



Yana v District Land Adjudication Settlement Officer Kilifi & 2 others; Kavita Investments Limited (Proposed Interested Party) (Environment and Land Miscellaneous Application 43 of 2019) [2025] KEELC 8632 (KLR) (11 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8632 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 43 OF 2019
JO OLOLA, J
DECEMBER 11, 2025**

BETWEEN

MOHAMED MENZA YANA APPLICANT

AND

**THE DISTRICT LAND ADJUDICATION SETTLEMENT OFFICER
KILIFI 1ST RESPONDENT**

**DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT 2ND
RESPONDENT**

CHIEF LAND REGISTRAR 3RD RESPONDENT

AND

KAVITA INVESTMENTS LIMITED PROPOSED INTERESTED PARTY

RULING

1. By A Notice of Motion dated 4th February 2025, Kavita Investment Limited (the Applicant/Intended Interested Party) prays for an order that it be granted leave to be enjoined in this suit and that the court be pleased to issue further or better orders as shall meet the ends of justice.
2. That application is supported by an Affidavit sworn by the Applicant's director Hassan Al-Amin Othman and is premised on the grounds:-
 - i. That the Intended Interested Party/Applicant is the lawful and bonafide registered proprietor of LR. No. 29600 Kilifi vide a registered transfer dated 25th June 2013;
 - ii. That the Applicant has a real and identifiable stake and/or legitimate interest to be enjoined in the suit; and



- iii. That it is fair and legitimate that the Applicant be allowed to be enjoined in this suit.
3. Mohamed Menza Yama (the Ex-Parte Applicant) is opposed to the application. By his Notice of Preliminary Objection dated 30th April 2025, the Ex-Parte Applicant objects to the application on the grounds that:
1. The judgment in favor of the Ex-Parte Applicant rendered on 29th September 2020 sought to be set aside has already been fully executed and there is nothing useful the proposed Interested Party will add to the suit;
 2. The Honourable Court has no jurisdiction to set aside the prerogative order of mandamus granted on 29th September 2020 which has already been fully complied with. The proposed Interested Party's application dated 1st April 2025 is misplaced, fatally defective and amounts to an abuse of the court process; and
 3. The Honourable court has no jurisdiction to hear and determine the Amended Application dated 1st April 2025 as it is now functus officio.
4. I have carefully perused and considered both the Notice of Motion dated 4th February 2025 as well as the objection raised thereto. I have similarly perused the submissions filed herein by the Intended Interested Party.
5. By its application before the Court, the Intended Interested Party seeks to be enjoined in this suit on account that it is the lawful bonafide proprietor of LR No. 29600 Kilifi vide a registered transfer dated 25th June 2013.
6. On its part, the Ex-Parte Applicant has raised a Preliminary Objection on account that the judgement delivered on 29th September 2020 has fully been executed and that this court has no jurisdiction to set aside the prerogative order of mandamus granted in the judgement.
7. The application before the court is expressed to be brought pursuant to Order 1 Rule 10 (2) of the Civil Procedure Rules. The Rule sates as follows:
- “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 person who ought to have been joined – whether as a 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.”
8. A perusal of the above provision reveals that unlike in Constitutional Petitions wherein rules were enacted in the year 2013 (properly known as the Mutunga Rules) to provide a distinct legal framework for joinder of parties as Interested Parties, the *Civil Procedure Act* and Rules do not specifically envisage the concept of an “Interested Part.” In Constitutional Petitions, Rule 2 of the Mutunga Rules clearly defines who an “Interested Party” is while Rule 7 thereof outlines the procedure for joining such a party. Specifically, sub-rule 1 of Rule 7 provides that “a person with the leave of the court, may make an oral or written application to be joined as an Interested Party.”
9. Considering where one could be joined as such an Interested Party in the case of Francis Karoki Muruatetu & Another –vs- Republic & 5 Others Petition No. 15 as consolidated with No. 16 of 2013 (2016) eKLR, the Supreme Court at paragraph 37 held that:



- i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough to stand apart from anything that is merely peripheral.
 - ii. The prejudice to be suffered by the Intended Interested party in case of non-joinder, must also be demonstrated to the satisfaction of the court. It must also be clearly outlined and not something remote.
 - iii. Lastly, a Party must, in its application, set out the case and/or submissions it intends to make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that those submissions are not merely a replication of what the other parties will be making before the court.
10. In my mind, before a party is joined in a matter, the court ought to satisfy itself that the proceedings to which the Applicant wants to be enjoined are alive. That means that the suit must still be pending and the onus falls upon the applicant to demonstrate that the application has been brought during the pendency of the proceedings. In this respect, I am in agreement with the decision of the court in the case of Florence Nafula Ayodi & 5 Others –vs- John Tabalya Mukite & Another (2021) eKLR where the court observed as follows:
- “ 12. The above notwithstanding, it is common sense to expect that for one to be enjoined in certain proceedings, those proceedings have to be pending before the court. In Leonard Kimeu Mwanthi –vs- Rukaria M’twerandu M’iringu; (2021) eKLR, Justice L. Mbugua stated that “A party claiming to be enjoined in proceedings must have an interest in the pending litigation...” In other words, the proceedings should still be alive in the court: they could be at the nascent or other stages but must be alive. In Central Kenya Ltd. –Vs- Trust Bank & 4 Others, CA No. 222 of 1998, the Court, in discussing the issue of joinder of parties, held that - “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.”
11. In the matter before me, there was no dispute that the Intended Interested Party herein has filed its application some five (5) years after this matter was concluded and judgment entered in favour of the Ex-Parte applicant on 29th September 2020. By any stretch of imagination, these proceedings cannot be said to be “alive” and I have not seen any demonstration on the part of the Intended Interested Party how its presence would enable the court to effectively and completely adjudicate a matter which was concluded and settled some 5 years before they thought of joining the same.
12. This court having rendered its final judgment in the matter on 29th September 2020, it is now clearly functus officio and cannot reconsider the matter and enjoin a party as an interested party in a matter that has been concluded. Functus officio as a doctrine ensures finality in legal and administrative proceedings, meaning once a decision is finalized, the authority of the decision – maker to change is exhausted, except for very narrow exceptions like correcting a clerical mistake.
13. In the premises, I am in agreement with the Ex-Parte Applicant that this court is now functus officio and cannot reconsider its decision by adding new parties. At any rate the Intended Interested Party has not demonstrated any prejudice that it has suffered due to non-joinder ever since the judgment was delivered herein.



14. It follows that I was persuaded that there was merit in the Preliminary Objection and that the application for joinder was misconceived.
15. Accordingly, I do uphold the Preliminary Objection dated 30th April 2025 and hereby dismiss the Motion dated 4th February 2025 with costs.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 11TH DAY OF DECEMBER, 2025

.....

J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Mr. Omondi Advocate for the Applicant/Intended Interested Party
- c. Mr. Ondabu Advocate the Respondent

