

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 221 OF 2017

PAUL MPELESI MOKOI (Suing as the legal Representative of the estate of *the Late Moko*

Ole

Nkare

Sonyoi

***(deceased)*.....PLAINTIFF/RESPONDENT**

VERSUS

COMMISSIONER OF LANDS.....1ST DEFENDANT/RESPONDENT

DISTRICT LAND REGISTRAR KAJIADO.....2ND DEFENDANT/RESPONDENT

**DISTRICT LAND SURVEYOR KAJIADO.....3RD
DEFENDANT/RESPONDENT**

LEPEN LOONKULAK OLE NAGELI.....4TH DEFENDANT/RESPONDENT

RULING.

(In respect of the Notice of Motion dated 28th August 2025 brought under the provisions of Sections 1A, 1B & 3A of the Civil Procedure Act, Order 40 rule 1 and Order 51 rule 1 & 3 of the Civil Procedure Rules).

Introduction.

1. From a perusal of the court record, the plaintiff and the 4th Defendant herein entered into a consent on 13th February 2023 whereby they agreed that, a

resurvey be undertaken in respect of parcels numbers Kajiado/Kaputiei-Central /448/447 and 442 for purposes of correcting the ground boundaries.

2. On **23rd February 2023**, the court (Gicheru J) directed that the report of the Land Registrar Kajiado, dated 25th February 2022 be implemented fully. The court further proceeded to mark the suit as settled.
3. The Applicants herein describe themselves as the registered owners of properties known as L.R Nos. KJD/Kaputiei - Central/2304 & 2303 which were allegedly excised from KJD/Kaputiei - Central/448 which was registered under the name of the late Mutututa Ole Sirinket Sapukenya. They assert that the recommendations and exercise conducted on 7th August 2025 by the Land Registrar Kajiado pursuant to the orders of this court affects their parcels of land and may lead to them being evicted from their permanent homes despite the fact that they were not party to these proceedings.
4. The Applicants therefore seek to be joined into these proceedings as Interested Parties. Subsequent to their joinder as Interested Parties, the Applicants pray for orders setting aside, quashing and expunging from the court record, the boundary dispute report prepared by the District Land Registrar Kajiado dated 25th February 2022. Further the Applicants pray for an order directing that a fresh boundary dispute meeting be held jointly by

the District Land Registrar Kajiado and the District Land Surveyor Kajiado with summons being issued to all the affected parcels including all subdivisions of the initial parcels being LR. No. KJD/Kaputiei - Central/442, LR. No. KJD/Kaputiei - Central/447 and LR. NO. KJD/Kaputiei - Central/448.

Response by the Plaintiff/Respondent.

5. The 4th Respondent responded to the application by the intended Interested Parties by way of a Preliminary Objection dated 23rd September 2025 and a Replying Affidavit sworn on 24th September 2025 by one James Kapakine Lepen.
6. In his Preliminary Objection, the 4th Defendant asserted;
 - a) **That the orders sought in the application dated 28th August 2025 violates the provisions of Order 45 Rule 1 thus unattainable as the same seek the court to disregard its orders dated 23rd of February 2023 directing the Land Registrar to implement his report dated 25th February fully, which report the Applicant now seek a restraining order against in the instant application.**
 - b) **That the court lacks jurisdiction to issue the orders sought as in so doing the court will be in violation of its own orders dated 23rd February 2022 which have been enforced.**

c) **That the suit is misconceived, scandalous, frivolous, vexatious and a blatant abuse of the court process.**

Issues for determination.

7. The main prayer upon which the intended Interested Parties' application is premised on is the prayer for joinder into these proceedings. The issue for the court then to determine is whether the intended Interested Parties' application is merited.

Determination.

8. I did point out at paragraph 2, above that this suit was already marked as settled on 23rd February 2023 by my predecessor Gicheru J. So there are no pending proceedings to which the intended Interested Parties may be joined into.

9. In the case of **JMK Vs. MWM & ano (2015) eKLR**, the court of Appeal had occasion to discuss a similar issue. I find it worthy quoting verbatim the holding of the court as follows:-

“We would however agree with the Respondent that Order 1 Rule 10(2) contemplates an application for amendment or joinder of parties where proceedings are still pending before the court.

