

**IN THE COURT OF
APPEAL AT NAKURU
(CORAM: WARSAME, MATIVO & GACHOKA, JJ.A.)**

CIVIL APPEAL (APPLICATION) NO. NAK E052 OF

2025 BETWEEN

COUNTY GOVERNMENT OF NAROK.....APPLICANT

AND

**LIVINGSTONE KUNINI NTUTU.....1ST
RESPONDENT OLKIOMBO
LIMITED.....2ND RESPONDENT THE
ATTORNEY GENERAL.....3RD
RESPONDENT**

AND

**ANTONY L. O. KILERAI.. APPLICANT/PROPOSED
INTERESTED
PARTY**

*(Being an application from the judgment of the
Environment and Land Court of Kenya at Narok (C.
Mbogo, J.) dated 6th March 2025
in*

ELC Case No. 21 of 2021

RULING OF THE COURT

1. Antony L. O. Kilerai, (the applicant) has moved this Court by an application is dated 31st October 2025, the subject of this ruling seeking orders that: (a) he be joined in this appeal as an interested party; (b) new and material evidence including official correspondence from the Cabinet Secretary for Lands, the official Hansard of the

Parliamentary Committee on Lands and other relevant documents pertaining to **Title Number Cis-**

Mara/Talek/155 which evidence confirms the non-existence of the said title and demonstrates its fraudulent registration;

(c) that the said evidence be considered by the Court while determining this appeal; and (d) any other orders that this Court may deem fit in the interest of justice, accountability, and the protection of public /community resources.

2. The application is premised on articles 42, 62 69 and 159 (2)

(d) of the Constitution. The grounds in support of the application as we discern them from the application and the applicant's annexed supporting affidavit sworn on 31st October 2025 are: (a) the applicant acts in public and community interest of the Talek Adjudication Area and the wider Maasai community safeguarding communal grazing ecosystems, cultural heritage and public land resources within the Mara ecosystem in which **Land Reference No. Cis- Mara/Talek/155** is situated; (b) he petitioned Parliament through the relevant Parliamentary Committee on lands citing the fraudulent registration of the suit property in the 1st respondent's name and the Cabinet Secretary for Lands, the Principal Secretary and the

Director of Survey all confirmed that the suit land does not exist in the official land registry and

the said title was fraudulently obtained; (c) the finding by the Parliamentary Committee on Lands as well as official correspondence from the Cabinet Secretary for Lands and the Director of Survey constitutes new and material evidence which was not available during the trial court proceedings and could not have been procured with reasonable diligence nor could it have been obtained earlier; (d) the said evidence is crucial for the just determination of the appeal and it is necessary to ensure that the Court considers all relevant facts in protecting the interest of the Maasai community and public resources; (e) photographic maps show that the land lies inside the Masai Mara National Game Reserve; (f) the evidence he seeks to present is distinct from the evidence adduced by the County Government of Narok and his participation will assist the Court in ensuring a complete and fair determination of the appeal while preventing any miscarriage of justice and safeguarding public/community resources.

3. In opposition to the application, the appellant filed a replying affidavit sworn on 6th November 2025 by John Mayiani Tuya, the appellant's County Secretary in which he

averred that: (a) the appellant holds the land in question in trust for the people

of Narok County and it is competent and adequately equipped to defend the land and as such the applicant's application is an attempt to claim ownership of the suit land through the back door and if the appellant were to concede to the application, this would amount to admitting the applicant's claim of ownership of the land; (b) the application will delay the hearing and determination of the substantive appeal since this case has been ongoing for over 20 years and this is the first time the applicant is coming up, yet he failed to apply to be joined before the Environment and Land Court where cross-examination of his witnesses was possible and the applicant is coming after this Court already directed that this appeal be heard on priority basis; (c) the appellant stands to be highly prejudiced since this Court's Rules do not allow for cross-examination and as a result it would not have an opportunity to cross-examine the applicant; (c) even if the issuance of the title to the suit land was irregular, the land reverts back to the appellant and not the applicant; (d) the appellant ought to have been served or notified of the proceeding before the National Assembly; (e) the omission to involve the appellant in the Parliamentary Petition was

by design and as such the
instant application should be dismissed with costs.

