



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC LAND CIVIL SUIT NO. E42 OF 2017

BETWEEN

**DANIEL KYULI & 6999 OWNERS OF
 MAVOKO TOWN BLOCK 12
 PLAINTIFF**

VERSUS

**FELIX MUTHEMBA & JOSEPH NJUGUNA
*(Being sued on their own behalf and as officials of
 Balozzy welfare group association)*
 DEFENDANTS**

AND

**NICHOLAS KASURU, MUTUA MBAI,
 DANIEL MUTUA MULINGA & JEREMIAH MUTISYA PAUL
*(Being sued on their own behalf
 and as officials of Ngelani Associates) 1ST*
 INTERESTED PARTY**

AND

GANANA DEVELOPERS

LIMITED.....1ST
INTERESTED PARTY

INTENDED

SAFARICOM INVESTMENT

CO-OPERATIVE SOCIETY LTD 2ND INTENDED
INTERESTED PARTY

RULING

1. This ruling considers three notices of motion: one dated 24/10/2023 by the intended first interested party ("**1st intended IP**"), the second one dated 30/09/2024 by the second intended interested party ("**2nd intended IP**"), and the last one by the plaintiffs, dated 10/02/2025. We will shortly review a summary of these applications along with their respective responses.

Motion dated 24/10/2023 by the 1st intended IP

2. In this one, the 1st intended IP seeks the following reliefs from this court: -

a. Spent.

b. Ganana Developers Limited, being an interested party herein be joined in these proceedings as the 2nd proposed interested party.

c. Spent.

d. The honourable court be pleased to make any other orders deemed fit in the circumstances for the end of justice.

e. The costs of the motion be in the cause.

3. The motion is supported by the grounds outlined in the main document and the supporting affidavit of Mohamed Koriyow Mohamed, sworn on the same date. In summary, he stated: a) the 1st intended IP is the registered owner of parcels of land known as L.R. Nos. 8529/9 and 8529/10 in Mavoko, Machakos County, having purchased them from the interested parties ("**IPs**") in 2018 and paying land rates since; b) the plaintiffs and defendants have no interests in these specific parcels of land, and their intent in filing the current suit appears suspicious; c) these proceedings adversely affect it, making it a necessary party; and, d) it is in possession of its land to the exclusion of all parties and will suffer loss and damage if the orders sought are not granted.

4. Additionally, the alleged certificates of title of these properties were presented to the court along with the alleged agreement dated 21/11/2018, which showed a purchase between the 1st intended IP and interested parties

over LR NO. 8529/7, Proposed Block B, Mavoko Municipality, Machakos District, measuring 250 acres.

5. On the service of the motion, Daniel Kyuli challenged it through the replying affidavit he deposed on 20/11/2023, where, in brief, he maintained that: (a) the 1st intended IP's land does not exist, as LR Nos. 8529/1, 3673, and 7283/1 were amalgamated, titles surrendered, converted, and subdivided to create Mavoko Town Block 12 ("Block 12") with parcel nos. 1-941; b) the certificates of title for the 1st intended IP's land were obtained through fraud; (c) the certificates of official searches over the 1st intended IP's land, and instruments of transfer had not been tendered to the court for inspection; and, (d) as members of Drumvale Farmers Cooperative Society, they have been in occupation of their land since 1965, and there was a finding in **Nairobi Misc. 255 of 2016**, that members of the Cooperative owned Block 12.
6. The plaintiffs also filed a notice of preliminary objection dated 23/04/2024, but it appears they abandoned it. In my humble view, and having reviewed it, it fell far short as it does not meet the settled threshold established in **Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors (1969) EA 696**.

7. Similarly, the motion is opposed by the IPs by the replying affidavit sworn by Jeremiah Mutisya Paul on 21/02/2024, who supported the plaintiffs' position and additionally stated that: a) the motion has not been moved within the relevant provisions of law; b) the motion is malicious as the 1st intended IP has no interest in the suit property which is L.R. No. 8529/7 originally known as L.R. No. 8529/1 and, finally, c) the motion had not met the legal threshold.

