



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Kisuse v Gwerenya; Yusuf & another (Intended Interested Party) (Environment and Land Case 82 of 2021) [2026] KEELC 129 (KLR) (20 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 129 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KWALE**  
**ENVIRONMENT AND LAND CASE 82 OF 2021**  
**LL NAIKUNI, J**  
**JANUARY 20, 2026**

**BETWEEN**

**MARIAM BAKARI KISUSE ..... PLAINTIFF**

**AND**

**SHEE HASSAN GWERENYA ..... DEFENDANT**

**AND**

**ABDALLAH YUSUF ..... INTENDED INTERESTED PARTY**

**MWINYI SALIM MWAMBONDO ..... INTENDED INTERESTED PARTY**

**RULING**

**I. Introduction**

1. Before the Honorable Court for its determination is the Chamber Summons application dated 24<sup>th</sup> February 2025 brought to court by ‘Mariam Bakari Kisuse’, the Plaintiff/Applicant herein. The application is under the dint of Order 1 Rule 10 (2) and Order 51 of the Civil Procedure Rules 2010 and Sections 1A (1), 3A and 63(e) of the *Civil Procedure Act* Cap. 21.
2. Despite of Service, the Defendant/Respondent never opposed the application and hence the necessity of this ruling since the pleadings had closed.
3. Ideally, the court is tasked with considering the said application together with the Land Registrar’s Kwale report dated 15<sup>th</sup> May 2024.

**II. The Plaintiff/Applicant’s Case**

4. Through the said application the Plaintiff/Applicant sought for the following orders: -



- a. That this Honourable Court be pleased to join Abdallah Yusuf and Mwinyi Salim Mwambondo as 1<sup>st</sup> Interested Party and 2<sup>nd</sup> Interested Parties respectively to this Suit.
  - b. That upon joinder, the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties herein be granted leave to file their responses if need be and participate in this matter.
  - c. That any other incidental relief that this Honourable Court will deemed fit to meet the ends of justice.
  - d. That costs be in the cause.
5. The application is further supported by the testimonial facts and averments made out under the contents of the 26 Paragraphed Supporting Affidavit of Mariamu Bakari Kisuse sworn and dated on 24<sup>th</sup> February, 2025. She averred as follows:
- a. She was the Plaintiff /Applicant in this matter.
  - b. On the advice of her Advocates which advice she believes to be true, that the land parcels the subject of the dispute fall within the General Boundary System, under which boundaries are represented by general features rather than precise survey coordinates.
  - c. Under the said system, boundaries are intended to follow general lines on the ground and were to be maintained by proprietors in accordance with actual ground occupation, making physical occupation and boundary alignment a critical consideration in resolving disputes of this nature.
  - d. Being alive to the foregoing position, the Kwale County Land Registrar, pursuant to a Court Order dated 8<sup>th</sup> May 2023, prepared a report dated 7<sup>th</sup> July 2023, which was subsequently reviewed and supplemented by a further report dated 4<sup>th</sup> October 2024.
  - e. In the said reports, the Land Registrar recommended that a resurvey be undertaken in respect of the disputed parcels, on the basis that Land Parcel Number Kwale/Ukunda/2955 constitutes the original parcel from which the subsequent subdivisions emanated.
  - f. The history of the suit land to Kwale/Ukunda/2955, which was jointly registered in the names of Juma Athuman Mwasheti and Mohamed Bakari Mwakumanya, and which was subdivided in the year 1993.
  - g. Following the sub - division, two parcels were created, namely Kwale/Ukunda/3036 and Kwale/Ukunda/3037.
  - h. The parcels known as Kwale/Ukunda/3036 was registered in the name of Abdallah Yusuf, while Kwale/Ukunda/3037 remained jointly registered in the names of Juma Athuman Mwasheti and Mohamed Bakari Mwakumanya.
  - i. The parcels known as Kwale/Ukunda/3037 was subsequently subdivided, giving rise to Kwale/Ukunda/3621 and Kwale/Ukunda/3622, which parcels were registered in the names of Mwinyi Salim Mwambondo and Momo Mohamed Matari, respectively.
  - j. On the basis of this chain of sub - divisions, the Applicant asserts that the Proposed 1st Interested Party and the Proposed 2nd Interested Party have legitimate and beneficial interests in Kwale/Ukunda/3036 and Kwale/Ukunda/3621, respectively, both parcels tracing their root of title to Kwale/Ukunda/2955.