4. The 1st respondent, (Livingstone Kunini Ntutu) opposed the application vide his replying affidavit sworn on 7th November 2025. The salient averments are that: (a) he is the registered proprietor of the suit land; (b) the dispute regarding the legality of his ownership of the land has been litigated for the last twenty-five 25 years attracting extensive electronic and print media coverage and it is a matter of judicial notice that the dispute has acquired local notoriety, therefore, the applicant must be taken to have known of the existence of the legal proceedings over the suit land; (c) the applicant's Petition to Parliament acknowledges the lengthy existence of the court proceedings, therefore, he has not offered any explanation as to why he never sought to be joined in the proceedings long before the matter reached the appellate stage; (d) the Constitution vests public land/community land on various County Governments, in trust for the people in the county; (e) pursuant to article 62 and 63 of the Constitution, the appellant defended the suit before the Environment and Land Court and subsequently in this instant appeal; (f) the applicant has not demonstrated his stake in the suit land or how he will be affected if he is not joined in the

proceedings;

(g) his brother has been Governor for only three years yet this dispute has existed for the last twenty-five 25 years and the appellant's position in the legal proceedings has never changed; (h) Additionally, the Attorney General has protected the public interest since the commencement of the dispute and continues to do so at this appellate stage; (i) the application does not meet the legal criteria for admission of interested parties to legal proceedings at the appellate stage.

5. Regarding the additional evidence, the 1st respondent maintained that the trial court determined the dispute over the suit land on 6th March 2025. Dissatisfied with the Judgment, and the interim orders issued by this Court on 16th July 2025, the applicant petitioned Parliament on 23rd July 2025. Therefore, the applicant is assaulting the Courts' judicial authority since a perusal of the annexures placed in the petition before the National Assembly confirms extensive reference to the Judgment of the ELC and a statement made by one of the witnesses and the interim orders issued by this Court on a 5 (2) (b) application, thereby unmasking the applicant's petition to Parliament as an appeal or review of the ELC Judgment and the interim

orders issued by this Court,

and, without any justification, the applicant describes this Court's interim orders as "*highly suspect*".

6. It is also the 1st respondent's case that Parliament or any of its committees lack the legal authority, power, expertise, competence or capacity to entertain appeals or review decisions rendered by this Court, the ELC or any other competent court. Therefore, the applicant's petition to Parliament was designed and calculated as a collateral attack on the ELC Judgment and the interim orders issued by this Court. Furthermore, the applicant without any justification whatsoever, describes this Court's interim orders as "*highly suspect*". Consequently, collateral attack of court judgments amounts to abuse of the legal process.
7. The 1st respondent further deponed that the witnesses who testified at the trial were among others Land Adjudication Officers, the Land Registrar and the former Commissioner of Lands, all of whom work under the Ministry of Lands. Therefore, if the Cabinet Secretary for Lands desired to give evidence, she would have availed herself in court where her evidence would have been tested in cross-examination. On the other hand, the Attorney General, being a party to the

proceedings, did not consider the Cabinet Secretary as a crucial witness. Therefore, the so-called additional evidence sought to be adduced at this stage is inadmissible for being collected in violation of articles 2 (4), 50 (4) and 159 (1) of the Constitution.