Motion dated 30/09/2024 by the 2nd intended IP

8. As for this motion, the 2nd intended IP seeks the following reliefs from this court: -

a. This honourable court be pleased to join Safaricom Investment Co-operative Society Ltd as an interested party in this suit.

b. The costs of this application be provided for.

c. Any other order this honourable court may deem just and expedient in the circumstances be granted.

9. The motion is supported by the grounds outlined in the main document and the supporting affidavit of Jared Osoro Nyagwoka, sworn on the same date. In summary, he stated:

a) the 2nd intended IP and its members have an identifiable stake and legal interest in the subject matter of this suit as they own registrable interests over the following parcel of land; **Mavoko Town Block 12/6989, 6990, 6991, 6992, 6993, 6994, 6995, 6996, 6997, 6998, 6999, 7000, 7001, 7002, 7003, 7004, 7005, 7006, 7007, 7008, 7009, 7010, 7011, 7012, 7013, 7014, 7015, 7016, 7017, 7018, 7019, 7020, 7021, 7022, 7023, 7023, 7024, 7025, 7026, 7027, 7028, 7029, 7030, 7031, 7032, 7033** (“the 2nd intended IP’s land”) that are part of Block 12, which is the land in dispute; and

10. B) If this matter is decided without their inclusion, their rights, obligations, and ability to use the land as they please may be lost; c) their presence in the suit will enable them to safeguard both their legal and financial interests in the land, which are directly at risk in the ongoing dispute; and d) their presence is necessary to enable this honourable court to effectively and fully adjudicate and settle all issues involved in the suit; and lastly, e) their rights and interests in the land will be directly affected by the outcome of this suit. Unfortunately, all the annexures attached to the motion are not legible.

11. Just as in the earlier motion, Jeremiah Mutisya Paul, on 25/03/2025, opposed the motion through his replying

affidavit and raised similar assertions as those contained in his earlier affidavit. It is worth pointing out that this court has disregarded a purported affidavit in opposition to this motion by Felix Maingi Ngui, as he, along with the alleged sixth intended interested party, are strangers to these proceedings.

Motion dated 10/02/2025 by the plaintiffs

12. In this one, they seek the following reliefs from this court: -

a. Spent.

b. The orders granted by this honourable court on 7/10/2022 directing the Officer Commanding Kamulu Police Station and Muungano Police Station to enforce the status quo orders, meaning no meetings, no construction, no developing, no selling, no charging, no encroaching, no transferring or dealing in any manner whatsoever with LR No. Mavoko Town Block 12, formerly LR No. 8529/1, 3673 and 7283/1, for tranquility, peace and compliance be extended forthwith.

c. In default of compliance with prayer (b) above, the Officer Commanding Kamulu Police Station

and Muungano Police Station be immediately cited for contempt of court orders.

d. Costs of the motion be provided for.

13. The motion is supported by the grounds outlined within the body of the motion and Daniel Kyuli's supporting affidavit, which is sworn on the same date and significantly he states that: a) the defendants, interested parties and their agents have illegally encroached, trespassed on Block 12 and have hired goons and the plaintiffs are unable to access their properties, and, b) the plaintiffs are highly apprehensive, prejudiced and exposed to loss of land, damages, destruction, violence unless the orders issued on 7/10/ 2022 are extended.
14. In a swift response, Jeremiah Mutisya Paul challenged this motion through his replying affidavit of 2/05/2025, where he succinctly argues that the motion is *res judicata*, an afterthought, an abuse of the court process, frivolous, vexatious, and an outright abuse of the court process.
15. As directed by the court, the motions are canvassed by written submissions from various parties, which this court has reviewed and appreciates for the submissions. Therefore, after identifying and considering the issues for determination, this ruling will, later in its analysis and

decision, address the arguments presented in the competing submissions regarding the specific issue and also take into account relevant law and judicial precedents. Accordingly, having reviewed the motions, their grounds, affidavits, annexures, as well as the opposing submissions, the ensuing issues that emerge for resolution are:

a) Whether the 1st and 2nd intended IPs should be joined as parties to these proceedings.

b) Whether the motion dated 10/02/2025 and the participation of strangers in these proceedings are an abuse of court process.

