



**Kalama v Kiponda; Katana (Intended Interested Party) (Environment and Land Case E083 of 2024) [2025] KEELC 7872 (KLR) (12 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7872 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND CASE E083 OF 2024  
FM NJOROGE, J  
NOVEMBER 12, 2025**

**BETWEEN**

**ALI OMAR KALAMA ..... PLAINTIFF**

**AND**

**JAPHET KAHINDI KIPONDA ..... DEFENDANT**

**AND**

**SIDI ROBERT KATANA ..... INTENDED INTERESTED PARTY**

**RULING**

1. The Applicant moved the court vide a chamber summons application dated 25/3/2025 seeking orders that she be joined to this suit as an interested party and that costs of the application be provided for. The basis of the application were the grounds that: -
  1. The Applicants are the lawful administrators of the Estate of Robert Samuel Katana Mramba (Deceased) and had even obtained a grant to that effect;
  2. The Applicants have great interest in this property and therefore it is only fair that they be joined in as a party;
  3. There is pending before the Kilifi Magistrate Court Succession proceedings on the administration of the estate being Succession Cause No. E267 of 2021 and that that the said suit property if part of the Estate for Distribution.
2. The application, which was brought under Sections 3A of the *Civil Procedure Act* and Order 1 rules 10 (2) and 22 of the Civil Procedure Rules, was supported by an affidavit sworn by Sidi Robert Katana, one of the administrators of the Estate of the late Robert Samuel Katana Mramba. She deposed that she was the widow of the deceased, who had been allocated Plot No. Kilifi/Ngerenyi/310 on 19/6/1973, and that the property was subsequently discharged in his favour in October 2017. She annexed copies



of the Grant of Letters of Administration, the Allotment Letter, and the discharge documents. She disputed the Plaintiff's claim of ownership, contended that the outcome of the present case directly affected pending succession proceedings in Kilifi, and asserted that she had a substantial interest in the property.

3. The Plaintiff opposed the application. He filed grounds of opposition dated 31/3/2025 framed as follows: -
  1. The Interested party has not demonstrated any stake and or identifiable interest or any locus standi in the matter in dispute as between the Plaintiff and the Defendant;
  2. The Interested party has not shown that she has any claim either as against the Plaintiff or as against the Defendant in respect to the suit land that is compatible with the existing cause of action between the Plaintiff and the Defendant;
  3. The Interested party has not demonstrated the prejudice that shall be occasioned to her unless she is joined in this suit;
  4. The Interested party has not demonstrated that she is a necessary and proper party in the dispute between the Plaintiff and the Defendant.
4. The application was canvassed by way of written submissions.

#### **Applicant's Submissions**

5. The Applicant filed submissions dated 13/6/2025 in support of her application. Counsel submitted that the sole issue for determination is whether the Applicant has met the threshold for joinder as an interested party. Reliance was placed on the Supreme Court decision in Francis Kariuki Muruatetu & Another v Republic & 5 Others Petition No. 15 of 2013 consolidated with Petition No. 16 of 2013 [2016] eKLR, where the Court outlined the guiding principles for joinder, namely that a party must demonstrate a personal interest or stake in the matter, show the prejudice likely to be suffered if not joined, and set out the relevance of the submissions they intend to make.
6. Counsel further submitted that the Applicant has moved the Court by a formal application filed during the pendency of the suit. The Applicant is the duly appointed legal representative of the estate of the deceased who was the former registered owner of parcel of land known as Kilifi/Ngerenyi/310, which he sold to the Defendant in 2017. That the Defendant took possession, but in 2018, while the deceased was critically ill, the Plaintiff filed ELC No. 122 of 2018 seeking cancellation of the deceased's title; that the suit proceeded undefended and the Plaintiff obtained orders; that the Plaintiff has now instituted the present suit against the Defendant seeking, inter alia, ownership and eviction orders.
7. Counsel argued that the Applicant's presence is necessary to protect the estate from prejudice, as the Defendant may be compelled to pursue the estate for having sold land which may ultimately be adjudged not to belong to the deceased. It was submitted that her interest is proprietary and direct, and that she possesses critical knowledge and documentation necessary for a fair determination of the dispute.
8. Reliance was also placed on Marigat Group Ranch & 3 Others v Wesley Chepkoimet & 19 Others [2014] eKLR, where the Court held that an intended party must show that their presence is necessary for the Court to effectually and completely adjudicate upon and settle all questions involved in the suit.
9. In conclusion, it was urged that the Applicant has a personal interest as the legal representative of the deceased, would suffer prejudice if not joined, has a close connection to the subject matter, and that



her participation is necessary to enable the Court to effectually and completely adjudicate upon the questions in dispute. Counsel urged the court to allow the application.

