



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC CIVIL SUIT NO. 146 OF 2016

BETWEEN

**JENNIFER
MUTIE.....**

**SYOKAU
PLAINTIFF**

VERSUS

**GRACE
MAUNDU.**

**MWITHI
1ST DEFENDANT**

**GK 8D INVESTMENT COMPANY LTD.....2ND
DEFENDANT**

AND

**PETER MBUGUA
INTERESTED PARTY**

NDUNGU.....INTENDED

RULING

1. This is a ruling in respect of a post-judgment notice of motion filed by the intended interested party dated 22/11/2024 expressed to have been moved within **Section 3A** of the **Civil Procedure Act** and **Orders 1 Rules 1 & 25, 45 Rules 1, 2 & 3** and **22 Rule 25** of the **Civil Procedure Rules, 2010** and

all other enabling provisions of the law. He seeks the following reliefs from this court: -

a) Spent.

b) Spent.

c) THAT the intended IP, Peter Mbugua Ndungu, be joined and added as the 2nd plaintiff in this suit, and the honourable court do give directions as to the amendment of pleadings in this suit.

d) THAT the judgment delivered on 26/01/2018 and all consequential orders ensuing therefrom be set aside and the suit be re-opened for fresh hearing.

e) THAT the honourable court be pleased to transfer this suit to the lower court and there be an order for consolidation of this suit with Machakos MC.CC/308/2016 between Patrick Kabui & 3 Others vs. Grace Muithi Maundu & 1 Other, which is similar to this suit and which is seeking amalgamation and subdivision of plot no. 1602 Mavoko town and the resultant titles nos. L.R. Mavoko Town Block 3/6005, 6006,6007,6008, 6009 and 6010.

f) THAT the costs of this motion be provided for.

2. The motion is supported by several grounds on the face thereof and the supporting affidavit of the intended IP,

deposed on 3/12/2024. In a nutshell, the grounds in support of the motion are materially that: a) he is the bona fide purchaser for value of **L.R. Mavoko Town Block 3/6008 (“suit land”)** having purchased the same from the 1st defendant, a consent issued by the Land Control Board (“LCB”), a transfer form executed and he has the original title deed of the suit land and all completion documents, b) he has learnt that there is a judgment in this court directing a portion of 1.36 acres to be excised from either the suit land or **L.R. Mavoko Town Block 6006** and an order compelling the 1st defendant to execute the necessary documents to subdivide and excise and a permanent injunction restricting dealings in the suit land; and

3. C) He has never been made aware of this case, and having all the requisite completion documents, including a letter of consent, he is prejudiced by the impugned judgment, d) the suit land is the subject matter of **Machakos MC.CC/308/2016** between **Patrick Kabui & 3 Others vs. Grace Muithi Maundu & 1 Other**, where the intended IP seeks cancellation and/or amalgamation of all resultant titles of plot no. 1602 Mavoko, which is the suit land and **L.R. nos. Mavoko Town Block 3/6005, 6006, 6007, 6009** and **6010**, thus, it is fair and just that the impugned judgment in this suit be set aside and the matter be transferred to the lower court for consolidation, hearing and determination on merits; and

4. At last, e) the addition of the intended IP as a party in this suit will enable the court to effectually and completely adjudicate upon and settle all the issues involving the suit land.
5. This motion is strenuously opposed by the plaintiff's lengthy affidavit sworn on 29/01/2025, and of significance, she maintains that: a) the impugned judgment was rendered by this court 7 years ago on 26/01/2018, b) she is at an advanced stage of execution as the deputy registrar of the court has executed several documents and she has in her possession the application for LCB consent, letter of consent from the LCB, valuation by the county valuer, transfer form, payment of stamp duty of ksh. 100,070/, and payment of registration fees, and c) the intended IP's claim lies elsewhere and not in these proceedings.
6. In rejoinder, the intended IP filed a lengthy supplementary sworn on 6/02/2025 and of relevance is that he attacked the impugned judgment for being ambiguous and unenforceable and also introduced new issues. He further stated that there is a multiplicity of pending suits in different courts touching on the same land, which will occasion a grave miscarriage of justice, and there is a need to consolidate all the suits and hear the matters conclusively.
7. Unfortunately, despite directions for the motion to be canvassed by written submissions, none of the parties complied, save for the intended IP, whose written submissions

were filed by his law firm on record, **M/s. Wangechi Wangare & Associates** dated 22/04/2025, and this court has considered these invigorating submissions. Accordingly, the intended IP's counsel's arguments and the provisions of law and judicial precedents relied upon shall be taken into consideration in the analysis and determination of the issues for determination, which are: a) **whether the intended IP can be joined to the proceedings post-judgment** and if in the affirmative, b) **whether the other reliefs sought should be granted**. These issues shall be addressed shortly concomitantly.

8. Regarding the 1st issue, the applicable legal provision for joinder of a party as an interested party is provided for in **Order 1 Rule 10(2)** of the **Civil Procedure Rules (CPR)** which has primarily been interpreted to mean that the party who ought to be joined or added to civil proceedings as a party to the suit either as a defendant, plaintiff or interested party whose presence in the proceedings would be necessary to assist the court determine the matter effectually and completely should be joined to the proceedings. This proviso 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 and settle all questions involved in the suit, be added.”

9. Further, the meaning of the definition of an IP is resounded in the Supreme Court of Kenya's decision of **Trusted Society of Human Rights Alliance v Matemo & 5 others [2014] KESC 32 (KLR)** in the following words: -

“3. An interested party was one who had a stake in the proceedings, though they were not initially a party to the cause. Such a person felt that their interest would not be well articulated unless they personally appeared in the proceedings, and championed their cause.”

10. However, although the intended IP seems to have a stake in the suit land, the law anticipates that for a party to be joined to the proceedings or an entertainment of such a request for joinder, there have to be live proceedings that are pending between parties to the suit, which is not so in this case, as judgment was rendered in this matter on 26/01/2018. It follows that the judicial precedents relied upon by the intended IP's

counsel for joinder are distinguishable from the scenario herein, as those cases dealt with instances of pending proceedings. Nonetheless, when dealing with similar circumstances as the case herein, the binding decision by the Court of Appeal of **JMK v MWM & MFS [2015] KECA 524 (KLR)**, which this court associates itself with, stated: -

“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. In the same vein, the Court of Appeal of Tanzania, while considering the equivalent of Order 1 Rule 10(2) of our Civil Procedure Rules, in TANG GAS DISTRIBUTORS LTD V. SAID & OTHERS [2014] EA 448, stated that the power of the court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before, or during the trial; that it can be done even after judgment where damages are yet to be assessed; 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.”

11. Being guided by the law and judicial precedence, and in the end, this court finds in the absence of pending proceedings, it cannot join a party to a suit post judgment, finds the motion is incompetent and an abuse of court process and finds that it is *functus officio*. For these findings, it is constrained from exercising its judicious discretion on the merits of some of the reliefs sought. In consequence, the motion dated 22/11/2024 is hereby struck out with no orders as to costs.

It is so ordered.

Delivered and Dated at Machakos this 21st day of October, 2025.

**HON. A. Y. KOROSS
JUDGE
21.10.2025**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

M/s Kanja Court Assistant

Mr. Makori for plaintiff/respondent.

Miss Wangeci Wangare for applicant

ORIGINAL