8. The 1st respondent also deponed that at the time Parliament was entertaining the applicant's petition, the appellate legal proceedings were active and in doing so, the Parliamentary Committee violated the common law *sub judice* rule and contravened the Parliamentary Standing Orders barring Parliament from debating active court processes. Therefore, any purported evidence collected unconstitutionally and illegally is thereby rendered inadmissible.
9. It is the 1st respondent's case that the applicant has not satisfied the guidelines laid down by the Supreme Court in the case of **Mahamud vs. Mohamad & 3 Others [2018] KESC 62 (KLR)** which requires this Court's admission of additional evidence at the appellate stage to be an exceptional step and it would set a very dangerous precedent for the court to permit dissatisfied litigants to be

petitioning Parliament to procure so

called additional evidence and then seek to introduce it in concluded legal proceedings at the appellate stage.

10. In his rejoinder, the applicant in his affidavit sworn on 11th November 2025, contended that he has never claimed personal ownership of the suit land and that his case was that the suit land lies within Talek area, which remains unsurveyed and ungazetted and is therefore community land and furthermore, the petition to Parliament was not a collateral attack on the Courts but was lawfully made under article 96 (2) and (5) of the Constitution and merely sought Parliamentary intervention on matters of public concern regarding the suit land.

11. The applicant also stated that the contention that this Court cannot entertain an application for joinder at the appellate stage is misconceived because the Court retains the discretion to admit interested parties where justice demands as was held in **Francis Karioko Muruatetu & Another vs Republic & 5 Others [2016] eKLR** and **Muslims for Human Rights (MUHURI) vs. Attorney General & 2 Others [2018] eKLR.**

12. Responding to the 1st respondent's assertion that the appellant was deliberately excluded from the Parliamentary Committee

process, the applicant maintained that his petition was copied to the appellant and the same was officially received by the office of the County Secretary on 24th July 2025. Therefore, the appellant ignored the Parliamentary proceedings. Nevertheless, the Departmental Committee on land has not completed its work and plans further engagement with the appellant and National officers in Narok County.

13. We heard this application virtually on 10th December 2025. Learned counsel Mr. Paul Muite, SC appeared for the appellant, learned counsel Mr. Kioko Kilukumi SC appeared for the 1st respondent, while the applicant Mr. Anthony Kilerai appeared in person.
14. In support of his application, the applicant in his written submissions dated 11th November 2025 essentially reiterated the contents of his affidavits in support of the application and focused on three issues namely: (a) whether he meets the legal threshold for joinder as an interested party; (b) whether his participation will aid the Court in achieving a fair and just determination; and (c) whether the application is properly before the Court and

brought in good faith.

15. Regarding the first issue, the applicant cited the Supreme Court decision in **Francis Karioko Muruatetu & Another vs.**

Republic & 5 Others [2016] eKLR and **Muslims for Human**

Rights (MUHURI) vs. Attorney General & 2 Others

[2018] eKLR in submitting that in an application for joinder an applicant must show a clearly identifiable interest or stake that such interest is proximate and not remote and that participation is necessary for the complete and effective adjudication of the matter. In demonstrating a legitimate and direct interest, the applicant maintained that he is a resident of Talek and a community advocate and that his interest arises from communal ownership considerations under article 63 (2)

(d) (ii) which categorizes unregistered community land as land held in trust for local communities.

16. The appellant further submitted that his participation would not prejudice the existing parties but will enrich the record and assist the Court to appreciate the public interest dimension of the dispute and promote the values under article 10 of the Constitution, in order to reach a just and

informed determination including through documentary
proof of parliamentary engagement on the subject;
evidence of official

acknowledgement by the County Government and Hansard excerpts of pending committee deliberations.

17. The applicant maintained that he filed the instant application promptly upon learning of the existence of the instant appeal. Further, Rule 52 (3) of the Court of Appeal Rule permits the filing of further affidavits to address new facts.
18. Lastly, in response to the allegations of contempt of the judiciary, the applicant maintained that he stands as a neutral and credible stakeholder whose participation will aid the Court to reach a fair and comprehensive decision, therefore, allowing his joinder will advance the objective of article 159 of the Constitution and prevent multiplicity of suits and enhance public confidence in the appellate process.
19. The appellant did not file written submissions. Mr. Paul Muite Senior Counsel. adopted the appellant's replying affidavit filed in opposition to the application. We earlier highlighted the contents of the said affidavit; therefore, it will add no value for us to rehash the same here.
20. The 1st respondent filed written submissions dated 14th

