



Kibanga & 72 others v Land Adjudication and Settlement Officer-Taveta & 2 others; Law Society of Kenya & another (Proposed Interested Parties) (Environment and Land Petition E006 of 2025) [2025] KEELC 6746 (KLR) (Environment and Land) (8 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6746 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND PETITION E006 OF 2025
EK WABWOTO, J
OCTOBER 8, 2025**

BETWEEN

**JEREMIAH KINANGUKA KIBANGA 1ST PETITIONER
RICHARD NIXON OTANO 2ND PETITIONER
GABRIEL KAZEE 3RD PETITIONER
NICHOLAS MUNUVE MUNA & 69 OTHERS & 69 OTHERS & 69 OTHERS &
69 OTHERS 4TH PETITIONER**

AND

**LAND ADJUDICATION AND SETTLEMENT OFFICER-TAVETA 1ST
RESPONDENT
CABINET SECRETARY MINISTRY OF LANDS, PUBLIC WORKS, HOUSING
AND URBAN DEVELOPMENT 2ND RESPONDENT
THE HON. ATTORNEY GENERAL 3RD RESPONDENT**

AND

**LAW SOCIETY OF KENYA PROPOSED INTERESTED PARTY
KITUO CHA SHERIA PROPOSED INTERESTED PARTY**

RULING

1. This Ruling is in respect to the omnibus Petitioners’ application dated 25th July 2025 which seeks the following orders:-



- i. Spent...
 - ii. That the Honourable Court be pleased to enjoin the proposed Interested Parties Law Society of Kenya & Kituo Cha Sheria as the 1st and 2nd Interested Parties.
 - iii. That the court be pleased to consolidate EL PETITION E06 OF 2025 and ELC PETITION E002 OF 2024.
 - iv. That the court be pleased to do a site visit to the suit property before the matters proceed to full hearing.
 - v. Such further orders be made and or granted as this court deems fit.
 - vi. Costs of the application be in the cause.
2. The application was premised on the grounds on its face and supported by the affidavit of Mwazighe Micar, the Petitioners' Counsel on the 25th July 2025.
 3. The application was partly opposed by the Respondents vide their grounds of opposition dated 25th July 2025. It was contended that:-
 - i. The application for joinder of interested parties is irregular as the said parties have not made the application and hence are being enjoined without their knowledge.
 - ii. That the proposed interested parties have no stake or personal interest in the ownership of property at the Taveta Settlement Scheme and the Applicant has not demonstrated the same.
 - iii. That the application for joinder does not meet the threshold set out by the Supreme Court in Francis Kariuki Muruatetu & Another v Republic & 5 Others as consolidated with 16 of 2013 [2016] eKLR.
 - iv. That there is no prejudice that will be visited on the proposed interested parties should they not be joined to the suit.
 - v. That the Applicant has not met the threshold set out in Meme v Republic [2004] 1 EA 124, the High Court.
 4. Pursuant to the directions issued by the court, parties were directed to file their written submissions and they were further allowed to highlight the same. The Petitioners filed written submissions dated 23rd September 2025 while the Respondents filed their written submissions dated 22nd September 2025.
 5. The Petitioners submitted on the following issues:-
 - i. Whether the Proposed Interested Parties Law Society of Kenya & Kituo Cha Sheria should be joined as interested parties.
 - ii. Whether ELC PETITION E006 OF 2025 AND ELC PETITION E002 OF 2024 should be consolidated.
 - iii. Whether the court should conduct a site visit to the suit property before the matter proceeds to full hearing.
 6. Citing the Supreme Court Case of Trustee Society of Human Rights Alliances v Mumo Matemo & 5 Others [2014] eKLR and Communications Commission of Kenya & 4 Others v Royal Media Services Ltd. & 7 Others [2014] eKLR it was argued that the proposed interested parties are dedicated to the implementation of *the Constitution* including the protection of fundamental rights and freedoms.



Their primary mandate is the promotion and protection of human rights in Kenya and facilitate the just disposition of matters. That the proposed Interested Parties intend to represent and further protect the interest of the Petitioners.

