determined by a court that had the jurisdiction over the same. There having been no evidence that the holding in ELC Case No. 62 of 2019 (OS) had been varied or set aside, the Plaintiffs suit herein struck out for being Res judicata with costs.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 9TH DAY OF OCTOBER 2025.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

