



Republic v Attorney General & 6 others; Wilson (Ex parte Applicant) (Environment and Land Judicial Review Case E005 of 2024) [2025] KEELC 7410 (KLR) (29 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7410 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E005 OF 2024**

CK NZILI, J

OCTOBER 29, 2025

BETWEEN

REPUBLIC APPLICANT

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

THE CABINET SECRETARY, MINISTRY OF LANDS HOUSING & PHYSICAL PLANNING 2ND RESPONDENT

THE CHIEF LAND REGISTRAR 3RD RESPONDENT

NATIONAL LAND COMMISSION 4TH RESPONDENT

COUNTY LAND ADJUDICATOR TRANS-NZOIA 5TH RESPONDENT

DIRECTOR OF LAND ADJUDICATION & SETTLEMENT .. 6TH RESPONDENT

LAND SETTLEMENT FUND BOARD OF TRUSTEES 7TH RESPONDENT

AND

LOSHAKEP CHUMEL WILSON EX PARTE APPLICANT

RULING

1. Through an application dated 23/7/2025, 152 applicants seek to join these proceedings as respondents. The reasons are contained on the face of the application and in a supporting affidavit of Geoffrey Mosiong Kirui, sworn on 23/7/2025, pursuant to an authority dated 23/7/2025, to execute all the pleadings herein.
2. The applicants depose that they are all bona fide allottees of the respective parcels of land, from part of the Chepchoina Phase 111. It is deposed that on 5/1/2025, a group of armed youths crisscrossed



- the section, giving residents a 3-day ultimatum to vacate their parcels of land, as the armed persons had won a land matter in Kitale Environment and Land Court, which had nullified their allotment letters, in whose strength they had taken occupation.
3. The applicants depose that they visited the court registry and verified the existence of this case, whose judgment the respondents had obtained through concealment and on non-disclosure of material facts.
 4. The applicants depose that there were public participation meetings held at the Chief's office, Chepchoina Location, on 11/6/2021 and 10/11/2021, where all members of the public had been invited to attend the public baraza as per annexed photos marked GMK-(3).
 5. Further, the applicants depose that out of the aforesaid meetings, a sub-county selection committee was appointed whose composition was in strict compliance with the law as per the annexed letter dated 18/1/2022 and marked as GMK-(4).
 6. The applicants depose that the selection committee was approved by the Cabinet Secretary, and those proposed were formally appointed as per the memo dated 13/05/2022 and attached as FMK-(5).
 7. The applicants depose that upon vigorous vetting from a list of over 15,000 applicants, the selection committee identified 970 persons as the successful applicants. Attached is a list marked GMK-(7).
 8. The applicants depose that the successful applicants complied with the terms and conditions of the allotment letters by remitting the required premiums and taking possession of their respective portions, as per the annexed bundle of allotment letters together with receipts of payments by the applicants in the order they appear in the application as GMK-(8).
 9. Equally, the applicants depose that the ex parte applicant was fully aware of the process adopted but tactfully elected not to involve them, despite being fully aware of their interest in the suit property.
 10. The applicants depose that if the judgment is implemented, it will result in their unlawful dispossession and forceful eviction from their parcels of land, without having been heard. The applicants depose that they were never notified, served, or invited to participate in these proceedings despite being affected by the court's decision.
 11. The applicants depose that their participation in the instant proceedings to assist the court in reaching a just finding and to safeguard their individual rights to property, which can only happen if the judgment is set aside, a stay of its implementation, and by being granted leave to defend the proceedings.
 12. The ex parte applicant opposes the application through a replying affidavit sworn on 1/10/2025. He avers that the application is fatally defective, lacks merit, and constitutes a misapprehension of the true nature and scope of judicial review proceedings, which is a public law remedy concerned with the legality of the decision-making process adopted by public bodies and not the merits of the decision itself.
 13. Again, the ex parte applicant avers that the court should examine the procedure through which the Chepchoina Phase III Settlement Scheme list was compiled and not to determine issues of land ownership or proprietorship, which are matters reserved for a full trial by way of plaint or originating summons.
 14. According to the ex parte applicant, the likely outcome of this Judicial Review, if successful, will be to mandate the responsible public bodies to commence the entire process de novo in compliance with the law, at which point the issue of identifying bona fide beneficiaries will properly be dealt with.