- k. The Land Registrar’s reports recommended not only a resurvey, but also the preparation of fresh mutation forms, with acreage to be determined by ground occupation, and that the registered proprietors, including the Proposed Interested Parties, be required to surrender their titles for issuance of new titles.
- l. In light of these recommendations, the participation of the Proposed Interested Parties was necessary, as their proprietary interests stand to be directly affected by the intended resurvey, mutation, and possible cancellation and replacement of titles.
- m. The joinder of the Proposed Interested Parties would enable the Court to effectively and completely adjudicate upon all issues, particularly those relating to ground occupation, common boundaries, and the historical root of title.
- n. Neither the Plaintiff nor the Defendant stood to suffer prejudice should the joinder be allowed, whereas the Proposed Interested Parties would suffer grave prejudice if excluded from the proceedings, as their titles may be interfered with without their participation.
- o. The Proposed Interested Parties were proper and necessary parties for the determination of the real issues in controversy, and that the issues raised in the Plaint could not be fully adjudicated upon in their absence.
- p. The Defendant would not suffer any prejudice if the orders sought were granted.
- q. Ultimately, the joinder sought is in the interest of justice and the expeditious disposal of suits, and that the affidavit was sworn in support of the Chamber Summons Application for leave to enjoin the Proposed 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties.

### **III. The Land Registrar’s Report dated 15<sup>th</sup> May 2024**

- 6. The land Registrar Report of S.M Mwanzawa dated 15<sup>th</sup> May 2024 is in respect of “Kwale ELC case 82 of 2021 Mariam Bakari Kisuse vs Shee Hassan Gwerenya – Kwale/Ukunda/3622.
- 7. Pursuant to the orders of this Court, dated 8<sup>th</sup> May 2023, the County Land Registrar and the District/ County Surveyor were directed to visit Land Parcel Number Kwale/Ukunda/2955 for purposes of obtaining evidence to ascertain, identify and/or re-establish the original position of the general boundaries.
- 8. The objective of the exercise was to facilitate the rectification of the Registry Index Map (RIM) while taking into account all pertinent issues, including physical ground occupation, and where possible, to erect fresh demarcation points.
- 9. In compliance with the said Court Order, a site visit and subsequent deliberations were undertaken, culminating in the preparation of the Registrar’s report.
- 10. Following the site exercise, a meeting was convened at the Land Registrar’s office and was attended by the following persons: Ms. Sophie Saeta, Advocate for the Defendant; Mr. George Kiti, Advocate for the Plaintiff; Mariam Bakari Kisuse, the Plaintiff; and Shee Hassan Gwerenya, the Defendant.
- 11. The Land Registrar arrived at the following findings:-
  - a. During the said meeting, the Applicant disclosed that she is the former spouse of Abdalla Yusuf, the registered proprietor of Land Parcel Number Kwale/Ukunda/3036.



