Muna (Suing as the legal representative of the Late Ann Wambui Muna) & 5 others v Boscardin & 5 others (Environment and Land Case 27 of 2020) [2026] KEELC 193 (KLR) (21 January 2026) (Ruling)

Neutral citation: [2026] KEELC 193 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ENVIRONMENT AND LAND CASE 27 OF 2020

CK NZILI, J

JANUARY 21, 2026

BETWEEN

REUBEN NG'ANG'A MUNA (SUING AS THE LEGAL REPRESENTATIVE OF THE LATE ANN WAMBUI MUNA) .... 1ST PLAINTIFF

ALLAN MUNGA MUNA .... 2ND PLAINTIFF

SARAH MWIHAKI MUNA .... 3RD PLAINTIFF

LUISA NYAKIBISHOI MUNA .... 4TH PLAINTIFF

REUBEN NG'ANG'A MUNA .... 5TH PLAINTIFF

KITAMU FARM LIMITED .... 6TH PLAINTIFF

AND

ANNE NJOKI MUNGA BOSCARDIN .... 1ST DEFENDANT

JANE WANGECI (BEING THE ADMINISTRATOR OF THE ESTATE OF THE LATE ELIZABETH WACHE)KE .... 2ND DEFENDANT

BERNARD MUIRURI KAMAU (BEING THE ADMINISTRATOR OF THE LATE PRISCILLA WANGECI MUIRURI) .... 3RD DEFENDANT

MUKAMI GATHU .... 4TH DEFENDANT

NJERI GATHU .... 5TH DEFENDANT

NG'ANG'A GATHU .... 6TH DEFENDANT

RULING

1. Order 1 Rule 10(2) of the Civil Procedure Rules allows for joinder, only during ongoing proceedings. A party intending to be considered to join a suit as an interested party must meet the criteria set out in Muruatetu & Another -vs- Republic; Kenya National Commission on Human Rights & Others Petition 15 & 16 of 2015 (consolidated) [2016] KESC 12 KLR (CIV) (28th January 2016) (Ruling):

   a. Personal interest or stake in the matter.

   b. Interest must be clearly identifiable and must be proximate enough to stand apart from anything that is merely peripheral.

   c. The prejudice to be suffered by the intended interested party must be demonstrated to the satisfaction of the court. It must also be clearly outlined and not something remote.

   d. 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.

   (e) It must also show that these submissions are not merely a replica of what the other parties will be making before the court.

2. Enjoinment is not as of right. It is a discretionary power of the court, exercisable on sound reasons where there is a demonstration of sufficient grounds as alluded in the case law of Muruatetu (supra), Communications Commission of Kenya -vs- Royal Media Services Limited & 9 others [2014] KESC 51 (KLR) and Trusted Society of Human Rights Alliance -vs- Mumo Matemu & Others [2014] eKLR.

3. In M'Mwenda & Another -vs- Mire Civil Appeal Appl. No. 3 of 2019 [2024] KECA 1257 [KLR] (20th September 2024) (Ruling), the court cited Mbaruk Abdalla Suleiman & 5 others -vs- Mombasa Cement Limited & 5 others [2018] KECA 26 (KLR), that the essence of allowing joinder of a party to any proceedings is for the court to achieve the ultimate goal of rendering conclusive determination of the real issues in controversy.

4. In Communications Commission of Kenya & Others (supra), the court declined to join the party for lack of demonstration of how the ends of justice could better be served by enjoining it. The court said that it could not join a party that disguised itself as an interested party while, in fact, it was merely seeking to institute a fresh cause.

5. In Civicon Limited -vs- Kivuwatt Limited [2013] KEHC 2549 (KLR), the court held that power is discretionary and wide, and that the overriding consideration is whether the party has an interest in the suit and that his right will be affected if he is not added, or his presence is crucial such that without him the matter cannot effectively be decided.

6. One of the other considerations is the prejudice to the other parties, including vexing them, convoluting the proceedings with unnecessary new matters or grounds not contemplated by the parties or envisaged in the pleadings. See Yawa & 35001 others -vs- Chome (Suing as the administrator of the Estate of the Late Mumba Chome Ngala (Deceased) & 19 others [2018] KECA 35 (KLR). The question is whether the applicant has made out a case to warrant his joinder. In Mbaki & Others -vs- Macharia & Others [2005] 2 EA 205, the court said that the right to be heard is a valued right, and it would offend all rules of justice if the rights of a party were to be prejudiced or affected without being afforded an opportunity to be heard.

