

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELC PETITION 11 OF 2012

**IN THE MATTER OF CHAPTER FOUR ON THE BILL OF RIGHTS, OF THE
CONSTITUTION OF THE SOVEREIGN REPUBLIC OF KENYA, 2010**

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (SUPERVISORY
JURISDICTION AND THE PROTECTION OF FUNDAMENTAL RIGHTS OF THE
INDIVIDUAL) HIGH COURT PRACTICE AND PROCEDURE RULES, 2006**

IN THE MATTER OF ARTICLES 1,2,3,10,12(1)

**(A),19,20,21,22,23,27(4),35(2),40,47,50,64,73(1)(A, AND 129) OF THE
CONSTITUTION OF THE SOVEREIGN REPUBLIC OF KENYA, 2010**

AND

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF
FUNDAMENTAL RIGHTS AND FREEDOMS UNDER THE CONSTITUTION OF KENYA to
wit CONTRARY TO ARTICLES 19,21,22,23,27(4),35(2),40,47 AND 50**

AND

**IN THE MATTER OF CONTRAVENTION OR BREACH OF THE CONSTITUTION OF KENYA
to wit Article 258**

AND

**IN THE MATTER OF THE INTERPRETATION, IMPLEMENTATION AND ENFORCEMENT
OF THE CONSTITUTION OF KENYA to wit ARTICLE 259**

AND

IN THE MATTER OF LAND ACT, 2012 (ACT NO. 6 OF 2012)

AND

IN THE MATTER OF THE LAND REGISTRATIUN ACT 2012 (ACT NO. 3 OF 2012)

AND

IN THE MATTER OF REGISTERED LAND ACT CAP 300(REPEALED)

AND

**IN THE MATTER OF THE CONSTITUTIONALITY OR OTHERWISE OF THE REPORT
OF THE SPECIAL TASK FORCE ON KILIFI JIMBA AND CHEMBE KIBABAMSHE
SCHEMES IN MALINDI DISTRICT DATED JUNE, 2010**

AND

**IN THE MATTER OF THE EXISTING AND YET TO BE LIFTED GENERAL EMBARGO,
MORATORIUM AND/OR RESTRICTION BY THE COMMISSIONER OF LANDS, THE 4TH
RESPONDENT HEREIN, APPEARING THE DAILY NATION ISSUE OF THURSDAY
AUGUST 12,2010 WITH RESPECT TO LAND WITHIN CHEMBE KIBABAMSHE LAND
REGISTRATIO SECTION AND JIMBA LAND REGISTRATION SECTION**

AND

**IN THE MATTER OF CONSTITUTIONALITY OR OTHERWISE OF THE LETTER BY THE
HON. GIDEON MUNG'ARO, THE 7TH RESPONDENT DATED AUGUST 20,2010
REFERENCED KILIFI JIMBA & KIBABAMSHE SCHEME ADDRESSED TO THE
COMMISSIONER OF LANDS, THE 2ND RESPONDENT HEREIN**

AND

**IN THE MATTER OF THE CONSTITUTIONALITY OR OTHERWISE OF THE ACTION OF
THE DISTRICT LAND REGISTRAR, KILIFI, THE 4TH RESPONDENT HEREIN, TO ISSUE
CERTIFICATES OF LEASES FOR PLOTS CONTAINED IN THE LETTER BY THE HON.
GIDEON M MUNG`ARO DATED AUGUST 20,2010 REFERENCED KILIFI JIMBA &
KIBABAMSHE SCHEME ADDRESSED TO THE COMMISSIONER OF LANDS**

BETWEEN

- 1. DENMAN PROPERTIES LIMITED**
- 2. BOND STREET PROPERTIES LIMITED**

3. GREEN LILY LIMITED
4. HOLBORN PROPERTIES LIMITED
5. ROYAL TULIA ESTATES LIMITED.....PETITIONERS

VERSUS

1. THE HON.ATTORNEY GENERAL
2. THE COMMISSIONER OF LANDS
3. THE CHIEF LAND REGISTRAR
4. THE DISTRICT LAND REGISTRAR, KILIFI
5. THE MINISTERIAL TASK FORCE ON LAND ISSUES IN COAST PROVINCE
6. THE HON.GIDEON M.
MUNGA'RO.....RESPONDENTS

AND.

