



REPUBLIC OF KENYA



**KENYA LAW**  
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**Asiyo v Ojwang & 2 others; Ogola (Proposed Interested Party) (Environment and Land Case 87 of 2017) [2025] KEELC 7158 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7158 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT AND LAND CASE 87 OF 2017**

**E ASATI, J**

**OCTOBER 23, 2025**

**BETWEEN**

**PHOEBE MUGA ASIYO ..... PLAINTIFF**

**AND**

**JOSEPH NYAKWA OJWANG ..... 1<sup>ST</sup> DEFENDANT**

**GORDON NYAKWA ..... 2<sup>ND</sup> DEFENDANT**

**ROSELYN KWAMBOKA ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**DANIEL OTIENO OGOLA ..... PROPOSED INTERESTED PARTY**

**RULING**

1. The Notice of Motion dated 14<sup>th</sup> November, 2024 expressed to be brought by the Proposed Interested Party pursuant to the provisions of section 1A, 1B, 3, 8, 2A of the *Civil Procedure Act*, seeks for orders that;
  - a. The Applicant be joined in the suit as an Interested Party.
  - b. The judgement be set aside for fresh hearing of the case.
  - c. The matter be stayed or set aside pending hearing of Elc Case No. E006 OF 2023 and also ruling in the Elc Case No.196 OF 2023.
  - d. The costs and interest of the application be provided for.
2. The grounds upon which the application was brought are that land under litigation in Kisumu/ Kanyakwar/385 and all surrounding plots 348 and 469 belong to the family of late Gordon Mark Agol. That the case was taken to court without the applicant's knowledge or consent.



3. The application was supported by the averments in the Supporting Affidavit sworn by the Applicant on 18<sup>th</sup> November, 2024.
4. The Applicant submitted that the suit land had been transferred to other parties. That the land belonged to his father. That the National Land Commission decided that the land belonged to him
5. On behalf of the Respondent/Plaintiff, it was submitted that the Further Affidavit was filed without leave of the court and ought not to be considered.
6. That the application is a non-starter. That the parcel the Applicant claims is Kisumu/Kanyakwar/385 which is unrelated to the suit lands herein.
7. That no grounds had been disclosed for joinder of the Applicant as a party in the suit and for setting aside of the judgement had been demonstrated.

I have considered the application and the submissions made.

8. The Applicant has not explained the nexus between the suit land herein and land parcel No. Kisumu/Kanyakwar/385 which he pursues. The suit lands herein are Kisumu/Municipality/LR 15037/10, 15037/14, 15037/13, 15037/12, 15037/9 and 15037/8 which the court after hearing evidence found to be belonging to the Plaintiff.
9. The Applicant who bears the burden of proof has not demonstrated grounds for allowing the application.
10. The Further Affidavit sworn and filed on 17<sup>th</sup> April 2025 was filed without leave of the court contrary to the provisions of order 51 Rule 14 (3) of the Civil Procedure Rules, 2010.
11. Black's Law Dictionary 9<sup>th</sup> Edition page 1232 defines an Interested Party as a party who has a recognizable stake in the matter. The Supreme Court in the case of Francis Karioko Muruatetu and another vs Republic and 5 others (Consolidated with 16 of 2013); [2016] eKLR held that

“From the foregoing legal provisions and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as Interested Party. One must move the court by formal application. Enjoinment is not as of right but is at the discretion of the court hence sufficient ground 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 cleared outlined and not remote.
  - c. 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 court.”
12. In the present application, the applicant has not demonstrated an identifiable personal interest in the suit lands the subject matter of the suit.



13. The applicant has also not demonstrated any grounds for setting aside of the judgement.
  14. The court finds that the application lacks merit and hereby dismisses it. Costs to the Plaintiff.
- Orders accordingly.

**RULING DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 23<sup>RD</sup> DAY OF OCTOBER, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:

Maureen: Court Assistant.

No appearance for the Plaintiff.

No appearance for the Defendants.

No appearance for the applicant.

