

(Articles 40, 48 and 50 of the Constitution of Kenya 2010, Order 1 rule 10(2) of the Civil Procedure rules.)

2. It seeks orders;

1) Spent.

2) THAT the Honourable Court do and hereby issues an order that the Intended Parties/Applicants be enjoined in this suit as Interested Parties.

3) THAT the Honourable Court be pleased to grant leave to the Interested Parties/Applicants to fully participate in the proceedings herein and file such pleadings, affidavits, submissions and other documents subsequent to joinder.

4) THAT this Honourable court do make any such further and/or other orders and issue any other relief it may deem just to grant in the interest of justice.

3. The grounds are on the face of the Application and are set out in paragraph 1 to 6.

4. The Application is supported by the Affidavit of John Mwaura Muiruri, the 2nd Intended Interested Party/Applicant.

5. The Application is opposed. There is a Replying Affidavit sworn by Mary Theresa Olepere, the 1st Plaintiff/Respondent, on the 25th September 2025.

6. On the 23rd October 2025 the court with the consent of parties directed that the Notice of Motion be canvassed by way of written submissions.

7. The Plaintiff's submissions are dated 26th September 2025. They raise three issues for determination;
- i. **Whether the Interested Parties have a direct and significant interest in the suit?**
 - ii. **Whether the Interested Parties have met the legal threshold for joinder?**
 - iii. **Who should bear the costs of the application?**
8. Counsel submitted that the Applicants have recourse in ELC 150 of 2017, where they can ventilate their claim. He has put forward the cases of **Trusted Society of Human Rights Alliance Vs. Matemu Vs. 5 others KESC 32 (KLR); SKOV Estate Limited & 5 Others Vs. Agricultural Development Corporation & Another (2015) KEELC 624 (KLR).**
9. It is also submitted that this suit has been fully heard and awaiting judgement and there is nothing more to be done.
10. Counsel further submitted that the Applicants have not demonstrated how their presence would and this Honourable court in resolving the real questions in controversy between the Plaintiffs and the Defendants. He has put forward the case of **Lucy Nungari Ngigi & 128 Others Vs. National Bank of Kenya Limited & Another (2015) KEHC 6117 (KLR).**
- They pray that the Application be dismissed with costs.
11. The Applicants' submissions are dated 28th November 2025. They raise three issues for determination;

- i. **Whether the Applicants have demonstrated a direct and identifiable interest in the subject matter of this suit?**
 - ii. **Whether the Applicants meet the legal threshold for joinder under Order 1 rule 10(2)?**
 - iii. **Who should bear costs?**
12. Counsel submitted that the Applicants have a legally cognizable and constitutionally protected interest that is sufficiently direct and identifiable and which cannot be safeguarded until they are joined to these proceedings. They have put forward the case of **JMK Vs. MWM & Another (2015) eKLR** which cited with approval **Mbaki & Others Vs. Macharia & Another (2005) 2EA 206**.
13. It is also submitted that the court has wide discretion to join a party at any stage, if their presence is necessary for complete adjudication they have put forward the case of **Mohamed & 5 Others Vs. Masinde Muliro University of Science and Technology & 5 Others; Mount Kenya University (Interested Party (2025) KEELC 1478 (KLR)**.
14. It is also submitted that ELC 150 of 2017 concerns historical disputes over certain parcels, while the Applicants' parcel Ngong/Ngong/36811 is directly relevant to ELC 180 of 2018 and falls out of the scope of ELC 150 of 2017. Further that any determination in ELC 180 of 2018, that excludes the Applicants risks the issuance of a Decree that

may inadvertently affect their property. The joinder in this suit is necessary.

15. They pray that the Application be allowed with costs in the cause.

16. I have considered the Notice of Motion, the affidavit in support, the response thereto, the rival submissions and the authorities cited. The issue for determination is; whether this application is merited.

17. **Order 1 rule 10(2) of the Civil procedure rules**, provides that;

“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”

18. It is not in dispute that the Applicants had earlier made an application to be enjoined in this suit. The said application was heard and a ruling delivered on 20th May 2020 by Honourable Lady Justice C . Ochieng.

19. In the said ruling; the Honourable Judge directed that the two matters **ELC 180 of 2018** and **ELC 150 of 2017** do proceed separately
20. The said ruling has not been overturned by the Court of Appeal. It has not been set aside.
21. It is my view that the Applicant's application is an abuse of the court process and meant to delay the conclusion of this matter.
22. In conclusion I find no merit in this application and the same is dismissed with costs to the plaintiffs.

Dated, Signed and Delivered virtually at Kajiado this 11th day of December 2025.

L. KOMINGOI

JUDGE.

IN THE PRESENCE OF:

Ms. Oganga for Ms. Chepkoech for the Plaintiffs.
Mr. Kinyanjui for Mr. Lilano for the Defendants.
Ms. Nambande for the 1st, 2nd Interested Parties.
Court Assistant - Peter.