- b. The Registrar noted that the Applicant's assertion that she acquired the portion she currently occupies from her parents could not be supported by any documentary or registry records.
  - c. From the site visit and deliberations, it was established that the ground occupation acreage of approximately 0.239 hectares was realised in favour of the Respondent, Momo Mohamed Matari.
  - d. It was further observed that the ground occupation area shown by the Respondent includes a portion also claimed and shown by the Applicant, thereby giving rise to the dispute.
  - e. The Registrar concluded that both the Land Register and the Registry Index Map (RIM) could not be relied upon to conclusively determine the sizes of the properties owned by either the Applicant or the Respondent, nor the precise extent of the disputed area.
  - f. The Registrar acknowledged that, under the general boundary system, maps are not authoritative as to the exact position of boundaries on the ground, and that discrepancies in the register alone cannot adequately resolve the dispute.
  - g. Notwithstanding the above, the Registrar observed that the Land Reference Numbers Kwale/Ukunda/3036, which is registered in the name of Abdalla Yusuf and currently occupied by the Applicant, measures approximately 0.08 hectares on the ground, as opposed to 0.06 hectares as per the land register.
  - h. This discrepancy was quantified at approximately 0.025 hectares, which the Registrar identified as the disputed area.
12. In light of the above findings in a – h the Land Registrar made the following recommendations tha:-
- a. a re - survey exercise to be undertaken on the basis that Land Parcel Number Kwale/Ukunda/2955 is the original parcel, and not Kwale/Ukunda/983, as parcel number 2955 gave rise to parcels 3036 and 3037.
  - b. Land Parcel Number Kwale/Ukunda/2954 should not be included in the resurvey, as doing so would occasion multiplicity of suits and affect parties who are not before the Court.
  - c. Kwale/Ukunda/2955 be subdivided into two portions, with each party being allocated the portion corresponding to their actual ground occupation.
  - d. the registered proprietors of Kwale/Ukunda/3036, 3621, and 3622 be required to surrender their titles for purposes of issuance of new titles.
  - e. fresh mutation forms be prepared, with the original acreage of each parcel being determined by the manner in which the parties occupy their respective portions on the ground.
  - f. the disputed area measuring approximately 0.025 hectares be distributed on a pro rata basis between the Applicant and the Respondent.
  - g. the Regional Surveyor make the necessary inserts and amendments on the area map to reflect the changes arising from the resurvey and subdivision.
  - h. the Court do issue appropriate directions on the distribution of the costs and expenses attendant to the resurvey and implementation exercise.



## VI. Analysis and Determination

13. I have carefully considered the Chamber Summons Application dated 24<sup>th</sup> February 2025, the Supporting Affidavit sworn by the Plaintiff/Applicant, the pleadings on record, the Land Registrar's Report dated 15<sup>th</sup> May 2024, the relevant statutory provisions, and the applicable principles of law.
14. In order to arrive at a just, fair and reasoned determination, this Court has condensed the subject matter into the following four (4) issues for determination:
  - a. Whether the application by the Applicant meets the threshold for joinder of parties.
  - b. Whether the Chamber Summons application dated 24<sup>th</sup> February 2025 seeking joinder of the Proposed Interested Parties has merit;
  - c. Whether the parties are entitled to the reliefs sought.
  - d. Who should bear the costs of the application.

### **Issue No. (a) Whether the application by the Applicant meets the threshold for joinder of parties.**

15. Under this sub-heading, the court holds that primarily the substratum of this application is on the joinder of parties. Legally, the joinder of parties are founded under the Provisions of Order 1 Rule 10 (2) of the Civil Procedure Rules which provides 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 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 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.

16. The joinder are designed to help place before the court all the relevant matters for purposes of determination of the real issue in dispute and controversy between the parties. However, joinder of parties may be refused where such joinder would lead into practical problems of handling the existing cause of action together with the one of the party being joined, is unnecessary or will just occasion unnecessary costs on the parties in the suits – or just being a nuisance on rocking the boat from the bottom. In other words, joinder of parties would be declined where the cause of action being proposed or the relief sought is incompatible to or totally different from the existing cause of action or the relief. The determining factor in joinder of parties would be a common question of fact or law would arise between the existing and the intended parties. (See Lucy Nangari Ngigi & 128 Others –Versus- National Bank of Kenya Limited & Another (2015) eKLR.
17. In the case “Pravin Bowry – Versus - John Ward and Another [2015] eKLR” the Court of Appeal considered the principles to be considered in an application for joinder of parties to a suit. The court referred to the Ugandan case of: “Deported Asians Custodian Board – Versus - Jaffer Brothers Ltd [1999] 1 E.A. 55 (SCU)” where the court stated as follows:-

“A clear distinction is called for between joining a party who ought to have been joined as a Defendant and one whose presence before the court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. A party may be joined in a suit because the party's presence is necessary in order to enable



the court effectually and completely adjudicate upon and settle all questions involved in the cause or matter.....