7. It was also submitted that the matter before court is a public interest litigation and pursuant to Section 4 of the *Law Society of Kenya Act*, they are obligated to protect and assist the public in Kenya in all matters touching ancillary or incidental to the law.
8. In respect to Kituo Cha Sheria, it was submitted that it was established in 1973 as a Legal Aid and Empowerment Centre and it specializes in the representation of the poor and marginalized through legal aid, legal education, public interest litigation, community mobilization, capacity building and Alternative Dispute Resolution.
9. On the orders for the consolidation of ELC PETITION NO. E006 OF 2025 and PETITION E002 OF 2024, it was submitted that there is need for the court to exercise its jurisdiction to consolidate the two suits because the reliefs sought arise from the same property and therefore the need to avoid multiplicity of suits. The Petitioners cited the cases of Nyati Security Guards Services Ltd v Municipal Council of Mombasa [2000] eKLR and Law Society of Kenya v Centre for Human Rights and Democracy & 12 Others [2014] eKLR.
10. In respect to the site visit, it was argued that the Petitioners raised vital issues including their property and houses being destroyed by the Respondent, blocking of access, putting up of an electric fence and hence there is need to have site visit as no prejudice will be occasioned by either party.
11. The court was also urged to allow the application with costs.
12. The Respondents submitted on whether the two proposed interested parties meet the criteria for joinder. It was argued that the threshold for the joinder of a party as an interested party is laid down the Supreme Court case of Francis Kiroko Muruatetu and another v The Republic and Five Others 2016 eKLR.
13. It was argued that the Supreme Court offered the definition of an Interested Party as adopted from the Black's Law Dictionary as one who voluntarily enters a pending lawsuit because of a personal stake in it.
14. The Supreme Court in Trusted Society of Human Rights Alliance v Mumo Matemu and 5 Others [supra] stated:-
 - “ 17. Suffice it to say that while an interested party has a stake/interest directly in the case, an amicus's interest is its 'fidelity' to the law: that an informed decision is reached by the court.....
 18. Consequently, a interested party is one who has a stake in the proceedings though he or she was not a party to the cause ab initio he or she is one who will be affected by the decision of the Court when its made, either way. Such a person feels like his or her interests will not be articulated unless he himself or she herself appears in the proceedings and champions his or her cause...”
15. It was contended that the Petitioners have not made any direct connection between the Petitioners and the proposed interested parties. They have also not made any direct connection with the subject matter of the suit being ownership of land by one Jeremiah Kinanguka and others in the KACHERO SETTLEMENT SCHEME.



16. It was further contended that the suit before the court though set out as a Petition is a simple claim for land ownership that has no nexus to the proposed interested parties.
17. According to the Respondents, the Petitioners have failed to demonstrate what and allocation the two institutions are party to. There is no direct stake nor tangible interest that allows them to be classified as interest parties.
18. It was further contended that the provisions of *the Constitution* of Kenya [Protection of Rights and Fundamental Freedoms] Practice and Procedure Rules provide for the Joinder of Interested Party at rule 7 as such:
Interested Party
 1. A person, with leave of the Court, may make an oral or written application to be joined as an interested party;
 2. A court may on its own motion join any interested party to the proceedings before it.
19. The application before the court has not been made by the proposed interested party but by the petitioners. The rules are specific that joinder can only be done either by the courts own motion or by the prospecting interested party's desire through an application. The application before the court defies the rule 7. The intention of rule 7 is to grant the prospecting interested party an opportunity to inform the court of the need to be enjoined more specifically the particular personal interest that they are safeguarding.
20. It was submitted that without the application from two proposed interested party's it cannot be ascertained what their interest is neither if they are actually aware of the said suit and are desirous to participate
21. It was also submitted that the other limb of the test for admission as an Interested Party is whether the non-admission is prejudicial to the proposed interested party. In the absence of any demonstrable claim of ownership on the suit parcel there cannot be any prejudice that can be available as against them should the court decline the application for joinder.
22. The Supreme Court has also stated that the Applicant must demonstrate what submissions they are to make and if so are those submissions relevant and novel in the matter at hand. They cannot be a regurgitation of the other party's submissions. Furthermore, upon admission they cannot add issues outside what the main parties are basing their case on.
23. The court was urged to struck out the prayers for joinder.
24. Learned Counsel Mr. Mwazighe and Learned Counsel Mr. Penda also made oral submissions for the Petitioners and Respondents respectively which the court has duly considered.
25. Having considered the entire application, the written and oral submissions made together with the existing legal framework, the following issues arise for determination:-
 - i. Whether Petition should be amended in terms of the proposed draft amended Petition.
 - ii. Whether the Proposed Interested Parties should be joined to these proceedings.
 - iii. Whether VOI ELC PETITION NO. E006 OF 2025 should be consolidated with VOI ELC PETITION NO. E002 OF 2024.
 - iv. Whether the court should conduct a site visit of the property.