### **Plaintiff's Submissions**

10. The Plaintiff filed submissions dated 25/7/2025 opposing the application. Counsel submitted that the enabling provisions for joinder of parties are to be found in Order 1 Rule 3 and Rule 10(2) of the Civil Procedure Rules.
11. Counsel argued that the onus lies on the Applicant to demonstrate that she has a stake or identifiable interest in the subject matter and that she is a necessary party likely to suffer prejudice if not joined. Reliance was placed on *Shirving Supermarket Limited v Jimmy Ondicho Nyabuti & Others* ELC No. 201 of 2016, where the Court held that an applicant must show an interest in the subject matter or demonstrate that their presence is necessary to enable the court to completely adjudicate the issues.
12. Counsel contended that the dispute is between the Plaintiff and Defendant over ownership of 7 acres of parcel No. Kilifi/ Ngerenyi/310, registered in the Plaintiff's name and occupied by the Defendant; that the Plaintiff seeks vacant possession and demolition of structures erected thereon. Counsel submitted that the Applicant does not own the suit property but claims to be the administrator of the estate of the late Robert Katana, who allegedly sold 6 acres to the Defendant.
13. Counsel argued that the ownership dispute between the Plaintiff and the late Robert Katana was conclusively determined in *Malindi ELC No. 122 of 2016 – Ali Omar Kalama v Robert Katana*, where the deceased's title was cancelled and the property registered in the Plaintiff's name. That judgment has neither been set aside on appeal nor review and remains binding, even on the Applicant as administrator. The Plaintiff therefore contended that the matter is *res judicata* within the meaning of Section 7 of the *Civil Procedure Act*.
14. Further reliance was placed on Section 44(2)(a)–(d) of the *Evidence Act*, to argue that the Applicant cannot claim interest in the property on account of being the deceased's administrator since the deceased's interests were extinguished by the judgment in the former suit. If dissatisfied, the Applicant ought to have sought recourse within the former suit.
15. Counsel also cited *Deported Asians Property Custodian Board v Jaffer Brothers Limited* [1999] 1 EA 55 (SC), in support of the proposition that an applicant must show that if a separate suit were filed, common questions of law or fact would arise. It was argued that the Applicant has not shown any relief she seeks against the Plaintiff, nor demonstrated that her presence is necessary for effective adjudication.
16. Counsel added that the Applicant has already filed a witness statement and intends to testify for the Defendant, which is permissible, but that does not render her a necessary party. In conclusion, counsel urged the Court to find the application unmerited and to dismiss it with costs.

### **Analysis And Determination**

17. The sole issue for determination arising herein is whether the Applicant should be joined as an Interested Party in the proceedings herein.
18. Order 1 Rule 10(2) of the Civil Procedure Rules 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 or settle all questions involved in the suit, be added.”

19. Rule 2 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 defines an interested party as follows: -

““interested party” means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation;”

20. The Black’s Law Dictionary defines an Interested Party as

“a party who has a recognizable stake (and therefore standing) in the matter.”

21. The Supreme Court of Kenya in *Communications Commission of Kenya and 4 Others -v- Royal Media Services Limited & 7 Others* Petition No. 15 of [2014] eKLR relied on its earlier decision and reiterated the following definition: -

“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. Similarly, in the case of *Meme v. Republic*, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- (i) Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;
- (ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) Joinder to prevent a likely course of proliferated litigation.

We ask ourselves the following questions:

- a) what is the intended party’s state and relevance in the proceedings and
- b) will the intended interested party suffer any prejudice if denied joinder.?”

22. Joinder of interested parties to suits was addressed by the Supreme Court of Kenya in the case of *Francis K. Muruatetu and another -v- Republic & 5 others* [supra] cited to me by counsel for the Applicant. Similarly, in *Skov Estate Limited & 5 others -v- Agricultural Development Corporation & another* [2015] eKLR Justice Munyao Sila in dealing with the issue of an Interested Party seeking to be joined in a suit stated as follows: -

“In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may



very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party.

In other words, there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.”

23. In the present case, the Plaintiff sought to resist the application principally through the grounds of opposition dated 31/3/2025, which challenged the Applicant’s identifiable interest, locus standi, and necessity for joinder. In submissions, counsel for the Plaintiff went further to raise the issue of a former suit, Malindi ELC No. 122 of 2016, in which the deceased’s title to the suit property was allegedly cancelled and the land registered in the Plaintiff’s name.
24. While that argument is weighty, I note that the issue of the former judgment was not pleaded in the grounds of opposition nor supported by affidavit evidence. It was raised for the first time at the submissions stage. It is trite that submissions, however persuasive, cannot substitute pleadings or evidence. Even if I were to consider the point, the material before me does not include a certified copy of the said judgment or decree for the Court’s verification. Without such proof, I am constrained to limit myself to the issues as properly raised and supported on record.
25. The applicable test remains whether the Applicant has demonstrated a personal stake or legal interest in the subject matter, and whether her presence is necessary for the Court to effectually and completely adjudicate upon the issues in dispute.
26. The Applicant anchors her interest on her status as administrator of the estate of the deceased, whom she contends was the former allottee and proprietor of the suit property. She has exhibited the grant of letters of administration and allotment/discharge documents. She also argues that the outcome of this case will directly affect the estate, which is the subject of pending succession proceedings.
27. However, the pleadings before the Court show the dispute as framed is strictly between the Plaintiff, as the registered proprietor, and the Defendant, as the alleged occupant of the land. The Applicant has not set out any substantive relief she seeks against either party. Her interest, while considerably genuine, can sufficiently be presented through testimony as a witness for the Defendant as already listed. That avenue, in my view, enables her to protect the estate’s position without necessitating joinder.
28. I am therefore not persuaded that the threshold for joinder has been met. The presence of the Applicant is not necessary for the Court to effectually and completely adjudicate upon the questions in controversy between the existing parties.
29. The outcome of the foregoing is that the application dated 25/3/2025 is dismissed with costs.

**DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 12<sup>TH</sup> DAY OF NOVEMBER, 2025.**



**MWANGI NJOROGE**  
**JUDGE, ELC, MALINDI.**

