



**Mbuthi Investments Company Limited & 13 others v Kajiado West District Land Registrar & 2 others; Chief of Olchoro Onyore Location & 5 others (Interested Parties); Partai (Intended Interested Party) (Environment and Land Judicial Review Case E005 of 2025) [2025] KEELC 7125 (KLR) (14 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7125 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**  
**ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E005 OF 2025**  
**MD MWANGI, J**  
**OCTOBER 14, 2025**  
**IN THE MATTER OF THE LAND REGISTRATION ACT**  
**AND**  
**IN THE MATTER SURVEY ACT CAP 299**  
**AND**  
**LAND ADJUDICATION ACT CAP 284**  
**AND**  
**COUNTY GOVERNMENTS ACT, 2012**  
**AND**  
**LIMITATION OF ACTION ACT CAP 22**  
**AND**  
**FAIR ADMINISTRATIVE ACTION ACT OF 2015**  
**AND**  
**IN THE MATTER SITE VISIT SUMMONS DATED 30TH JANUARY, 2025**  
**AND**  
**IN THE MATTER SECTIONS 8 AND 9 OF THE LAW REFORM ACT, CAP 26**  
**IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010**  
**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR**  
**THE JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION**  
**BETWEEN**  
**MBUTHI INVESTMENTS COMPANY LIMITED ..... 1<sup>ST</sup> APPLICANT**



LENDEKI OLE SOKOYUNI ..... 2<sup>ND</sup> APPLICANT  
 JEREMIAH KANJAI OLE NDEKA ..... 3<sup>RD</sup> APPLICANT  
 JACKSON KAPITANY SUPEYO ..... 4<sup>TH</sup> APPLICANT  
 JANE WANGARI MUGO ..... 5<sup>TH</sup> APPLICANT  
 KIRARIA OLE KEISHUELI ..... 6<sup>TH</sup> APPLICANT  
 JOHN TOIMASI OL TEEKA ..... 7<sup>TH</sup> APPLICANT  
 KIPERPERA MULELENOT ..... 8<sup>TH</sup> APPLICANT  
 JOSEPH SLAON OLE SAUNYI ..... 9<sup>TH</sup> APPLICANT  
 KAI ENE SAMANDE ..... 10<sup>TH</sup> APPLICANT  
 MAITEL OLE NKORIO MPAI ..... 11<sup>TH</sup> APPLICANT  
 SARAH ANITA W KURIA ..... 12<sup>TH</sup> APPLICANT  
 ALICE NJERI KURIA ..... 13<sup>TH</sup> APPLICANT  
 JURIUS ITHIRU GITAU ..... 14<sup>TH</sup> APPLICANT

AND

KAJIADO WEST DISTRICT LAND REGISTRAR ..... 1<sup>ST</sup> RESPONDENT  
 KAJIADO WEST DISTRICT LAND SURVEYOR ..... 2<sup>ND</sup> RESPONDENT  
 THE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT

AND

THE CHIEF OF OLCHORO ONYORE LOCATION ..... INTERESTED PARTY  
 THE OFFICER IN CHARGE OF KISAMIS POLICE  
 STATION ..... INTERESTED PARTY  
 COUNTY GOVERNMENT OF KAJIADO ..... INTERESTED PARTY  
 ANGLICAN CHURCH OF KENYA MURERA ..... INTERESTED PARTY  
 THE CHURCH OF COMMISSIONER OF KENYA OF THE ANGLICAN  
 CHURCH OF KENYA ..... INTERESTED PARTY  
 KAUSAU OLE KURENDE ..... INTERESTED PARTY

AND

SIMITIA OLE PARTAI ..... INTENDED INTERESTED PARTY



## RULING

### (In respect of the 7<sup>th</sup> Intended Interested Party/Applicant NOM dated 1<sup>st</sup> July, 2025 seeking to be enjoined in the suit)

1. The Notice of Motion dated 1<sup>st</sup> July, 2025 is brought under Sections 1, 1A, 3 and 3A of the Civil Procedure Act and Order 1 Rule 10(2) of the Civil Procedure Rules. The Applicant, the 7<sup>th</sup> Intended Interested Party, seeks to be joined in these proceedings and fully participate as an interested Party. He also prays that costs of the Application be in the cause.
2. The Application is supported by the Affidavit of Simitia Ole Partai sworn on 1<sup>st</sup> July, 2023. He asserts that he should be enjoined in these proceeding because he resides on an area subject to the boundary dispute. He claims that his parcel of land Kajiado/Olchoro-Onyore/2880 measuring over 120 acres has drastically decreased mysteriously. It is the Applicant's case that only a guilty party would prematurely hope to stop any lawful determination because the Land Registrar and District Surveyor are mandated by law to determine disputes.
3. The 7<sup>th</sup> Intended Interested Party/Applicant asserts that he supports the noble effort by Kajiado West District Land Registrar and District Surveyor of attempted settlement of the land dispute because he was served with summons to appear regarding the subject matter.

