



Oketch (Suing as Administrator Ad Litem to the Estate of Ludia Oketch Obunde) v Kapanga & 11 others; Karasi & 79 others (Proposed Interested Parties) (Environment and Land Case 91 of 2018) [2025] KEELC 7483 (KLR) (23 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7483 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE 91 OF 2018
EK MAKORI, J
OCTOBER 23, 2025**

BETWEEN

**JOHN OLUOCH OKETCH PLAINTIFF
SUING AS ADMINISTRATOR AD LITEM TO THE ESTATE OF LUDIA
OKETCH OBUNDE**

AND

**SHARIF KAPANGA & 11 OTHERS & 11 OTHERS & 11
OTHERS DEFENDANT**

AND

**WILLIAM SHOKA KARASI & 79 OTHERS & 79 OTHERS & 79
OTHERS PROPOSED INTERESTED PARTY**

RULING

1. The applicants herein have filed a notice of motion application dated June 26, 2025, seeking the following orders:
 - a. This court be pleased to stay any further proceedings herein, pending the hearing and determination of this application.
 - b. The proposed interested parties herein be joined as defendants and be permitted to file responses, if any, to the plaintiff's/respondent's suit.
 - c. The plaintiff/respondent should be ordered to amend his plaint filed on April 20, 2018, to include the proposed interested parties as defendants, allowing them to file the responses and/or defenses mentioned above.



- d. The costs of this application be provided for.
2. The application is supported by an affidavit sworn by Julius Katana Mwaringa, the 7th defendant/applicant, on behalf of the other applicants on June 25, 2025, and his additional supplementary affidavit sworn on July 15, 2025.
 3. The plaintiff/respondent submitted a replying affidavit sworn on July 10, 2025, opposing the said application.
 4. The court also issued directions for the parties to submit their written arguments on the application. I received submissions from learned counsel, Mr. Kilonzo, on behalf of the respondents in this application, but did not see any submissions from learned counsel, Mr. Kenga, on behalf of the applicants.
 5. Based on the materials and submissions before me, the issues I present for the court's decision are whether the defendants/applicants are entitled to the orders they seek, specifically, a stay of proceedings, joinder of the applicants as defendants, and who should be responsible for the costs of the application.
 6. The applicants argue that the plaintiff/respondent filed this suit with a plaint dated April 20, 2018, seeking eviction orders against occupants of the suit premises, located at Plot No. 59-Malindi, Volume LT 29, folio 134/8, file 3581, situated in Malindi within Kilifi County. They state that, for reasons unknown to them, some lawful occupants and/or residents living on the suit premises were omitted from these proceedings, creating a need to amend the pleadings so that the affected parties can be properly represented in the case concerning the same parcel of land. The applicants attached certified copies of scanned photographs taken on the suit premises on June 25, 2025, to support their occupation.
 7. The applicants seek to be added as defendants, and the plaintiff amends the pleadings accordingly. If the respondents win, execution will not be feasible as they occupy part of the property.
 8. In response, the respondent argues that the proposed interested parties insist they need to be added as defendants because they truly reside on the suit property; however, they have failed to attach a survey report to identify the geographical location of the structures seen in the scanned photographs. Additionally, the applicants have not provided copies of the proposed interested parties' identification cards, making it impossible for this court to verify if the names match the indicated identity numbers. This omission by the applicants makes the essential verification exercise pointless. It is a well-established principle of law that he who alleges must prove.
 9. The plaintiff claims the defendants' application is an abuse of the court process and a delay tactic. The suit was filed in 2018, with the court repeatedly ordering it to proceed, and is scheduled for a hearing on July 16, 2025. The current application aims to delay the hearing and final decision. The court should note multiple applications by the defendants in the past. The respondent states that the applicants continue to occupy and use the plaintiff's property, causing waste. It is in the justice's interest to proceed to a hearing and issue a final ruling, as the plaintiff suffers significant loss and his property rights are being infringed if proceedings are stayed. The respondent confirms that there is no application to amend the pleadings. The plaintiff has sued 12 defendants and does not plan to add others, as he is unaware of potential interested parties and has no cause of action against them. The court ought to recognize the plaintiff's right to choose whom to sue, only overriding this if necessary for the case.



10. Having considered the application and reviewed the conflicting averments, Order 1 Rule 10(2) of the Civil Procedure Rules addresses the addition of a “necessary” party to proceedings. The rule states:

“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 person who ought to have been joined – whether as a 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 for enabling the court to effectively and completely adjudicate upon and settle all questions involved in the suit, be added. “

2. As correctly submitted by Mr. Kilonzo for the respondent, citing the case of Francis Kariuki Muruatetu & Another v Republic & 5 Others; Petition No. 15 as Consolidated with No. 16 of 2013 [2016] eKLR, the Supreme Court outlined guidance on the requirements for a successful application for joinder as an interested party. In it, the court provided three principles to be followed. The court stated that the applicant must demonstrate:

- 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 explain the relevance of these submissions are not merely a replication of what the other parties will be making before the court.

2. The applicants seek to include proposed interested parties as defendants but have not demonstrated sufficient cause. They only provided allegations and photos that do not verify the location of the structures they claim to occupy, and no survey report was submitted to substantiate the location. In my view, their request constitutes an abuse of the court process, intended to delay proceedings and prolong the occupation of the property in question. As submitted, there have been several applications in the past whenever this matter has been set down for hearing; notably, in the ruling dated July 3, 2024, this court declined a joinder application similar to this one.

3. Consequently, the application dated June 26, 2025, is hereby dismissed with costs.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 23RD DAY OF OCTOBER 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Ms. Kinyakanga for the Plaintiff

Happy: Court Assistant

In the absence of:



Mr. Kenga for the Defendants/ Proposed Interested Parties

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