And they shall soon be addressed sequentially in this court's analysis and determination.

a. Whether the 1st and 2nd intended IPs should be joined as parties to these proceedings.

16. Respecting the law on this issue, guidance is drawn from Order 1 Rule 10(2) of the Civil Procedure Rules (CPR) which has mainly been interpreted to mean that the party who should be joined or added to civil proceedings-whether as a defendant, plaintiff, or interested party, whose presence in the proceedings is essential to assist the court in determining the matter effectively and comprehensively-

should be included in the proceedings. This proviso 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 and settle all questions involved in the suit, be added.”

17. The **Black’s Law Dictionary, 11th Edn, page 1351**, defines an interested party in the following terms:

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

18. The meaning of this definition was reiterated in the Supreme Court of Kenya's decision in **Trusted Society of Human Rights Alliance v Matemo & 5 others [2014] KESC 32 (KLR)**, as follows:

“3. An interested party was one who had a stake in the proceedings, though they were not initially a party to the cause. Such a person felt that their interest would not be well articulated unless they personally appeared in the proceedings, and championed their cause.”

19. When considering a motion for joinder, the court exercises prudent discretion rooted in law and reason. Therefore, this court adopts the guiding principles established in **Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) [2016] KESC 12 (KLR)**, thus: -

“37. 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 an interested party: One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements: 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. 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. 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 the Court.”

20. In this case, the plaintiff, interested parties and intended interested parties are in opposition, with the former asserting that the motion has not satisfied the required threshold. In contrast, the latter (intended IPs) claim that they have. Therefore, it calls upon this court to exercise its discretion and consider whether the intended IPs have met the established threshold and to conclude either way.

21. In dealing with this, it is crucial to scrutinize the material that the these intended IPs have submitted before this court, which links their supposed parcels of land to properties mentioned in the plaint which are Block 12 (formerly LR nos. 8529/1, 7283/1 and 3673) and Mavoko Town/Block 784, 755, 623, 539, 695, 779, 739, 786, 288, 832, 792, 697, 868, 6711, 6769, 6772, 6773, 6774, 6776, 6778, 6781, 6783, 6785, 6786, 6788, 6787, 6789, 6796, 6791, 6795, 6796, 6797, 6805, 6802, 6803, 6804, 6799, 6801, 467, and 6798.

22. Hence, upon scrutiny, what avails this court is that the intended 1st IP allegedly purchased a portion of LR NO. 8529/7, Proposed Block B, from the interested parties. Although this property is not mentioned in the plaint, the interested parties have clarified that L.R. No. 8529/7 was initially known as L.R. No. 8529/1- the latter is mentioned in the plaint, which was allegedly amalgamated, titles surrendered, converted, and subdivided to create Block 12. In these circumstances, it shows that the intended 1st IP has an interest in the suit properties and disagrees with the counsel opposing the joinder. In conclusion, this court finds that the 1st intended IP has a stake in the matter and is a necessary party.

23. Turning to the 2nd IP's motion, this court is entirely constrained to entertain the motion as the documents presented are illegible, and this court is uncertain whether the 2nd IP is the registered owner of the several parcels of land listed or if they are in the names of its members. They also need to demonstrate the connection of these parcels of land to Block 12 or LR nos. 8529/1, 7283/1, and 3673. In the circumstances where the documents tendered are unreadable, this court is inclined to strike out the motion dated 30/09/2024.

b. Whether the motion dated 10/02/2025 and the participation of strangers in these proceedings are an abuse of court process.

24. Concerning this matter, it is a well-established legal principle that the court possesses inherent jurisdiction to protect itself against abuse or to prevent its processes from being misused. An abuse of court process is any departure from established good order that significantly deviates from reasonable use of the court process; such abuse occurs when an individual makes excessive, improper, or contradictory use of court procedures, contravening their natural legal principles. The persuasive decision in **Satya Bhamu Gandhi v. Director of Public Prosecutions & 3 others [2018] KEHC 6100 (KLR)** outlined several

examples of such instances of abuse of court process, thus:

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(a) Instituting a multiplicity of actions on the same subject matter, against the same opponent, on the same issues or multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action.