7. Further, in David Kiptugen -vs- Commissioner of Lands Nairobi [2016] eKLR, the court held that declining the orders sought would deprive the applicant of an opportunity to be heard on her claim over the suit property, it would be contrary to the rules of natural justice, and unconstitutional.

8. In an application dated 31/12/2025, John Arthur Kabiru, who testified before this court on behalf of the defendants and the plaintiffs in the counterclaim as DW2, sought leave to join this suit as an interested party, arrest of the judgment scheduled for 21/1/2026, and leave to file pleadings in this suit.

9. The grounds are that vide Nairobi Succession Cause No. 857 of 1992, in the matter of the estate of Clement Munga Muna, who was his late father, his late brother Solomon Muna acquired the suit properties herein, which he transferred to his late wife. The intended interested party says that, being a son, he needs to be made a party in order to articulate his interest in the suit properties.

10. The applicant states that he had paid Kshs.100,000/= to Joseph Mutava Advocates to make this application in October 2025, but neglected to do so. He says that mistakes of counsel should not be visited upon him.

11. In an undated, unsworn, and unsigned affidavit attached to the application, the applicant confirms that his late parents died in July and May 1990 and 1993, respectively, leaving behind eleven children.

12. The applicant states that his late brother and sister-in-law hold the suit properties in trust for all the 12 siblings, himself included. The applicant says that the late brother fraudulently transferred the suit properties to the late wife, and therefore, it is only fair that the transfer be cancelled and be shared equally among the deceased's 12 children. The applicant has not attached the draft intended pleadings.

13. The application was certified urgent and placed for hearing on 19/1/2026. When it came up, neither the applicant nor his lawyer was in court to prosecute it. There was also no affidavit of service to show that the respondents had been served on time or at all.

14. Notwithstanding that, Miss Shah and Omamo, learned counsels for the 1st, 3rd, 4th, 5th, and 6th defendants, asked for dismissal of the same for non-attendance and non-prosecution. The applicant and her advocates only came to court after 9:00 a.m. that day, and orally pleaded for the reinstatement of the application. Eventually, they filed an application dated 19/1/2026 for reinstatement, giving reasons for non-attendance.

15. The 1st, 3rd, 4th, 5th, and 6th defendants and the plaintiffs are opposed to the same through oral submissions based on the grounds of opposition dated 21/1/2026, for indolence, lack of justification, abuse of court process, and based on the loss or damage, in terms of time and financial resources expended by the parties.

16. The court has looked at the same and notes that even though the applicant and his counsel on record were late, they still made efforts to attend court. In the interest of justice, I allow the application for reinstatement so that the court can determine the issues on the merits. Costs will be to the respondent in any event.

17. Coming to the 2nd application, the same is opposed by the plaintiffs and the 1st - 6th defendants. The grounds of opposition dated 21/1/2026 by the plaintiffs and which the 1st - 6th defendants orally associated with during the hearing are; that the joinder is not necessary, the applicant is not a necessary party, the affidavit in support offends the law, the applicant will suffer no prejudice for non-joinder, he lacks locus standi to seek any substantive reliefs, he is estopped from asserting any interest in view of his testimony as DW2, based on a witness statement before the court where he acknowledged past litigation and confirmed that he acquired his share of the estate, independent of the suit properties; the

reliefs he may wish to seek are similar to those of the defendants; the suit has been heard substantially and is at judgment stage; hence to reopen it will prejudice the parties; there is delay of 36 years in raising the stake; the delay is unreasonable and unexplained; the applicant has all along been aware of the pending litigation; evidence of instructions to counsel is not available; the applicant was in court as a witness on 7/10/2025, yet he did not raise the issue of instructions or intention to join the suit or make an oral application; litigation must come to an end; joinder is not automatic; the applicant has not met the threshold of joinder; the intention is to scuttle the judgment and to grant the application at this stage will give the applicant undue advantage and facilitate wanton wastage of time, resources, manpower, and financial resources of both the court and the parties.

18. Learned counsels Miss Shah Omamo and Miss Njeri for the plaintiffs, and the 1st - 6th defendants urged the court to find the application lacking a competent supporting affidavit, the draft intended pleadings also lacking merits, and an abuse of the court process.

19. In a rejoinder, learned counsel Miss Wangechi conceded that the supporting affidavit was lacking a signature, date, and stamp of both the deponent and the Commissioner of Oaths. She urged the court to find the anomaly not fatal and rely on the grounds in support thereof, as sufficient to demonstrate the stake that the applicant wishes to advance, given a chance.