15. The ex parte applicant avers that the applicants are private citizens whose sole, demonstrable interest is the merit of their individual claims to be bona fide allottees. Their personal interests are irrelevant to the issue of whether the public administrative process itself was lawful.
16. The ex parte applicant avers that the applicants' lack of locus standi and their involvement serve no purpose, since the respondents are public officials who are mandated and are capable of defending their actions using public records and are already on record.
17. The application for joinder is predicated upon mendacious averments deliberately calculated to mislead the court, since any public participation relied upon by the Interested Parties relates to Chepchoina Phase II, which was held at Naminiit Primary School. Further, the allegations about armed youths and utterances are unsubstantiated and otiose. The legal burden of proof lies upon the person who alleges a fact to prove.
18. The ex parte applicant avers that annexure marked "GMK-1" containing a list of purported beneficiaries is replete with entries which reveal that some of these purported beneficiaries did not sign the authority to plead. He avers that it is in the interest of justice and the expeditious disposal of this judicial review that the application for joinder be dismissed with costs.
19. It is not in dispute that this court, on 17/9/2025, set aside the judgment dated 18/6/2025 and granted the respondents leave to defend the notice of motion dated 3/10/2025. Order 53 Rule 6 of the Civil Procedure Rules provides that on the hearing of any such motion, any person who desires to be heard in opposition to the motion and appears to the court to be a proper person to be heard shall be heard, notwithstanding that he has not been served with the notice or summons.
20. The right to be heard is fundamental. It would offend all notions of justice if the rights of a party were to be prejudiced or affected without a party being afforded an opportunity to be heard. See *Matiba -vs- Attorney General* [1995-1998] 1 EA 192.
21. In *Mumo Matemu -vs- Trusted Society of Human Rights Alliance & Others* [2013] eKLR, the court said that a suit in court is a solemn process that is solely between the parties. In *Francis Karioko Muruatetu & Another -vs- Republic & Others* [2016] eKLR, the court held that any party seeking to join proceedings in any capacity must come to terms with the fact that the overriding interest or stake in any matter is that of the primary parties before the court.
22. Order 1 Rule 10(2) of the Civil Procedure Rules grants the court powers to join a party who ought to have been joined, whose presence before the court may be necessary to enable the court to effectually and completely adjudicate upon and settle all questions involved in a suit.
23. Rule 7 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (Mutunga Rules), provides that a party may apply to be joined in any proceedings before it.
24. The considerations to join were set in *Francis K. Mutuatetu & Another -vs- Republic* (supra). They include personal interest or stake, prejudice to be suffered by the intended party, and setting out the case it intends to make before the court.
25. In *Communication Commission of Kenya & Others -vs- Royal Media Services Ltd & Others* [2014], the court emphasized on joinder of a party who will be affected by the decision of the court when it is made one way or the other, to enable him to champion his or her cause.



26. In Meme -vs- Republic [2004] 1EA 24, the court emphasized that joinder aims to protect the rights of a party who would otherwise be adversely affected in law and or to prevent a likely course of proliferated litigation.
27. There is no dispute that in the impugned decision and the decision-making process, the subject matter of the notice of motion dated 3/10/2024, the intended respondents were the ultimate beneficiaries.
28. I think the applicants have an identifiable stake or interest. Their participation in these proceedings as respondents will not prejudice anyone. Instead, all the parties will be able to participate in the proceedings so that the court can settle all issues without the need for proliferated litigation. The application is allowed. The respondents shall file and serve their responses to the notice of motion dated 3/10/2024, within 30 days from the date hereof. Costs shall be in the cause.
29. Orders accordingly

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 29TH DAY OF OCTOBER 2025.

In the presence of:

Court Assistant - Dennis

Exparte applicant present

Intended respondent present Jeruto for exparte applicant present

Serebe for intended respondents

Serebe holding brief for Chilaka for 1st – 7th respondents present

HON. C.K. NZILI

JUDGE, ELC KITALE.