For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the court in that suit. Alternatively, a person qualifies (on an application of a defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.” (Emphasis by underline)

18. Additionally, the Court of Appeal in the case of:- “JMK – Versus - MWM & another [2015] eKLR” while speaking to the principle of joinder of a party in a proceeding noted as follows:-

“This Court adopted the same approach in CENTRAL KENYA LTD - Versus - TRUST BANK & 4 OTHERS, CA NO. 222 OF 1998, when it affirmed that the guiding principle in amendment of pleadings and joinder of parties is that:

“all amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs.”

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...”

19. Further, the Court of Appeal in the case of “EG – Versus - Attorney General; David Kuria Mbote & 10 others (Interested Parties) [2021] eKLR” shedding more light on the application of this principle held as follows:-

“(1) The core of the court’s power to join a party to any proceedings including at the appellate stage, as aptly discussed in Hamisi Yawa & 36,000 others – Versus - Tsangwa Ngala Chome & 19 others [2018] eKLR, is to bring on board a necessary party for purposes of determining the real issue(s) in dispute. Also, a joinder of a party is not an automatic right, but one which is granted upon exercise of the discretion of the court concerned. Nonetheless, the court exercises such discretion under defined parameters, that is, it must be satisfied that: -

- i. 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.
- ii. The intended party’s presence would enable court to resolve all the matters in the dispute.
- iii. The intended party would suffer prejudice in case of non-joinder.



- iv. 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.”

20. Similarly, in the case of:- “Meme – Versus - Republic, [2004] 1 EA 124”, the High Court observed that a party could be enjoined in a matter for the reasons that:-

“

- “(i) Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;
- (ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) Joinder to prevent a likely course of proliferated litigation.  
We ask ourselves the following questions: a) what is the intended party’s state and relevance in the proceedings and b) will the intended interested party suffer any prejudice if denied joinder.?”

21. Further, the principles objectives for joinder are enunciated in the case of:- “Joseph Njau Kingori – Versus - Robert Maina Chege & 3 others [2002] eKLR” that:-

“..... that the guiding principles when an intending party is to be joined are as follows:

- (1) He must be a necessary party;
- (2) He must be a proper party;
- (3) In the case of the Defendant there must be a relief flowing from that Defendant to the Plaintiff;
- (4) The ultimate order or decree cannot be enforced without his presence in the matter;
- 5) His presence is necessary to enable the Court to effectively and completely to adjudicate upon and settle all questions involved in the suit.”

23. Although joinder as a party is not an automatic right, a party who is desirous to have a party enjoined in the suit can do so at any time in an ongoing proceeding through an application. The Court will then consider it and in its discretion decide on the suitability of such an addition. In making this determination the Court is accordingly guided by the principles set out in the cited authorities.



22. The Honourable Court wishes to make reference to the Supreme Court case of “Communications Commission of Kenya & 3 others – Versus - Royal Media Services Limited & 7 others [Supra) where it held that:-

“In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court’s Ruling in the Mumo Matemo case where the Court (at paragraphs 14 and 18) held:

“ [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...”

Similarly, in the case of Meme – Versus - Republic, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- “(i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
- (ii) joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) joinder to prevent a likely course of proliferated litigation.”

23. The questions that the Supreme Court sought to answer in the above case were: -

- (a) what is the intended interested party’s stake and relevance in the proceedings? and
- (b) will the intended interested party suffer any prejudice if denied joinder?

**Issue No. (b). Whether the Chamber Summons application dated 24<sup>th</sup> February 2025 seeking joinder of the Proposed Interested Parties has merit**

24. From the pleadings and the uncontested affidavit evidence, it is not in dispute that the dispute herein traces its root to Land Parcel Number Kwale/Ukunda/2955, which was subdivided over time, giving rise to Kwale/Ukunda/3036, 3037, 3621 and 3622.

25. It is further not disputed that the Proposed 1st Interested Party, Abdallah Yusuf, is the registered proprietor of Kwale/Ukunda/3036, while the Proposed 2nd Interested Party, Mwinyi Salim Mwambondo, is the registered proprietor of Kwale/Ukunda/3621.

