

**REPUBLIC OF KENYA**

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

**ELC CASE NO. E124 OF 2022**

**PATRICK ROBERT KUDUKU.....  
PLAINTIFF**

**VERSUS**

1. **SYDNEY ROBERT KUDUKU**
2. **RHODA UCHI KUDUKU aka RODA UCHI CAKURU**
3. **CHARLOTTE MBODZE KUDUKU**
4. **DAVID MDICO KUDUKU**
5. **HILDA KADZO KUDUKU**
6. **SIKALILY AHMED MOHAMED**
7. **BIMAL RASIK VARIA**
8. **VARIA MOHINI BIMAL**
9. **DAVID MWANCI KAMAU**
10. **DAMARIS MBITHE NZUVE**
11. **SAMUEL WARUI NJANE**
12. **FLORENCE MWENDE NYAMAI**
13. **MERCY WANJIKU**
14. **JANE WAIRIMU WAWERU**
15. **NCBA BANK KENYA PLC**
16. **COUNTY/DISTRICT LAND REGISTRAR, KILIFI .....DEFENDANTS**

**RULING**

1. By a notice of motion dated 29.10.2025 expressed to have been filed pursuant to *Article 159 (2)(d) Constitution of Kenya, Sections 1A, 1B and 3A of the Civil Procedure Act (Cap 21) Laws of Kenya, Order 1 Rule 10 (2) of the Civil Procedure Rules 2010, and all other enabling provisions of the law*, the 10<sup>th</sup> and 11<sup>th</sup> defendants sought

to be joined as interested parties in the proceedings despite already being parties to the suit.

2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the 10<sup>th</sup> defendant who swore it on her own behalf and on behalf of the 11<sup>th</sup> defendant. The gist of the application was that they could not effectively participate in the proceedings since they had not been served with summons to enter appearance by the plaintiff.
3. The 10<sup>th</sup> and 11<sup>th</sup> pleaded that they were purchasers for value of Title No. Kilifi/Buni Kisimani/1237 which was one of the parcels the subject of the suit to enable them protect their proprietary interest therein. She annexed a copy of the title deed for the said property which was in the joint names of the 10<sup>th</sup> and 11<sup>th</sup> defendants.
4. The plaintiff filed grounds of opposition dated 06.11.2025 in opposition to the application. It was contented, *inter alia*, that there was no provision in law entitling the 10<sup>th</sup> and 11<sup>th</sup> defendants who are already parties to the suit to be joined as interested parties. The court was urged to disallow the application for being bad in law and an abuse of the court process. There is now indication on record of the rest of the parties having filed responses to the application.

5. The material on record shows that the 10<sup>th</sup> and 11<sup>th</sup> defendants filed written submissions dated 11.11.2025 in support of their application. They submitted that as registered owners of parcel 1237 they were entitled to be heard in the suit in order to defend and protect their interest in the suit property. They relied on 3 authorities in support of their application including the decision of the Supreme Court of Kenya in *Trusted Society of Human Rights Alliance vs Mumo Matemu & 5 Others [2014]eKLR*.
6. In the said case the Supreme Court of Kenya considered the status of an interested party thus;

*“.....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. On the other hand, an amicus is only interested in the Court making a decision of professional integrity. An amicus has no interest in the decision being made either way, but seeks that it be legal, well informed, and in the interest of justice and the public expectation. As a ‘friend’ of the Court, his cause is to ensure that a legal and legitimate decision is achieved.”*

7. The court is thus of the view that an application for joinder as an interested party can only be made by a person who is not already a party to the proceedings in question. The purpose of such joinder is to accord him an opportunity of being heard on matters which he may have a stake or legal interest. It would thus follow that a plaintiff or defendant to an existing suit cannot legitimately apply to be joined as an interested party.
8. The court is not persuaded that the 10<sup>th</sup> and 11<sup>th</sup> defendants cannot protect their legal interest in parcel 1237 in their capacity as defendants. There is really nothing which they cannot do as defendants but which they would be able to do so as interested parties. Their allegation that they cannot legally defend their interest in the suit in the absence of service of summons is not plausible. The two defendants are now aware of the existence of the suit their advocates have filed a notice of appointment. They are at liberty to file their defence to the action and defend their proprietary interest on the suit property.
9. The court has noted that the suit properties are located within Kilifi and not within Mombasa County where the suit was filed. As a

result, the court is inclined to transfer the suit to the Environment and Land Court at Malindi for trial and disposal.

10. The upshot of the foregoing is that the court finds no merit in the 10<sup>th</sup> and 11<sup>th</sup> defendants' application for joinder in the suit as interested parties. Consequently, the court makes the following disposal orders;

***a. The notice of motion dated 29.10. 2025 is hereby dismissed with costs.***

***b. The suit is hereby transferred to the ELC at Malindi for trial and disposal since the suit properties fall within Kilifi County.***

***c. The suit shall be mentioned on 02.02.2026 before the Presiding Judge of the ELC at Malindi for further orders.***

It is so ordered.

**Ruling dated and signed at Mombasa and delivered** virtually via Microsoft Teams on this **4<sup>th</sup> day of December, 2025.**

.....

**Y. M. ANGIMA**

**JUDGE**

In the presence of:

Court Assistant Gillian

No appearance for the plaintiff

Mr. Kongere for the 6<sup>th</sup> and 15<sup>th</sup> defendants

Ms. Bwire for the 9<sup>th</sup> defendant

Mr. Kebaso for the 19<sup>th</sup> defendant

Ms. Nyambane for the 10<sup>th</sup> and 16<sup>th</sup> defendants

No appearance for the rest of the defendants

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