CHARO MASHAKA KAZOMBA &35 OTHERS INTERESTED PARTIES

REHANA DEEN INTENDED INTERESTED PARTY/APPLICANT

RULING

1. For determination is a Notice of Motion application dated **25th October 2024** brought by the Applicant under Article 23(3) of the Constitution of Kenya 2010, section 3, 4, 13, 14,19 and 23 of the Constitution of Kenya, Protection of Rights and Fundament Freedoms and Enforcement of the Constitution) practice and Procedure rules 2013, Sections 1A, 1B, 1C, 3A and 100 of the Civil Procedure Act and Order 1 Rule 10(2) and (4) of the Civil Procedure Rules. The orders sought are:

- 1)Spent;
- 2) **That the Intended Interested Party/Applicant REHANA DEEN be enjoined in this suit as interested parties;**
- 3) **That the Judgement/Decree of this honourable court issued on 13th May 2015 be stayed, set aside, reviewed and varied to the extent of Plot No. KILIFI/JIMBA/328;**
- 4)Spent;
- 5)Spent;
- 6) **That the Applicant herein REHANA DEEN be granted leave to defend their interest as far as parcel known as plot no. KILIFI/JIMBA/328.**
- 7) **That this Honourable Court be please to reopen this petition for hearing and determination;**

8) That the costs of this application be provided for.

2. The application which is based on the grounds listed therein is supported by an affidavit sworn by Rehana Deen the Intended Interested Party, and Mathius Kalu Kitsao on **25th October 2024** and **31st October 2024** respectively. Rehana Deen deposed that she is the *bona fide* owner of Plot KILIFI/JIMBA 328 (hereinafter also referred to as “*the suit property*”) measuring 1.7 hectares, title to which is annexed as **Annexure A**; that she purchased the plot from Mathias Kalu Kitsau on 16th August 2001, with the sale agreement attached as **Annexure B**, and has since maintained peaceful occupation, constructing houses and a perimeter wall (**Annexure C**).
3. She averred that her title deed has never been revoked and remains valid. Upon conducting a search on **15th December 2023**, she discovered that the plot had been transferred to Denman Properties Limited and restricted on 26th January 2023 (**Annexure D**), without her knowledge. She noted that the transfer followed a petition (**Petition No. 11 of 2012**) wherein the petitioners claimed ownership of her plot, relying in part on a letter from the former MP Hon. Gideon Mung’aro (**Annexure E**), a Ministerial Task Force Report (**Annexure F**), and alleged non-existent leases. She averred that she was not joined in the petition, thereby denying her the opportunity to be heard. She challenged the authenticity and admissibility of the Task Force Report, as well as the quashed leases which she stated were never tendered in court.

4. She further asserted that the petitioners relied on incorrect plot numbers and that prior judicial rulings supporting her position were later contradicted (**Annexure G**). She asserted that the subsequent judicial process disregarded the National Land Commission's investigations, which found the petitioners' claims irregular or illegal (**Annexures H and I**). She provided an executive summary of the court proceedings and analysis to illustrate the alleged miscarriage of justice (**Annexure J**).
5. On his part, Mathius Kalu stated that he was the indigenous owner of the suit property, which he inherited from his father; that he sold 3.5 acres of the plot to Rehana Deen in 2001, with the sale agreement attached as **Annexure MKK-A**, and agreed that a title would be issued in her name, with subdivision to carve out his remaining one-acre portion (**Annexure MKK-B**).
6. He further averred that in December of the previous year, Rehana Deen conducted a search at the Kilifi Lands Registry and discovered that the plot had been transferred to Denman Properties Limited without their knowledge. He stated that a petition was lodged in court, leading to a judgment in favor of third parties, and that this process occurred without disclosure of material facts, resulting in transfer of the plot contrary to their rights and the land laws.
7. The application was opposed through a Replying Affidavit sworn on 5th June 2025 by **Sophia Abdillahi Chacha**, a Director and shareholder of Denman Properties Limited, the 1st Petitioner. She deposed that Denman

