



Mwaura & 2 others v Elesondai & 4 others; Sabonyo & 3 others (Applicant) (Environment and Land Case 33 of 2018) [2025] KEELC 8571 (KLR) (4 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8571 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 33 OF 2018**

**MD MWANGI, J
DECEMBER 4, 2025**

BETWEEN

**BETH WAMBUI MWAURA 1ST PLAINTIFF
ALBERT P. MWAURA KIERO 2ND PLAINTIFF
WILFRED K. NJENGA 3RD PLAINTIFF**

AND

**IBRAHIM LEI ELESONDAI 1ST DEFENDANT
JOSEPHINE SEKELON KILUSU 2ND DEFENDANT
NATIONAL LAND COMMISSION 3RD DEFENDANT
REGISTRAR OF TITLES, KAJIADO REGISTRY 4TH DEFENDANT
JOSEPH MWANIKI GITAU 5TH DEFENDANT**

AND

**ABDUL SABUNI SABONYO APPLICANT
NGETICH KIMTAI ISHMAEL APPLICANT
ADAN HAJI DAKANE APPLICANT
SAIDA NYAMOITA SABUNI APPLICANT**

(In respect of the applications by the Intended Interested Parties and the Intended Defendants seeking to be joined into the proceedings after Judgement)



RULING

Background.

1. Judgement in this case was delivered on 7th October 2024. The court found in favour of the Plaintiffs against the Defendants; it ruled that the transfer of the suit land to the 1st Defendant and other subsequent transfers thereof are null and void for not respecting the proprietary rights of the Plaintiffs acquired through payments of valuable consideration and possession. Consequently, the court determined that the Plaintiffs were entitled to an order of Specific Performance as sought in their case. The court therefore entered Judgement for the Plaintiffs against the Defendants jointly and severally as prayed in the amended Plaint dated 23rd May 2013 specifically in terms of Prayers (a), (b), (c) and (d) and revoked any title deeds issued to the 2nd Defendant, 5th Defendant and any other persons claiming through them.
2. Subsequent to the delivery of Judgement four (4) applications have been filed by intended Interested Parties and one (1) by intended Defendants who claim to be affected by the Judgement of this court and the resultant decree. Amongst the orders the Applicants seek is the stay of execution of the judgement and the resultant decree, review, setting aside or variation of the Judgement delivered by the court and re-opening of the case to allow them tender evidence and participate in the proceedings.
3. The 1st such application is the Motion dated 3rd February 2025 by one Justin Muriuki Ngai. The others are;
 - a. Motion dated 13th March 2025 by Samson Lekasi & 10 Others.
 - b. Motion dated 4th April 2025 by Lucy Wanjiku Mburu alias Lucy Wanjiru Mburu
 - c. Motion dated 1st July 2025 by Mumbistar Limited.
 - d. Motion dated 9th June 2023 by Abdul Sabuni Sabonyo and 3 others seeking to be joined into the proceedings as defendants.
4. This ruling is in respect to all the five (5) applications.

Issues for Determination.

5. Considering that Judgement in this matter has already been delivered and proceedings closed, the question then is, which proceedings are the Applicants seeking to be joined into? Are the applications tenable in law?

Analysis and determination

6. The above issue from my research is an issue that has been determined and settled by the Court of Appeal and the Supreme Court as I will demonstrate here below;
7. In the case of *JMK v 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 v 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.”

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

“This question has been settled in a long thread of past decisions. For example, in *JMK v 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.”

9. The Supreme Court of Kenya further pointed to a number of other decisions including the Court of Appeal decision in *Kenya Airports Authority v 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 v 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 & 4 Others v Royal Media Services Ltd & 7 Others* (2014) eKLR, relying on *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 Others* (2015) eKLR, on the place of an interested party in any proceedings.
10. 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 applications by the intended Interested Parties and the intended Defendants to be joined into this suit after a final judgement was rendered are untenable in law; They are incompetent and without legal basis. They must therefore fail.
11. That said, the subsequent prayers in the applications too fail as a matter of course.
12. 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 v 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.”

13. The applicants must reconsider their litigation strategy the proceedings herein having been closed upon delivery of the Judgement finally determining the rights of the principal parties in this case.
14. The upshot is that the applications dated 3rd February 2025, 13th March 2025, 4th April 2025, 1st July 2025 and 9th June 2023 are struck out with costs to the Plaintiffs.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 4TH DAY OF DECEMBER 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Olewe for the Plaintiffs/Respondents.

Ms. Ndinda holding brief for Mr. Tole for Mumbistar Limited.

Mr. Chenge for 4th Applicants in the Motion dated 9th June 2025.

Ms. Kinyanjui holding brief for Ms. Kinyua for Justin Ngai.

Ms. Gitonga holding brief for Mr. Shem for 11 Interested Parties.

Court Assistant: Mpoeye