November 2025 in opposition to the application. Mr. Kioko
Kilukumi, Senior Counsel on behalf of the 1st respondent

maintained that the applicant has failed to offer any explanation whatsoever as to why he never sought to be joined in the proceedings long before the matter reached the appellate stage. Counsel asserted that joinder is not as of right, but is at the discretion of the Court, hence, sufficient grounds must be laid before the Court. It was his submission that the applicant did not meet the criteria laid down by the Supreme Court in **Attorney General vs. David Ndi & 73 Others [2021] KESC 17 (KLR)** for admission of interested parties in proceedings at the appellate stage.

21. Regarding the plea for admission of additional evidence, Mr.

Kilukumi, S.C. maintained that the power to order the taking of additional evidence is a judicial discretion which can only be exercised for sufficient reasons as stipulated under rule 31

(1) (b) of the Court of Appeal Rules, 2022. Therefore, the applicant has not satisfied the guidelines issued by the Supreme Court for the admission of additional evidence and his application must fail.

22. It was his submission that the Constitution separates

legislative, executive and judicial powers vesting judicial authority in the courts and tribunals established by the

Constitution, therefore, at the time the National Assembly was entertaining the applicant's petition, the appellate legal proceedings were active and in doing so, the Parliamentary Committee violated the common law *sub judice* rule and contravened Order No. 89 (1) & 89 (3) (d) of the National Assembly Standing Orders restricting the National Assembly from debating active appellate court processes. Any purported evidence collected unconstitutionally and illegally is thereby rendered inadmissible.

23. In conclusion, Mr. Kilukumi SC. maintained that the applicant makes the preposterous and startling argument in his submissions that the suit land is *"unsurveyed and ungazetted parcel of land within Talek area, Narok County."* This is an artificially generated political narrative, processed through the Parliamentary Committee, which the applicant seeks to rely on at the appellate stage, disguised as additional evidence.

24. We have duly considered the application, the affidavits filed by the parties as well as their submissions. We have also read the judgment that is being appealed against in this

appeal. In our view, the issues that crystallize for determination are two, namely: (a) whether the applicant has met the criteria to be

joined in this appeal, and (b) whether the applicant has made a case for admission of additional evidence.

25. Central to this dispute is the ownership of the suit land. Both the appellant and the 1st respondent are claiming ownership of the land. On one hand, the 1st respondent is the registered proprietor of the land and seeks to assert his ownership, while on the other hand the appellant claims, it owns the land in trust for the people of Narok County. Undeniably, the dispute has been in Court for the last over 25 years. The litigation was escalated all the way to the Apex Court. The appeal before the Supreme Court related to a consent that had been entered into before the trial court granting the land to the 1st respondent. However, the Apex Court set aside the consent and referred the dispute back to the ELC where the matter was heard afresh culminating in the judgment dated 6th March 2025 in favour of the 1st respondent now the subject of this appeal filed by the appellant.

26. In the instant application, the applicant seeks to be joined in this appeal as an interested party. This application will turn on the sole question whether the applicant meets the

threshold to be admitted as an interested party in this appeal.

27. The Black's Law Dictionary (Ninth Edition) defines 'an interested party' as: " A party who has a recognizable stake (and therefore standing) in the matter". This Court in the case of **Muungano Wa Wanavijiji Akiba Mashinani Trust vs.**

Kihiu & 3 Others; Waweru & 5 Others (Interested Parties) (Civil Application E279 of 2022) [2023] KECA 946 (KLR) observed that this Court's Rules do not provide for joinder of an interested party but of an affected party. It also noted that, an affected party is not defined by the Rules. In an attempt to explain whether an interested party could fall under the definition of an affected party this Court stated:

"14. We agree that Rule 79(1) does not define the word "affected." However, this Court defined the word in the case of Centre for Rights Education and Awareness & Another v John Harun Mwau & 5 Others, CA No 74 of 2014 (CA). Referring to the cases of Kamlesh Pattni v Starwood Hotels and Resorts World Wide Inc & 7 Others Civil Application No Nai 330 of 2001 (UR 176/2001) and Commercial Bank of Africa Limited v Isaac Kamau Ndirangu, Civil Appeal No 157 of 1991, (CA); [1992] eKLR, the Court held that: 'The person referred to in the Rule is, at least, one whose property rights are affected by the judgment appealed against and that he

need not have been party to the superior court case to be served and allowed to participate in the appeal.'

- 15. *The Supreme Court in Trusted Society of Human Rights Alliance v Mumo Matemo & 5***

others [2014] eKLR at paragraphs 18 of the ruling did define an interested party as follows: -‘Consequently, an interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause.’

16. **Of note is that the Court of Appeal Rules provides for joinder of persons affected by the appeal and does not have any provision for joinder of an interested party, but given the Supreme Court definition in the afore cited case, such a person would be covered by Rule 79 as an affected person. Joinder of a party is not an automatic right, but one which is granted upon exercise of the discretion of the court concerned.”** Emphasis added).

28. Accordingly, an interested party/affected person is a party that has a recognizable stake or interest in a matter, whose presence may be necessary to enable a court or any adjudicating body to effectually and completely settle all questions raised therein.

29. In the case of **Attorney General vs. David Ndi & 73**

Others (Petition 12 (EO16) of 2020) [2021] KESC 17 (KLR),

the Supreme Court of Kenya reiterated the guiding principles

to be considered in determining an application for joinder of an interested party. It stated:

“This Court has laid down the guiding principles applicable in determining an application to be enjoined as an interested party in Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others SC Petition (Application) No 12 of 2013. The principles were affirmed in the case of Francis Kariuki Muruatetu & another v Republic & 5 others (supra) where the court stated: -“.... One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the court; hence, sufficient grounds must be laid before the court, on the basis of the following elements:

- (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 these submissions are not merely a replication of what the other parties will be making before the Court” (Emphasis ours).***

30. Similarly, In the case of **Communications Commission of**

**Kenya and 4 Others vs. Royal Media Services Limited
& 7**

Others Petition No. 15 of 2014 [2014] eKLR the Supreme Court stated as follows in declining to join a party to a suit;

“The applicant now seeks to be enjoined in this matter, even though it was neither a party at the High Court nor at the Court of Appeal. The applicant has not demonstrated how the ends of justice would better be served by enjoining it in the appeal...”

31. From the foregoing, it is a settled principle that joinder of a party is not an automatic right but one which is granted upon exercise of the discretion of the Court. The Court on its part should exercise such discretion under defined parameters, being that it must be satisfied that:

- a) The intended party has a personal interest or stake in the matter in question; and that interest is clearly identifiable and proximate enough and not merely peripheral.***
- b) The intended party’s presence would enable the court to resolve all the matters in the dispute.***
- c) The intended party would suffer prejudice in case of non-joinder.***
- d) The joinder of the intended party will not vex the parties or convolute the proceedings with unnecessary new matters and grounds not contemplated by the parties or envisaged in the pleadings.***

32. Largely, grounds for joining an interested party in an appeal focus on whether that party has demonstrated that he or she has a *“direct and substantial interest”* in the outcome

of the

appeal. This means that the order or orders made in the appeal cannot be sustained without prejudicing him or her or if the interested party has a legal right or duty that will be affected, necessitating his or her input during the hearing of the appeal to facilitate a full and just ventilation of all the issues, often to avoid multiplicity of actions or to uphold constitutional rights. This threshold requires demonstration of an identifiable stake which is clearly relevant to the Court's decision. Therefore, the substantial test is whether the party that alleges to be a necessary party for purposes of joinder has a legal interest in the subject matter of the litigation, which may be affected prejudicially by the judgment of the Court in the proceedings in question.