Properties Limited, a duly incorporated private limited liability company in Kenya, had purchased the suit property, Plot KILIFI/JIMBA/328, in **January 2008** from Glitter Venture Company Limited for Kshs. 3,825,000.00 as a *bona fide* purchaser for value without notice of any prior claims, and had duly registered the transfer at the Kilifi District Land Registry (**Annexure SAC 1** included the title deed and search certificate). She contended that the 1st Petitioner had maintained quiet possession and occupation of the property, paying all requisite rates and charges.

8. She further stated that the Petitioners' claims arose from a constitutional petition challenging the legality of Certificates of Lease issued based on the 2010 Task Force report and a letter from Hon. Gideon M. Mung'aro, which the Court had previously held to be unconstitutional and null and void. She averred that all affected parties, including Rehana Deen, had received adequate notice and opportunity to participate in the proceedings. The deponent added that once judgment was delivered and registers restored, a stranger could not join the proceedings or challenge the title of a *bona fide* purchaser. She emphasized that the principle of finality of court decisions and opposed the Application, asserting that the Applicant's conduct amounted to abuse of court process, and prayed that the Court dismiss the application with costs.
9. The Applicant filed written submissions dated **23rd September 2025** while the Petitioners relied on the replying affidavit aforementioned.

10. Counsel for the Applicant addressed several issues, namely: whether there had been a violation of the rules of natural justice; whether the doctrine of finality applied; whether the curtain principle was relevant; whether the Court had jurisdiction to hear the matter; whether the applicant was entitled to the orders sought; and whether the Court had usurped the powers of the National Land Commission (NLC).
11. On the first issue, counsel submitted that the Applicant had not been a party to the earlier proceedings and had not been served with court documents despite being in occupation of the suit premises. He contended that the Applicant was condemned unheard in violation of **Article 50** of the Constitution. Counsel further argued that the petitioners had sued parties with no interest in the suit land, rendering the petition technically undefended. Counsel relied on the ruling of Angote J. dated 9th May 2013, wherein the Court had found that certain plots sued upon had no nexus with the petitioners' plots. It was counsel's submission that Plot No. KILIFI/JIMBA/328 had not been part of the contested parcels, and the Applicant's exclusion from the proceedings was therefore unjust.
12. On the doctrine of finality, Counsel distinguished the Supreme Court's pronouncement in *Raila Odinga & Others v IEBC & Others (2013) eKLR*, arguing that the matter before Court concerned historical land injustices for which the National Land Commission had an open-ended mandate. He submitted that such cases could be reopened if the applicant demonstrated a continuing claim of historical injustice.

13. Regarding the curtain principle, counsel relied on the decision in *Dina Management Limited v County Government of Mombasa & 5 Others (2023) eKLR*, and submitted that courts were now required to go beyond the instrument of title to examine the root of ownership. Counsel argued that although the title was registered in the name of Denman Properties Limited, the Applicant's claim originated from purchase from an indigenous owner under a settlement scheme, and that the NLC's gazette notice had declared the petitioners' title irregular.
14. On jurisdiction, counsel contended that the Judicial Review proceedings previously filed were void *ab initio* for being instituted out of time and without leave, contrary to Rule 30 of the National Land Commission (Review of Grants and Dispositions of Public Land) Regulations, which required appeals rather than judicial review.
15. Counsel further submitted that the Court, in entertaining and determining the earlier petition, had usurped the powers of the National Land Commission, which was constitutionally mandated to investigate historical land injustices. Reliance was placed on *Diana Kethi Kilonzo v Independent Electoral and Boundaries Commission & 2 Others (2014) eKLR*, for the proposition that courts should refrain from exercising powers specifically reserved for other constitutional bodies.
16. In conclusion, the applicant urged the Court to allow the application, reopen the petition, and refer the matter to the National Land Commission for proper determination, submitting that the case raised weighty issues

of historical injustice and that denying her audience would amount to removing her from the seat of justice.