26. I shall now proceed to consider the said issues sequentially.
27. In respect to the amendment of the Petition, it is worth noting that a constitutional petition can be amended at any stage of the proceedings with the leave of the court, according to Rule 18 of the Mutunga Rules. Amendments are generally allowed to determine the true facts of a case, avoid multiple lawsuits, and prevent injustice, but the court will deny amendments that introduce a new cause of action, cause undue delay, or affect vested rights.
28. The Court has perused the proposed draft amended Petition and notes that the same only seeks to introduce an additional relief of general damages for trespass and as such this court shall proceed to allow the same.
29. In respect to the proposed joinder of parties, the procedural law on joinder of interested parties in matters flows from the provisions of Order 1 Rule 10 of the Civil Procedure Rules, 2010 as amended in 2020, as read with related provisions enacted subsequent thereto. It provides for addition of “a necessary” party. It 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.”
 1. There is a no dearth of case law on the fact that an interested party can be joined to a suit, under the provisions of Order 1 Rule 10 of the Civil Procedure Rules. After the promulgation of the 2010 Constitution, the procedure relating to joinder of parties as such is firmly and clearly stipulated in the statutes and subsidiary legislation of the country. Its main source is the special procedure in Legal Notice No. 117 of 2013, Gazetted on 28th June, 2013 as *The Constitution* of Kenya [Protection of Rights and Fundamental Freedoms] Practice and Procedure Rules, 2013, [The Mutunga Rules, 2013].
 2. In Rule 2 of the Rules, it defines 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.” The procedure on how that is to be done is provided for in Rule 7. Under Sub-rule 1 of Rule 7 it is provided that “A person, with leave of the Court, may make an oral or written application to be joined as an interested party.” In that respect it means a person desirous of being joined as an interested party has to move the court. If he chooses to do so, he ought to seek leave of the Court first and once granted it, he will be enjoined. While this is what the Applicants have done in the instant case, they already ‘brought’ themselves into the matter in two ways as stated in paragraph 2 above: they jumped the gun. One wonders why they made the application if it would be true that they be referred to as interested parties at this stage.
30. Be that as it may, the Supreme Court set out guidance on the requirements for successful application for joinder as an Interested Party. This was in the case of Francis Kariuki Muruatetu & Another v Republic & 5 Others, Petition 15 as consolidated with 16 of 2013 [2016] eKLR. In it the apex Court gave three principles to be followed. At paragraph 37 the Court state 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.
31. In the instant case, it is worth noting that pursuant to the directions issued by this Court on 28th July 2025, the Petitioners were directed to serve all the parties but no evidence was tabled to confirm whether the Proposed Interested Parties had been served. The application before the court has not been made by the proposed interested party but by the petitioners. The rules are specific that joinder can only be done either by the courts own motion or by the prospecting interested party's desire through an application. The application before the court defies the rule 7.
32. The intention of rule 7 is to grant the prospecting interested party an opportunity to inform the court of the need to be enjoined more specifically the particular personal interest that they are safeguarding.
33. Without the application from two proposed interested party's it cannot be ascertained what their interest is neither if they are actually aware of the said suit and are desirous to participate.
34. In the absence of any demonstrable claim of ownership on the suit parcel there cannot be any prejudice that can be available as against them should the court decline the petitioner's application for joinder.
35. The Supreme Court has also stated that the Applicant must demonstrate what submissions they are to make and if so are those submissions relevant and novel in the matter at hand. They cannot be a regurgitation of the other party's submissions. Furthermore, upon admission they cannot add issues outside what the main parties are basing their case on.
36. From the foregoing, the court can only make an inference that the proposed interested party are not even aware of the need for their joinder, it is highly irregular as the application has not been made by them, they have no tangible interest in the settlement scheme. That the application has not met the threshold in Francis Muruatetu and another and the Mumo Matemu case set out by the Supreme Court.
37. In the instant matter, the Respondents contended that the application had not met the threshold as given in the case of Francis Muruatetu [supra]. This Court needs not go into analyzing the contention between the Petitioners and the Respondents regarding the dispute herein and whether the proposed interested parties are best suited to be joined herein for determination when making findings on the merits of the Petition.
38. Additionally, as submitted by the Respondents, the Petitioners have not demonstrated any prejudice they would suffer if the proposed parties are not joined in this matter. They have not clearly outlined it. There is nothing by them in terms of evidence to demonstrate that their joinder as interested parties will bring in any new issue not presented by the Petitioners. In any event, they have not clearly submitted or given submissions that the proposed interested parties intend to make before the Court and show the relevance of those submissions while showing that they are not a replica of what the other parties already before court shall make. For that reason, their application is not merited. I base my reasoning on the authorities cited by the Petitioners, being, the cases of Lucy Nangari Ngigi & 128 others v National Bank of Kenya Limited & another [2015] eKLR; Francis Kariuki Muruatetu [supra]; Habiba W. Ramadan & 7 others v Mary Njeri Gitiba [2017] eKLR, Nairobi High Court ELC Case No. 119 of