Sarkar's Code (supra) quoting as authority, decisions of Indian courts on the provision, expresses the view that an application for joinder of parties can be filed only in pending proceedings. In the same vein, the Court of Appeal of Tanzania, while considering the equivalent of Order 1 Rule 10(2) of our Civil Procedure Rules, In TANG GAS DISTRIBUTORS LTD VS. SAID & OTHERS (2014) EA 448, stated that the power of the court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before or during the trial; that it can be done even after Judgement where damages are yet to be assessed; that it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that the rules becomes inapplicable; and that a party can even be added at the appellate state.”

10. Mutungi J, in Kimwele Vs. Kubora & Another; Mwasya & 5 Others (interested Parties) {2025} KEELC 5636 KLR, while agreeing with the above position further stated that;

“Regarding the prayer for joinder as interested parties, the court in my view is functus officio in this matter as the matter was heard and concluded and a judgement was rendered. Order 1 rule 10(2) of the

Civil Procedure Rules allows for joinder, only during ongoing proceedings.”

11. The Supreme Court of Kenya on its part in *Everton Coal Enterprises Ltd Vs. Rose Wakanyi Karanja & 5 others, Application NO.E026 of 2023*, cited with approval, the Court of Appeal’s holding in *JMK Vs. MWM & Another (2015) eKLR* , stating that,

“This question has been settled in a long thread of past decisions. For example, in JMK VS. MWM & Ano (2015) eKLR , the court stressed that;

“an application for joinder of parties can be filed only in pending proceedings; that the power of the court to add a party to proceedings can be exercised at any stage of the proceedings either before, or during the trial; and that it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable.”

12. The Supreme Court of Kenya further pointed to a number of other decisions including the Court of Appeal decision in *Kenya Airports Authority Vs. Mutubell Welfare Society and 2 Others (2016) eKLR*, on the finality of a judgement as a judgement of the court resolving all the contested issues and settling the rights and liabilities of the parties before it as well as its own

decision in *University of Eldoret & Another Vs. Hosea Sitienei & 3 Others, Supreme Court application No. 8 of 2020; {2020} eKLR*, emphasizing the finality of the litigation process. It too noted its own pronouncement in *CCK & 4Others Vs. Royal Media Services Ltd & 7 Others (2014) eKLR*, relying on *Trusted Society of Human Rights Alliance Vs. Mumo Matemo & 5 Others (2015) eKLR*, on the place of an interested party in any proceedings.

13. Guided by the provisions of Order 1 rule 10(2) of the Civil Procedure Rules, and the above cited decisions, the court finds and holds that the application by the intended Interested Parties to be joined into this suit after it was marked as settled is untenable in law; it is incompetent and without legal basis. It must therefore fail.

14. That said, the subsequent prayers in the application too fail as a matter of course.

15. In any event, even if the intended Interested Parties were to be joined into the suit as such, they still would have to contend with the pronouncement in *Francis Kariuki Muatetu & Another Vs. Republic & 5 Others (2016) eKLR*, on the extent to which an interested party may participate in any proceedings. The Supreme Court stated that;

“Any party seeking to join proceedings in any capacity must come to terms with the fact that the overriding interest or stake in any matter

is that of, the primary/principal parties before the court. The determination of any matter will always have a direct effect on the primary/principal parties. Third parties admitted as interested parties may only be remotely or indirectly affected, but the primary impact is on the parties that first moved the court.

.....Therefore, in every case, whether some parties are joined as interested parties or not, the issues to be determined by the court will always remain the issues as presented by the principal parties. An interested party may not frame its own fresh issues, or introduce new issues for determination by the court.”

16. The upshot is that the **Notice of Motion** dated **28th August 2025** is hereby struck out with costs to the 4th Defendant.

Dated Signed and Delivered at Kajiado Virtually this 4th Day of December 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Karwanda for the intended Interested Parties/Applicants

Ms. Muhanda for the 4th Defendant/Respondent

N/A by the Plaintiff and the 1st – 3rd Defendants

Court assistant: Mpoye

M.D. MWANGI
JUDGE

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