ANALYSIS AND DETERMINATION

17. The issues for this Court's determination are
- (i) whether to join the intended interested party,
 - (ii) reopen the current petition,
 - (iii) whether the orders sought in the motions are available, and
 - (iv) who should bear the costs of the application.
18. The 1st Petitioner purchased the suit property from Glitter Venture Company Limited for valuable consideration, and a Title Deed was subsequently issued on 31st January 2008. After a full hearing, this Court (Angote J.) rendered its decision on the present petition, having earlier invited the participation of any interested parties through public advertisement. Notably, the same issues had previously arisen in Judicial Review No. 1 of 2019.
19. On 8th May 2015, this Honourable Court in its judgment in this Petition held as follows:
- i. A declaration be and is hereby issued that the issuance of Certificates of Leases based on the Report of the Task Force on Kilifi Jimba and Chembe Kibabamshe dated June, 2010 and the letter by the Hon. Gideon Mung'aro dated the 20th day of August, 2010 was in violation of Articles 3, 10, 27, 40,**

- and 47 of the Constitution and Sections 10, 33 and 143 of the Registered Lands Act, Cap 300 of the Laws of Kenya (Repealed) hence unconstitutional, null and void ab initio.
- ii. **A declaration be and is hereby issued that the 1st Petitioner is the legal proprietor of Parcels of Land known as Kilifi/Jimba/ 342, 335, 340, 341, 427, 338, 353, 333, 334, 311, 331, 337, 317, 336, 345, 328 (read the suit property), 343 and 344. iii.**
 - iii. **A declaration be and is hereby issued that the 2nd Petitioner is the legal proprietor of Parcels of Land known as Kilifi/Jimba/315, 319, 316, 314, 346, and 312. 5. iv. A declaration be and is hereby issued that the 3rd Petitioner is the legal proprietor of a Parcel of Land known as Kilifi/Jimba/323.**
 - iv. **A declaration be and is hereby issued that the 4th Petitioner is the legal proprietor of Parcels of Land known as Chembe/Kibabamshe/396, 637, 638, 401, 423, 425, 428, 394 and 379.**
 - v. **An order of Certiorari be and is hereby issued to bring to this Honourable Court for purposes of being quashed, Leases and Certificates of Lease that were issued in respect of the above suit properties.**
 - vi. **An Order of Permanent Injunction be and is hereby issued to prohibit the Respondents by themselves, servants, agents or whosoever authorized on their behalf from giving effect or implementing in any manner whatsoever the Report of the Task Force on Kilifi Jimba and Chembe Kibabamshe dated June 2010 or in any other manner interfering with the Petitioners possession and ownership of their respective suit properties.**
 - vii. **An order of mandamus be and is hereby issued compelling the 4th Respondent to restore the register in respect of the above-mentioned parcels of land and issue to the Petitioners with Certificates of Search on payment of the requisite fees.**

20. The decree in this Petition was duly executed. The registers in respect of the suit properties therein were restored and Certificates of Search availed to the Petitioners. Specifically, the suit property was, vide a transfer dated 1st April, 2025, transferred by the 1st Petitioner to Ssibanom

Limited at a consideration and a Title Deed issued on 16th April, 2025 to Ssibanom Limited.