26. The Land Registrar’s Report dated 15th May 2024, prepared pursuant to orders of this Court, expressly recommends a resurvey, fresh mutations, and the surrender of existing titles for issuance of new titles based on ground occupation. These recommendations, if implemented, will directly and substantially affect the proprietary interests of the Proposed Interested Parties.

27. In the Court’s view, any determination touching on resurvey, re-mutation, cancellation, surrender or replacement of titles cannot be fairly, lawfully, or conclusively undertaken in the absence of the registered proprietors whose titles stand to be affected.



28. The Court is therefore satisfied that the Proposed Interested Parties have a clear, identifiable, and legally protectable interest in the subject matter of the suit, and that their presence is necessary to enable the Court to fully and effectually adjudicate upon all the questions involved.
29. Further, no prejudice has been demonstrated to be occasioned to the Defendant should the joinder be allowed. On the contrary, declining the joinder would expose the Proposed Interested Parties to grave prejudice by subjecting their titles to potential interference without affording them an opportunity to be heard.
30. Guided by the principles laid down in *Communications Commission of Kenya & 3 others – Versus - Royal Media Services Limited & 7 others* [Supra],. Thus, bearing in mind the constitutional dictates of fair hearing and procedural justice, this Court finds that the application for joinder is merited.

#### **Issue No. (c) Whether the parties herein are entitled to the reliefs sought**

31. Having found that the Proposed Interested Parties are necessary and proper parties to this suit, it follows that the Plaintiff/Applicant is entitled to the reliefs sought in the Chamber Summons Application.
32. The reliefs sought are procedural in nature. They are aimed at ensuring that all persons with a stake in the dispute are before the Court so as to avoid multiplicity of suits, conflicting decisions, and piecemeal adjudication.
33. Therefore, the Honourable Court is satisfied that granting leave to the Interested Parties to be joined and to participate in the proceedings will enhance, rather than hinder, the just, expeditious and proportionate determination of the dispute.

#### **Issue No. d). Who will bear the costs of the application?**

34. It is now well established that the issue of Costs is at the discretion of the Court. Costs is the award that a party is granted at the conclusion of any legal action or proceedings in any litigation. The provision of Section 27 ( 1 ) of the *Civil Procedure Act*, Cap. 21 holds that costs follow the event. By the event, it means the result or outcome of any legal action.
35. In the present case, the application has not been opposed and has been found to be meritorious. Given the nature of the dispute and the fact that the joinder is intended to facilitate substantive justice, the Court is of the view that costs should abide the outcome of the suit.

### **VII. Conclusion and Findings**

36. Ultimately, following the indepth analysis of the framed issues, based on the Principles of the Preponderance of Probabilities and the Balance of Convenience, the Honourable Court proceeds to specifically make the following orders:-
  - a). THAT the Chamber Summons Application dated 24<sup>th</sup> February 2025 be and is hereby found to be merited and thus allowed under the following terms:
    - i. Abdallah Yusuf and Mwinyi Salim Mwambondo be and are hereby joined in this suit as the 1<sup>st</sup> Interested Party and 2<sup>nd</sup> Interested Party, respectively;
    - ii. The Interested Parties shall have leave 14 days to file and serve their respective responses within such time as the Court shall direct;
  - b). That the Plaintiff granted 14 days leave to file and serve amended Plaintiff accordingly.\_\_\_\_\_



- c). That upon service, all the other parties to be at liberty to cause amend to their pleadings within the next seven ( 7 ) days from this date.
- d). That the matter shall be mentioned on 25<sup>th</sup> February, 2026 to ascertain compliance of these orders and for further directions including fixing a hearing date on the expeditious disposal of the suit.
- e). That the costs of the application shall be in the cause.

It is so ordered accordingly.

**RULING DELIVERED VIA MICROSOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS 20<sup>TH</sup> DAY OF JANUARY, 2026.**

.....  
**HON. JUSTICE MR. L. L. NAIKUNI**

**ENVIRONMENT AND LAND COURT AT KWALE**

Ruling delivered in the presence of:

- a. Mr. Daniel Disii, Court Assistant.
- b. M/s. Muronyi Advocate holding brief for Mr. Kiti Advocate for the Plaintiff.
- c. M/s Saeta Advocate for the Defendant

