



**REPUBLIC OF KENYA**

**IN THE SUPREME COURT OF KENYA**

*(Coram: Koome; CJ & P)*

**PETITION (APPLICATION) NO. E015 OF 2025**

—BETWEEN—

**ATTORNEY GENERAL ON BEHALF OF  
THE CABINET SECRETARY, MINISTRY  
OF INTERIOR AND COORDINATION  
OF  
NATIONAL GOVERNMENT.....APPELLANT/  
RESPONDENT**

—AND—

**NGURUMAN LIMITED**

.....  
**RESPONDENT/APPLICANT**

**JOHN KAMANGA & ISAAC KISERIAN**  
**(Suing on their own behalf and on**  
**behalf of 14,264 members and/or**  
**residents of Shompole Group Ranch,**  
**Oi Kiramatian**  
**Group Ranch, Pakase Irrigation Scheme and**  
**Entasopia Irrigation Scheme)...1<sup>ST</sup> PROPOSED INTERESTED**  
**PARTY**

**THE COUNTY GOVERNMENT**  
**OF KAJIADO.....2<sup>ND</sup> PROPOSED INTERESTED**  
**PARTY**

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*(Being an application for review and setting aside of the Deputy Registrar  
directions issued on 11<sup>th</sup> July, 2025)*

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Representation:

Ms. Oscar Eredi for the  
Appellant/Respondent (*Attorney  
General Chambers*)

Ms Jerioth Muthoni for the Respondent/Applicant  
(*Ahmednasir Abdullahi Advocates LLP*)

Ms Cecilia Misiati h/b for Prof. Tom Ojienda, SC for the Proposed Interested Parties (*Prof. Tom Ojienda & Associates*)

## **RULING OF THE COURT**

**[1] CONGNISANT** that, the appeal herein culminates from a judgment of the Court of Appeal dated 28<sup>th</sup> February 2025, which upheld the Environment and Land Court's (ELC) decision in **ELC Petition No. 18 o 2018**, to the effect that the prolonged failure by the police and other State agencies to enforce court orders as well as protect the suit land from invasion, amounted to violation of the respondent/applicant's right to property under Article 40 of the Constitution by the appellant/respondent. It is in that regard that the proposed interested parties filed a Notice of Motion dated 16<sup>th</sup> April, 2025 (joinder application) seeking to be joined in the appeal; and

**[2] BEARING IN MIND** that on 30<sup>th</sup> April 2025, *Wanjala, SCJ* certified the joinder application as urgent, and the Deputy Registrar (*Hon. Bernard Kasavuli*) issued directions, *to wit*: that the joinder application as well as the written submissions in support thereof be served upon the applicant and respondent on even date; that the applicant and respondent do file and serve their responses and written submissions to the joinder application within 7 days of service; and that the proposed interested parties file and serve their rejoinder, if any, within 7 days of service. Eventually, on 11<sup>th</sup> July 2025, the Deputy Registrar (*Hon. Alice Mukenga*) issued directions that the parties herein had fully complied with the directions relating to filing responses and submissions to the joinder application and that the ruling thereto would be delivered by this Court on notice; and

**[3] UPON PERUSING** the Notice of Motion dated 18<sup>th</sup> July, 2025 and filed on 30<sup>th</sup> July, 2025 at the instance of the applicant seeking *inter alia*:

“ ...

*a) THAT the decision, order and directions of the Hon. Deputy Registrar dated 11<sup>th</sup> July 2025 to the effect that all the parties had fully complied with the directions relating to filing of responses and submissions to*

*the Notice of Motion dated 16<sup>th</sup> April 2025 by the proposed interested parties be reviewed and set aside.*

*b) THAT upon review of the directions dated 11<sup>th</sup> July 2025, the applicant be allowed to challenge the locus standi of the proposed interested parties by filing submissions to the Notice of Motion dated 16<sup>th</sup> April, 2025.*

*c) THAT the costs of the application be provided for; and*

**[4] UPON CONSIDERING** the affidavit sworn by the applicant's Director, Martin Richard Styen, on 18<sup>th</sup> July, 2025 in support of the Review Motion and the submissions dated 29<sup>th</sup> July, 2025 the tenor of which is that, when the joinder application was first mentioned before Hon. Bernard Kasavuli on 19<sup>th</sup> May, 2025 further directions were issued granting the applicant 7 days within which to file its response thereto; the applicant did file a replying affidavit sworn by its Director on 26<sup>th</sup> May 2025; and on 30<sup>th</sup> May 2025, the proposed interested parties were granted 7 days to file a rejoinder to the applicant's replying affidavit, which they did by lodging a further affidavit and supplementary submissions. The applicant further avers that on 16<sup>th</sup> June 2025, the joinder application was mentioned before another Deputy Registrar (*Hon. Alice Mukenga*) and the applicant's counsel, Ms. Jerioth Muthoni, indicated that the applicant intended to file an application challenging the proposed interested parties' *locus standi*. In turn, that the Deputy Registrar issued directions that the parties had fully complied as far as the joinder application was concerned; and that the applicant's counsel may file the application alluded to within 14 days; and

**[5] TAKING INTO ACCOUNT** the applicant's contention that, on 11<sup>th</sup> July, 2025 the same Deputy Registrar reiterated, erroneously so, that the parties had fully complied with the directions relating to the joinder

application and that the ruling thereto would be delivered by the Court on notice; the initial directions of 30<sup>th</sup> April, 2025 were superseded by the subsequent directions dated 19<sup>th</sup> May 2025 and 16<sup>th</sup>

