

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC PETITION NO. E004 OF 2025

IN THE MATTER OF ARTICLES 1, 2(4), 10(1) (b),(c), 10(2)(a),(b),(c), 22(2)(c), 35(1), 35(3), 47(1),(2), 60(1) (c), (d); 73(1) and 232(1)(a),(c),(d),(e) and (f) OF THE CONSTITUTION

BETWEEN

**BERNARD SIMIYU KUBASALI &
ANDREW KHISA WANJALA**

***(Suing as in the interest of the parties)*-----
PETITIONERS/APPLICANTS**

VERSUS

**NATIONAL LAND COMMISSION-----1ST
RESPONDENT**

**THE LAND REGISTRAR,
TRANS NZOIA COUNTY-----2ND
RESPONDENT**

**THE ATTORNEY GENERAL-----3RD
RESPONDENT**

AND

**BEN NICODEMUS OMARIBA MOGAKA-----1ST
INTERESTED PARTY**

**G.H.TANNA & SONS-----2ND
INTERESTED PARTY**

**ETHICS AND ANTI-CORRUPTION
COMMISSION-----3RD
INTERESTED PARTY**

RULING

- 1.** By an application dated **27/10/2022**, the petitioners are seeking leave to amend the petition to include the Commissioner of Lands as the 4th respondent. The grounds on the face of the application and in the affidavit of Bernard Simiyu are that the petitioners were not aware that the 1st interested party was deceased; investigations have revealed that the land belonging to the postal corporation of Kenya was acquired fraudulently by 2nd interested party, an entity was incorporated on **17/12/1999** whereas the suit land was transferred from the deceased on **5/5/1999**, which information is missing in the petition. The petitioners also intend to add reliefs as per the draft petition annexed to the application.
- 2.** The applicants depose that the application has been filed expeditiously and should be allowed in the interest of justice, and leave to be granted for him to file further documents and statements. The applicants contend that no prejudice shall be occasioned to the respondents. The authority to plead and the draft amended petition are annexed as **BSK 1** and **2**.
- 3.** The 2nd interested party has opposed the application through a replying affidavit, sworn on **4/11/2025**, avers

that the application is misconceived since the 1st respondent took over the role of the Commissioner of Lands. It is deposed that the 3rd respondent is a representative of all government departments, and therefore, the petitioners are out to cause jurisdictional confusion, rendering the application bad in law and incompetent. The 2nd interested party did not oppose the prayer to remove the 1st interested party.

4. The power to allow an amendment to a petition is set out in **Rule 18** of the Constitution of Kenya (Protection of Rights and Freedoms) Practice and Procedure Rules, **2013** (Mutunga Rules).
5. The parameters to consider were discussed in **Elijah Kipngeno Arap Bii -vs- Kenya Commercial Bank Limited [2013] eKLR**, and the **Institute for Social Accountability & Another -vs- Parliament of Kenya 2014 eKLR**. I think the applicant has met the conditions, save that an amendment cannot be allowed to join a defunct party now succeeded by the National Land Commission. The application is allowed with no order as to costs.
6. Orders accordingly.

Ruling dated, signed, and delivered via Microsoft Teams/Open Court at Kitale on this 10th day of December 2025.


In the presence of:

Court Assistant - Dennis

Baithalu for the 3rd interested party- present

Kahoya for the 1st respondent- present

Chilaka- absent

A handwritten signature in blue ink, appearing to read 'C.K. Nzili', with a large, sweeping flourish extending to the right.

**HON. C.K. NZILI
JUDGE, ELC KITALE.**