2014; Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 others [2014] eKLR; and the Supreme Court case of Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others [2015] eKLR.

39. Further, in the Judicial Service Commission v Speaker of the National Assembly & Another [2013] eKLR the court 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.”

40. In view of the foregoing, it is the finding of this court that the Petitioners have not made a case for the joinder of the proposed parties. The said request is disallowed.

41. In respect to the site visit, the Court notes that the Petitioners submitted that there is need to conduct the same owing to the activities that are ongoing on the site.

42. It is worth noting that from time to time it becomes necessary for the court to visit a site with a view to helping it reach a just decision in a matter. It must however be remembered that all decisions of the court are based on an interpretation of facts and the law. Facts are to be presented before the court as evidence whether oral or written. Evidence is the sole route through which parties introduce their version of facts before the court. In an adversarial system the burden of proof is always on he who alleges and the court never goes out to seek facts on its own. It is always incumbent on parties to adduce sufficient evidence to prove the facts which they assert. On the other hand, the law can be cited by parties in pleadings or submissions. The court can access the law on its own. Needless to state, parties are free to urge the court to interpret the law one way or the other.

43. In the instant case, if the court visits a site, it can only be for purposes of receiving evidence which will assist it make a just decision. So long as a site visit is incapable of yielding any evidence or for that matter any admissible evidence then the judge will be no better than a tourist satisfying curiosities and taking photographs during the site visit. See Ohungo J. in the case of Beatrice Ngonyo Ndungu & Cyrus Charles Kamau [Suing as legal representatives of the estate of Francis Ndungu Njuguna [Deceased] v Samuel K. Kanyoro, Attorney General [Sued on behalf of the Commissioner of Lands] & County Government of Nakuru [Environment & Land Case 70 of 2006] [2017] KEELC 3025 [KLR] [27 April 2017] [Ruling].

44. Similarly, in the case of Parkire Stephen Munkasio & 14 others v Kedong Ranch Ltd & 8 others [2015] eKLR, the court while considering an application of this nature stated that it is the duty of litigants to place material in support of their case before the court. The court does not have the mandate to go on a fact-finding mission.

45. In the circumstances, it is the finding of this court that the site visit may not serve any useful purposes and the said request is declined.

46. On the aspect of the consolidation of the suits, Rule 17 of *The Constitution* of Kenya [protection of rights and fundamental freedoms] Practice and Procedure Rules, 2013, states:

“.....The Court may on its own motion or on application by any party consolidate several petitions on such terms as it may deem just.....”