### Ex parte Applicants' Case

4. When the matter came up for hearing on 31<sup>st</sup> July, 2025, Ms. Nini holding brief for Mr. Maina for the 4<sup>th</sup> and 5<sup>th</sup> Interested Party's stated that she would not be opposing the application.
5. The Application is however opposed by the Ex parte Applicants through the Replying affidavit of Mbuti Gathenji sworn on 4<sup>th</sup> August, 2025 who prays for its dismissal terming it as unmerited, misconceived, frivolous, and unjustified. He states that the 7<sup>th</sup> Intended Interested Party does not meet the legal threshold for joinder as an interested party.
6. It is stated that the subject of these proceedings is the 1<sup>st</sup> Respondent's summons dated 30<sup>th</sup> January, 2025 scheduling a site visit to allegedly to fix boundaries for Kajiado/Olchoro/Onyore/59, 125, 126, 179, 1502, 1503, 2014, 2072, 2073, 2227, 2992, 5115, 5275, 4661, 8324, 26541 and 26542. It is alleged that the summons were issued following an application by the 3<sup>rd</sup> Interested Party concerning boundary disputes with respective registered owners. According to the Ex Parte Applicants, the 7<sup>th</sup> intended Interested Party's claim is not supported by any documentary evidence or credible factual basis neither does he have any bonafide interest in these proceedings. This is because his name is not listed among the persons summoned neither was his land reference therein.
7. According to the Ex Parte Applicants, joinder of the 7<sup>th</sup> intended Interested Party in these proceedings will prejudice them as they may cause unreasonable delay of this matter through introduction of new and unrelated issues yet he will not be affected by the decision of this court.

### 7<sup>th</sup> Intended Interested Party reply to Ex Parte Applicants' case

8. Simitia Ole Partai, filed a Supplementary Affidavit sworn on 14<sup>th</sup> August, 2025 where he reiterated his earlier assertions. He deposes that he is the registered proprietor of Kajiado/Olchoro-Onyore/2880 measuring 99.37 hectares adjacent to Kajiado/Olchoro-Onyore/126 which is the subject matter of



these proceedings. The Deponent avers that he was summoned to appear and assist the Kajiado West District Land Registrar and District Surveyor in trying to settle and determine the boundary dispute.

9. The 7<sup>th</sup> Intended Interested Party contends that his interest in these proceedings is specific, identifiable, proximate and not hypothetical or remote because enjoyment of his private proprietary rights guaranteed under Article 40 and 47 of *the Constitution* will adversely be affected if he is excluded from the proceedings. Any redefinition, adjustment, alteration of the boundaries consequent to the boundary determination exercise of Kajiado/Olchoro-Onyore/126 which is proximate to his land will have a direct and immediate effect on his property. Further, if the Judicial Review application is allowed, he shall have no recourse and or available remedy as he will suffer the brunt and outcome of the orders that may issue directly.
10. According to the 7<sup>th</sup> Intended Interested Party, his joinder into these proceedings will assist the court resolve all the issues arising in a comprehensive and just manner without expanding the scope of the matters in contention. He further opines that if the boundary disputes are not resolved in a timely and conclusive manner, he stands to lose a large portion of his land.

### **Court's Directions**

11. The directions of the court were that the application be dispensed through submission written. Only the 7<sup>th</sup> Intended Interested Party complied.

### **Issues for determination**

12. Having carefully considered the 7<sup>th</sup> Intended Interested Party's application, responses thereto as well as the submissions filed in support of the application, the sole issue for determination is whether the 7<sup>th</sup> Intended Interested Party/Applicant has met the threshold for joinder as an Interested Party.

### **Determination**

13. The legal provision on addition of a party to a suit or any proceedings is Order 10 Rule 2(a) of the Civil Procedure Rules, which states as follows;

“(2) 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”.  
{emphasis}

14. In *JMK v MWM & another* [2015] KECA 524 (KLR), the Court of Appeal while citing the decision of the Tanzania Court of Appeal in *Tang Gas Distributors Ltd v. Said & Others* [2014] EA 448, adopted the following position with respect to joinder of Party;

“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 vs 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.

15. Further, the Supreme Court's dictum in *Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated))* [2016] KESC 12 (KLR) (Civ) (28 January 2016) (Ruling) established the principles that ought to be taken into consideration in determining whether an Interested Party is to be joined into proceedings as follows;

“One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

- a. 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.
- b. 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.
- c. 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.

16. The 7<sup>th</sup> Intended Interested Party Applicant seeks to be enjoined in these proceedings for the reason that the outcome of these Proceedings will affect his proprietary rights for the reason that his property is adjacent to Kajiado/Olchoro-Onyore/126 which is the subject of this suit and boundary dispute determination by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. The Ex parte Applicants dismisses the affirmations by the Applicant contending that the Applicant was never served with summons.

17. In support of his application, the 7<sup>th</sup> Intended Interested Party has filed a sketch map signifying that his alleged property Kajiado/Olchoro-Onyore/2880 borders Kajiado/Olchoro-Onyore/68 and 126. Amongst the documents filed by the Ex Parte Applicants in support of their Application is summons dated 3<sup>rd</sup> September, 2018 issued by the Kajiado North Land Registrar. The Summons related to determination of boundary dispute for Kajiado/Olchoro-Onyore/68 {1379-1381} lodged by Kausai Ole Kurunde. According to the summons, the parties invited for the hearing of the boundary dispute included Olkejuado County Council and Simita Ole Partai as respective owners of Kajiado/Olchoro-Onyore/262 and 2880 {4775-4771} in that order.

18. Given this crucial information, the 7<sup>th</sup> Intended Interested Party is justified in his bid to be joined in these proceedings as an interested party because the outcome is likely to have an effect on his proprietary rights. I hereby allow the 7<sup>th</sup> Intended Interested Party/Applicant Notice of Motion dated 1<sup>st</sup> July, 2025 as prayed. The costs of the application shall be in the cause.

It is so ordered.



**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 14<sup>TH</sup> DAY OF OCTOBER 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Muturi for the Ex Parte Applicants

Mr. Taliti for the 5<sup>th</sup> and 7<sup>th</sup> Interested Parties

N/A by the Respondents and the 1<sup>st</sup> – 4<sup>th</sup> Interested Parties & the 6<sup>th</sup> Interested Party

Court Assistant: MPoye

**M.D. MWANGI**

**JUDGE**