20. It is not disputed that the applicant was a defence witness who went on to testify on their behalf on 7/10/2025 as DW2. He conceded that he had acquired 40 acres from the estate of his late father in 1992, following confirmation of the grant, in which his late brother Solomon Muna and mother were co-administrators. The applicant told the court that the share of 258 acres comprised in the four suit properties was held exclusively in trust for the benefit of his late brother and the defendants herein, as the female siblings.

21. Similarly, the applicant was categorical that he claims none of the suit properties and supported the defendants' counterclaim that the properties be declared as held in trust for the benefit of his late brother's estate and the 7 sisters, some now deceased.

22. The doctrine of estoppel has been invoked to oppose this application. It operates as a principle of the law that precludes a person from asserting something contrary to what is implied by a previous action. It is a doctrine of equity, which walks hand in hand with the doctrines that he who comes to equity must come with clean hands and that delay defeats equity. It bars a party from relitigating issues already litigated and determined. It also prevents parties from retracting on the promises or representations that others have since relied upon.

23. Applying the foregoing case law to the facts of this application, the question is whether the applicant fits the test to be admitted as an interested party. To start with, it is not disputed that the applicant was aware of this suit. He actively participated as DW2. He also firmly put it in writing and on oath before this court as a witness that he was satisfied with the confirmed grant in respect to the estate of his late father, where he acquired 40 acres and his late brother acquired 258 acres, to hold for himself and on behalf of the female siblings.

24. The applicant has lived with reality until 31/12/2025, but now swears on oath contrary to what he had earlier told the court that the suit properties were held in trust for his sisters and late brother's estate. The assertion now is that the suit properties are held in trust for all the siblings, both male and female.

25. The application shows that the applicant wants to acquire a character, not of a witness in support of one side, but as a substantive party to the suit, to agitate for substantive reliefs.

26. One of the issues is that the applicant has been privy to the confirmation of grant since 1992, hence the delay in agitating for his stake against his late brother and late wife, until they passed on, and further awaiting until all the parties in the present case have closed their respective claims is unreasonable.

27. Delay defeats equity, and he who comes to equity must come with clean hands. The explanation for the delay is lacking. The applicant, when he took the witness stand on 7/10/2025, did not bring to the attention of the court that he was intending to descend to the arena of trial as a substantive party or as an interested party. The applicant did not seize that opportunity to stake his claim on the suit properties until the defence case was closed and a judgment date issued for 21/1/2026.

28. The application was only filed on 13/1/2026. I agree with the respondents that the intention is suspect and likely intended to scuttle the judgment, with a view to reopening the suit to serve unintended motives which do not augur well with the interests of justice.

29. Parties and the court have expended a lot of time and resources in this matter, while the applicant was aware that he had a stake. It is not clear what stopped him from asserting the same.

30. Similarly, the dimension that the applicant is taking is tantamount to raising a new cause of action based on all alleged challenge to the confirmed grant in 1992, that he should not have been given 40 acres, and instead the estate should have been shared equally and not in the ratio set in the grant.

31. The applicant's alleged claim has been termed by his sisters and nieces as strange and an about-turn. I agree with the respondents that the application is an afterthought and made in bad faith, especially after the applicant was given a chance to testify on behalf of the defendants, but effectively, he seeks through this application to disown his own testimony and stand. That is where the doctrine of estoppel applies.

32. Under Section 120 of the *Evidence Act*, the parties herein and the court were meant to believe the earlier representation by the applicant that it was true. He now wants to take back his words. Retracting the earlier witness statement and evidence is what the applicant is now doing and seeking joinder as an interested party, who now wishes to participate in the suit by filing his pleadings in support of his stake that the suit properties are held in trust for all the children of the late Clement Munga Muna, himself included.

33. The doctrine of estoppel is intended to protect against injustice and unconscionability. The court, in the circumstances, is not convinced that the application is made in good faith. The alleged stake in the suit properties, even if it were demonstrated through a draft defence or pleadings, would still be remote, made in the wrong court, caught up by the doctrine of estoppel, coming too late, and above all, prejudicial to the parties in this suit.

34. The upshot is that the application dated 31/12/2025 lacks merit. It is dismissed with costs to the respondents.

35. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 21ST DAY OF JANUARY 2026.

In the presence of:

Court Assistant - Dennis

Shah & Omamo for the 1st - 6th plaintiffs

1st and 2nd defendants present

Njeri for Simiyu for 1st, 3rd, 4th, 5th, and 6th defendants and plaintiffs in the counterclaim

Chilaka for 3rd and 4th defendant in the counterclaim present

Wangechi for Interested Party present

Jane Wangechi Waruiru, 2nd defendant present

HON. C.K. NZILI

JUDGE, ELC KITALE.