47. In any event, the law to be applied prior to and or before any two or more named suits are consolidated was elaborately discussed and underlined vide the case of Republic versus Paul Kihara Kariuki & 2 Others Ex-parte Law Society



of Kenya [2020] eKLR, where the Honourable Court stated and observed as hereunder;

“ 11. The principles of consolidation of suits are settled. They were best explained in *Stumberg and another v Potgeiter* as follows:-

“Where there are common questions of law or facts in actions having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matters should be disposed of at the same time, consolidation should be ordered.”

12. The Supreme Court Case of India in *Prem Lala Nahata & v Chandi Prasad Sikaria* had this to say: -

“...Consolidation is a process by which two or more causes or matters are by order of the Court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the Court and it appears to the Court that some common questions of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason it is desirable to make an order consolidating the suits”

13. In *Law Society of Kenya v The Centre for Human Rights and Democracy*, the Supreme Court of Kenya had this to say about consolidation of suits: -

“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it.” [Emphasis added]

14. From the above jurisprudence, a broad principle emerges relating to consolidation of suits. That is, where there are common questions of law or fact in actions having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matter should be disposed at the same time, consolidation should be ordered. However, it is succinct position of law that precedential verdicts are



to be followed where the facts of the case are almost identical in nature or the question of law involved is identical.”

47. It therefore follows that prior to and before granting an order for consolidation of two or more suits, it is incumbent upon the court to ascertain and authenticate the existence of various issues, inter-alia,
- i. Whether the Parties in the named/related suits are the same/similar to the existing suit in respect of which consolidation is sought.
 - ii. Whether the causes of action/issues that belie the named suits are similar/same to the issues obtaining in the suit in respect of which consolidation is sought.
 - iii. Whether there are common questions of law and fact which cut across both/all the named suits to warrant their consolidation.
 - iv. Whether the reliefs sought in respect of the named suit are related to and bear close semblance with the relief sought in the suit in respect of which consolidation is sought.
 - v. Whether the intended consolidation would enable the issues in dispute to be tried and determined expeditiously and cost effectively.
 - vi. Whether the Parties involved shall not be exposed to hardship, prejudice or Injustice if the impugned consolidation is undertaken.
48. In the case of *Nyati Security Guards & Services Ltd v Municipal Council of Mombasa* [2004] eKLR , Maraga, J [as he then was] aptly captured what consolidation is all about when he stated:-
- “...Consolidation is a process by which two or more suits or matters are by order of court combined or united and treated as one suit or matter. The main purpose of consolidation is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action...”
49. The Court went on to outline some of the situations where consolidation may be denied:
- “...There are however situations where consolidation is undesirable like where in two actions a plaintiff in one is a defendant in the other unless the claim in one is to be treated as a counter-claim in the other. The other situation where consolidation is undesirable is where the plaintiffs in two or more actions are represented by different Advocates. In such situation the hearing will longer and the purpose of saving time will be defeated...”
50. In this case, this Court has carefully perused the pleadings filled in the two petitions. The Parties therein are significantly different different save for the 1st Respondent in this matter. The substantive reliefs sought are different in each of the said Petitions and further the Petitioners herein have not pleaded with specificity the particulars of the parcel number for the property, the court cannot make assumptions on the same.
51. In view of the foregoing observation, it is evident that any of the intended consolidation of the Petitions suit shall not facilitate proportionate and expeditious determination of the subject suit or otherwise. Any attempt to consolidate same would only convolute the issues for determination and thereby exacerbate the controversy and hence therefore it will not serve any useful purpose to have the said suits consolidated.



52. Consequently, it is evident and apparent that the intended consolidation is neither in the interests of justice nor shall same culminate into the efficient and proportionate utilization of the precious judicial time. The same shall only pose a challenge to the parties and the Court in the determination and disposal of the said suits.

53. In conclusion, the Petitioners application dated 25th July 2025 is hereby determined as follows: -

- a. The Petitioners are hereby granted leave to file and serve the draft amended Petition within 2 days from today.
- b. All the other reliefs are hereby declined.
- c. Each party to bear own costs of the application

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY/OPEN COURT AT VOI THIS 8TH DAY OF OCTOBER 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Kamwenda and Mr. Mwazighe for the Petitioners.

Mr. Penda for the 1st to the 3rd Respondents.

N/A for the 1st Proposed Interested Party

N/A for the 2nd Proposed Interested Party

Court Assistant: Mary Ngoira.