33. The term “*direct and substantial interest*” means an interest in the right, which is the subject matter of the litigation and not merely an indirect interest in the litigation. A meagre or a remote interest or an academic or a theoretical interest is insufficient. As was held by the High Court of South Africa, Gauteng, in **Myeni vs. Organization Undoing Tax Abuse**

NPC and Others, (15996/2017) [2019] ZAGPPHC

565 (2

December 2019), the question of joinder should not depend

on the nature of the subject matter of the suit, but on the manner in which, and extent to which the Court's order may affect the interests of third parties. Therefore, the question of joinder depends on the relief sought and not on the facts of the case or the issues in dispute. This position was articulated by the Supreme Court of Appeal of South Africa in **South African**

History Archive Trust vs. South African Reserve Bank and

Another (Case no 17/19) [2020] ZASCA 56 (29 May 2020).

34. Based on the criteria set out in the jurisprudence discussed above and the entire background to this case, we now address our mind to the question whether the applicant has met this threshold. Notably, the applicant describes himself as acting in the interests of the people of the Talek Adjudication Area and the wider Maasai community. However, there is nothing to show that he is a truly appointed representative of the people of Talek Adjudication Area or the people of Narok County and not a self-proclaimed representative.
35. Notably, the applicant states in its affidavit that he seeks to

adduce distinct evidence, namely, his petition filed in Parliament and the Parliamentary Report of the Committee on Land which established that the suit land does not exist in the

official land registry and it was fraudulently obtained. In short, he seeks to introduce totally new issues which were not canvassed before the trial court and tested by way of cross-examination.

36. The issues to be determined by the Court will always remain the issues presented by the principal parties or as framed by the Court from the pleadings and submissions of the principal parties. An interested party may not frame his/her own fresh issues or introduce new issues for determination by the Court. As stated earlier, one of the principles for admission of an interested party to an appeal is that such a party must demonstrate that he/she has a stake in the matter before the Court. That stake cannot take the form of an altogether a new issue to be introduced before the Court. (See ***Murutetu & another vs. Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) [2016] KESC 12 (KLR)***). In our considered opinion, allowing the applicant to join this appeal will open a window for him to urge this Court to consider the findings by the Parliamentary

Committee on Land, a clearly new issue that does not originate from the pleadings filed by the principal parties.

37. The applicant was required to bring his application within the criteria set out in the cases cited above. He has not shown a personal stake or legal interest in the matter, nor has he demonstrated how he will be affected or prejudiced by the judgment of this Court. Seeking to champion community interests is not one of the grounds set out in decided jurisprudence. In any event, the County Government of Narok has clearly stated that it holds the disputed land in trust for the people of Narok County, therefore, in this appeal, it is championing the interests of the people of Narok. The applicant claimed that the appellant entered into a consent with the 1st respondent. That may be so, but that consent was set aside by the Apex Court which ordered a fresh trial which culminated in the judgment the subject of this appeal.

38. We are persuaded that the interests of the people of Narok County who include the applicant will be well articulated and represented by the appellant. Furthermore, the applicant has neither shown his personal interest in this

matter nor the prejudice he will personally suffer if he is not joined in this

appeal. We therefore find that, this application is devoid of merits. Having concluded as herein above, it will serve no purpose for us to address the second issue mentioned earlier.

39. Accordingly, the applicant's application dated 31st October 2025 is hereby dismissed in its entirety with no order as to costs.

Dated and delivered at Nakuru this 16th day of January, 2026.

M. WARSAME

.....
**JUDGE OF
APPEAL**

J. MATIVO

.....
**JUDGE OF
APPEAL**

M. GACHOKA C.Arb, FCI Arb.

.....
**JUDGE OF
APPEAL**

*I certify that this is
a true copy of the
original.*

Signed.

DEPUTY REGISTRAR.