21. In the present application, the Applicant seeks, *inter alia*, to re-open the petition and to set aside or vacate this Court's judgment delivered on 8th May 2015, together with the decree issued on 13th May 2015, to the extent that it affected her interests. She contended that she had purchased the suit property from one Mathias Kalu Kitsao on 16th August 2001, who had inherited the same from his late father. The Applicant further averred that, having not been a party to the petition, she ought to have been accorded an opportunity to be heard on merit.
22. The 1st Petitioner averred that a party can choose to sue whomever it wants to and that the most crucial interest or stake in any suit is that of the primary/principal parties before the Court as was discussed in ***Methodist Church in Kenya v Mohamed Fugicha & 3 others [2019] eKLR***; that an interested party may not frame its own fresh issues or introduce new issues for determination by the Court, especially after delivery of judgment when a court becomes *functus officio*. The 1st Petitioner cited ***Raila Odinga & 2 others v Independent Electoral & Boundaries Commission & 3 others [2013] eKLR***.
23. The Black Law Dictionary, 9th Edition, page 1232, defines an interested party as; "*A party who has a recognizable stake (and therefore standing) in the matter.*" The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, Legal Notice No.

117 of 2013, also defines an interested party as “A person or an entity that has an identifiable stake or legal interest or duty in the proceedings and may not be directly involved in the litigation.”

24. The Supreme Court of Kenya in **Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 others** [2014] eKLR observed as follows: -

“[22] In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court’s Ruling in the Mumo Matemu case where the Court (at paragraphs 14 and 18) held:

“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.?”

25. It is also trite that the Court’s power to order the joinder of any person under **Order 1 Rule 10(2)** of the *Civil Procedure Rules* may be exercised

at any stage of the proceedings. Commenting on a similar provision under the Indian *Code of Civil Procedure*, the editors of **Mulla, Code of Civil Procedure**, 14th Edition, Volume II, at page 863, observed that *“it is only when a suit or proceeding has been finally disposed of, so that there is nothing more to be done, that this rule becomes inapplicable.”*

26. In the present case, the Applicant is not merely seeking to be joined as a party to the petition; she also seeks a review and setting aside of the Court’s judgment to enable her to be heard. In essence, upon being admitted, she intends to reframe the issues and have the entire petition reopened for rehearing. Undoubtedly, the joinder of an interested party is intended to protect the interests of a person who might otherwise be excluded by a party acting maliciously, with the sole aim of depriving them of the right to be heard before being condemned. However, upon examining the application and the orders sought, it is evident that the judgment in this petition was delivered on **8th May 2015**. Since then, the suit property, in respect of which the Applicant seeks to assert her rights, has long changed hands. The substratum of the suit, so to speak, no longer exists as it did in 2015 when this Court rendered its judgment. Consequently, the matter cannot be reopened in its original form.

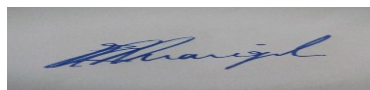
27. From the record and the Applicant’s own pleadings, it is apparent that neither Mathius Kalu nor his father ever held registered title to the suit property; at the very least, no evidence was adduced to establish such title. The 1st Petitioner averred that when it purchased the suit property

from Glitter Venture Limited, there was no caveat or caution registered against it. The 1st Petitioner further asserted that it was a *bona fide* purchaser for value without notice of any defect in the title to the suit property. As such, the 1st Petitioner could not have been aware of the interests now being claimed by the Applicant.

28. In these circumstances, this Court is not persuaded that it can revisit the matter to accommodate the intended interested parties, as their plea is inordinately late. It would serve no practical or legal purpose to reopen a matter that has long been concluded and whose subject matter has since changed hands, to a party who was not a participant in this Petition. Perchance the Applicant has a legitimate cause of action, this forum is not the appropriate avenue for her to ventilate her claims.

29. The upshot is that the application dated 25th October 2024 is misconceived, devoid of merit, and it is hereby dismissed with costs.

Dated, signed and delivered at Malindi on this 26th day of November, 2025.

A rectangular box containing a handwritten signature in blue ink, which appears to read 'Mwangi Njoroge'.

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