

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. APPEAL NO. E002 OF 2024**

**ROSEMARY**

**MUENI**

**NDONYE.....APPELLANT**

**VERSUS**

**KENNEDY ISINGI MWIKALI.....RESPONDENT**

**RULING**

The application is dated 19<sup>th</sup> February 2025 and is brought under Order 1 Rule 10(2), Order 51 Rule 1 of the Civil Procedure Rules 2010, Sections 1A, 2 and 3A of the Civil Procedure Act Cap 21 Laws of Kenya, Article 159 (2) (D) of the Constitution of Kenya seeking the following orders;

1. That this Honourable Court be pleased to certify this application as urgent and to hear the same ex parte in the first instance.
2. That this Honourable Court be pleased to order that:
  - a. Nicholas Keli Ndongye
  - b. James Mwanthi Ndongyebe enjoined in the suit as Interested Parties
3. That the costs herein be costs in the cause.

It is premised on the grounds that the land adjudication record for the subject herein i.e. Matungulu/Kinoti/661 dated the 7<sup>th</sup> June, 1985 bears a cancellation of the Appellant father's name William Ndonye Keli as the land owner, and insertion of the name Esther Keli, the mother of the Respondent herein as the land owner. That the aforesaid cancellation of William Ndonye Keli name and replacement with the name Esther Keli was done irregularly, fraudulently and illegally. It is on the basis of the aforesaid irregularity and illegality that the Land Registrar registered the name of the Respondent's mother Esther Keli as owner of the land instead of William Ndonye Keli. It is necessary that they, Nicholas Keli and James Mwanthi be enjoined in this case as they are also beneficiaries of William Ndonye Keli as they stand to lose their ancestral home due to the irregularities surrounding this case thus as be denied access to the land that their father, mother, two sisters are buried.

This court has considered the application and the submissions therein. As to whether the Applicant ought to be enjoined in the suit as a Plaintiff, Defendant or an Interested Party, the Court is guided by Order 1 Rule 10(2) of the Civil Procedure Rules which 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 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.”*

The Supreme Court decision in *Communications Commission of Kenya and 4 Others vs Royal Media Services Limited & 7 Others* Petition No. 15 OF (2014) eKLR where the Court pronounced itself on who an Interested Party is and held as follows:

*“In determining whether the applicant should be admitted into these proceedings as an interested party, we are guided by this Court’s decision in the Mumo Matemo 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?"*

It is therefore clear that the parties who should be made parties to a suit are persons who are necessary for a complete and effectual adjudication of disputes before the court.

The Applicants claim that the land adjudication record for the subject herein i.e. Matungulu/Kinoti/661 dated the 7<sup>th</sup> June, 1985 bears a cancellation of the Appellant father's name William Ndongye Keli as the land owner, and insertion of the name Esther Keli, the mother of the Respondent herein as the land owner. That the aforesaid cancellation of William Ndongye Keli name and replacement with the name Esther Keli was done irregularly, fraudulently and illegally. The Respondent claims that the suit has abated and that the Appellant is deceased. I have perused the court record and find Nicholas Keli Ndongye appeared in court and stated that

the Appellant was his sister and was deceased. I find that if this is true then the Appellant ought to be substituted if the suit has not abated. Secondly, I find that the joinder is not necessary to enable this court determine the real issues in dispute. Be that as it may, I find they have no locus standi in the proceedings at this stage and are not necessary parties in this matter. I find this application is not merit dismiss it with costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 25<sup>TH</sup> DAY OF  
NOVEMBER 2025.**

**N.A. MATHEKA**

**JUDGE**