(b) Instituting different actions between the same parties simultaneously in different court even though on different grounds.

(c) Where two similar processes are used in respect of the exercise of the same right for example a cross appeal and respondent notice.

(d) Where an application for adjournment is sought by a party to an action to bring another application to court for leave to raise issue of fact already decided by court below.

(e) Where there no iota of law supporting a court process or where it is premised on recklessness. The abuse in this instance lies in the inconvenience and inequalities involved in the aims and purposes of the action.

(f) Where a party has adopted the system of forum-shopping in the enforcement of a conceived right.

(g) Where an appellant files an application at the trial court in respect of a matter which is already subject of an earlier application by the respondent at the Court of Appeal.

(h) Where two actions are commenced, the second asking for a relief which may have been obtained in the first. An abuse may also involve some bias, malice or desire to misuse or pervert the course of justice or judicial process to the irritation or annoyance of an opponent.”

25. After carefully reviewing the record in the present case, this court finds that the motion dated 10/02/2025 constitutes an abuse of court process and appears to have been filed for reasons known only to the plaintiff. The court states this conclusion for well-founded reasons. Firstly, there are no proceedings related to 7/10/2022. Secondly, even if there was an error in the date and the plaintiffs intended to refer to 6/10/2022, the orders of 6/10/2022 are rendered moot, as the court issued interim orders pending the hearing and determination of an application dated 26/09/2022 and a ruling on this application was delivered on 9/11/2022, which struck it out. Thirdly, a similar application filed by the plaintiffs seeking to maintain the status quo was denied by a ruling delivered on 7/02/2022.

26. As for the alleged “intended 5th and 6th interested parties,” they are nothing but mere busy bodies and strangers in these proceedings, as evidenced by the ruling of 9/11/2022 that was earlier referenced. In this ruling, their application for joinder and their attempt to introduce additional interested parties were struck out for want of jurisdiction. Remarkably, their counsel was present when the ruling was made, yet he has submitted numerous replies and submissions in this case that the court will not consider or accept. Accordingly, this court finds that their involvement in these proceedings amounts to nothing but vexatious conduct and an abuse of the judicial process.
27. As this court concludes, it is noteworthy that this matter has been pending for 8 years and has not proceeded to a case conference due to numerous applications by various parties. In the court's view, the consideration of many applications, which are often vexatious, creates an obstacle to the efficient administration of justice. Therefore, it is necessary for this matter to progress to a hearing.
28. In the end, and for the above reasons and findings, this court hereby issues the following disposal orders: -

- a) That the intended first interested party, Ganana Developers Limited, be joined to these proceedings as an interested party.**
- b) The plaintiff is directed to serve all pleadings on the first intended interested party within 21 days hereof.**
- c) That upon being served, the first intended interested party shall file responses to the pleadings within 21 days of service, and it shall serve its filings on all the parties hereto.**
- d) That the intended second interested party's notice of motion dated 30/09/2022 is hereby struck out.**
- e) That the second intended interested party and/or its members are granted leave to apply for joinder within 21 days hereof.**
- f) That the plaintiffs' notice of motion dated 10/02/2025 is hereby dismissed.**
- g) That parties are directed to comply with Order 11 of the Civil Procedure Rules within 60 days.**
- h) That, from now henceforth, no other or further applications shall be entertained by the court.**
- i) That strict timelines apply.**

- j) That a mention date shall be given for purposes of pretrial directions***
k) Costs shall be in the cause.

Orders accordingly.

Delivered and Dated at Machakos this 18th day of November, 2025.

HON. A. Y. KOROSS
JUDGE
18.11.2025

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms. Kanja Court Assistant.

Mr. Kimundi holding brief for Mr. Makundi for 1st, 2nd & 4th Interested Parties.

Mr. Wachakana for the plaintiff.

Mr. Otieno Obwanda for 5th to 8th Interested Parties.

Mr. Eric Mugo for Interested Party.

Mr. Muriuki for 5th & 6th Interested Parties.

Miss. Kiprop for Mr. Ndeda for the Defendants.

Mr. Lakicha for 3rd Intended Interested Party.

ORIGINAL