June 2025; the subsequent directions did not stipulate timelines for the applicant to file its written submissions; the applicant has not filed its written submissions to the joinder application; it is only just for the applicant to be allowed to file its written submissions having intimated its intention to challenge the proposed interested parties' *locus standi*; and that, the directions of 11<sup>th</sup> July, 2025 have the effect of limiting the applicant's right to a fair trial under Article 50(1) of the Constitution and its participation in the joinder application. In totality, the applicant argues that, its failure to file the written submissions was not intentional; it should be placed on the same footing as the proposed interested parties who on 30<sup>th</sup> May 2025 were given an opportunity to file further affidavit and supplementary submissions; this is a proper case for review to prevent injustice in line with this Court's decision in ***Outa Vs Okello & 3 Others*** [2017] KESC 25 (KLR); and the proposed interested parties will not suffer any prejudice should the Review Motion be allowed; and

**[6] NOTING** that the appellant/respondent has not filed any response to the Review Motion despite being served with the said motion; and

**[7] UPON EXAMINING** the replying affidavit sworn by John Kamaga on 29<sup>th</sup> August, 2025 on behalf the proposed interested parties and the written submissions of even date, the gist of which is that: vide the directions issued on 30<sup>th</sup> April 2025, not only were the proposed interested parties directed to serve their joinder application and the submissions thereto but the applicant was also required to respond to the said application within 7 days of service; on 19<sup>th</sup> May 2025, the applicant was granted an additional 7 days to file its response to the joinder application; as such, in line with the Rules of this Court and as a matter of practice, the applicant was expected to file both a replying

affidavit and submissions; and nevertheless, the applicant only filed a replying affidavit dated 26<sup>th</sup> May 2025. Additionally, that on 16<sup>th</sup> June, 2025 the parties, including the applicant's counsel, confirmed that they had complied with the directions relating to the joinder application; the applicant's counsel also sought leave to file an application to

challenge the proposed interested parties' *locus standi*; on the strength of the aforementioned confirmation, the Deputy Registrar directed that the ruling on the joinder application would be delivered by the Court on notice, and granted the respondent leave to file the application alluded to within 14 days, which has not been filed to date; and

**[8] FURTHER NOTING** the proposed interested parties' position that, the applicant's counsel ought to have informed the Deputy Registrar on 11<sup>th</sup> July, 2025 that they were yet to file their written submissions; the directions of 11<sup>th</sup> July 2025 were issued on the strength of the pronouncements of applicant's counsel and not through fraud or mistake; prior to the aforementioned directions, the applicant had more than three opportunities to file its submissions to the joinder application, and the failure to do so only points to indolence on its part; the Review Motion is riddled with material non-disclosure by the applicant and does not meet the threshold for review as set out in the ***Outa Case*** and ***Tawai Limited Vs Eldoret Express Limited; National Land Commission (Interested Party)*** [2021] KESC 68 (KLR); and the Review Motion ought to be dismissed; and

**[9] APPRECIATING** that the applicant in response filed a further affidavit and supplementary submissions dated 12<sup>th</sup> September 2025. In its rejoinder, the applicant asserts that on 16<sup>th</sup> June 2025, the respondent's counsel lost internet connectivity when the other parties were making their submissions with respect to the joinder application as evinced by the proceedings of the said day. Furthermore, that by the time her internet connectivity was re-established, the Deputy Registrar had already erroneously issued directions to the effect that the parties had fully complied with the directions relating to the joinder application. Be that as it may, the court proceedings of 16<sup>th</sup> June 2025

do not in any way indicate that the applicant's counsel had confirmed compliance with respect to the joinder application contrary to the proposed interested parties' allegations; and

**[10] BEING MINDFUL** of this Court’s jurisdiction to review a decision or directions issued by a Deputy Registrar as set out under Section 11 of the Supreme Court Act, Cap 9B in the following terms:

*“11. Reviews of decisions of the Registrar*

*1) A person aggrieved by a decision of the Registrar made in accordance with the rules may apply to a judge of the Supreme Court for a review of such decision.*

*2) The judge may confirm, modify, or reverse the decision in issue...”*

See also Section 23(2)(e) of the Supreme Court Act and Rule 6(2) of the Supreme Court Rules.

**[11] I NOW OPINE** as follows:

- i. It is common ground that the directions issued by the Deputy Registrar with regard to the joinder application are in line with Rule 31 of this Court Rules which governs interlocutory applications. Such directions are part and parcel of case management and ensure orderly and efficient determination of interlocutory applications without unnecessary procedural delay.
- ii. I understand the applicant’s core contention is that the directions of 11<sup>th</sup> July 2025 were issued in error or through an oversight by the Deputy Registrar. More specifically, that the said Deputy Registrar erroneously held that the applicant had complied with directions relating to filing submissions to the joinder application.
- iii.** Having perused the proceedings before the Deputy Registrar, I cannot help but note that the first-time directions were issued with regard to compliance by the parties to the joinder application was

on 16<sup>th</sup> June 2025. Apart from giving directions on the main appeal, Hon Alice Mukenga noted that, ***“These are the directions on the application. I have noted that the parties***

***have fully complied...*** Whereas, there was no objection on the part of the applicant's counsel to the aforementioned direction, the record indicates that the said counsel submitted that -

**“Ms. Muthoni (the applicant's counsel)**

***Your Honour sorry, If I may, my internet had dropped when we were discussing the application ...”***

Counsel went on further to state -

**“Ms. Muthoni**

***Yes, upon service of the applicant's (proposed interested parties herein) submissions, we received instructions this morning to file an application which seeks to challenge the applicants' locus in these proceedings. We will be seeking leave to file the application. Your Honour we pray for 7 days to be able to file our application and serve.”***

In turn, the Deputy Registrar granted the applicant's counsel leave to file the said application, which is yet to be filed.

- iv. Thereafter, on 11<sup>th</sup> July 2025 when the appeal was mentioned before the Deputy Registrar, she issued the following directions with regard to the joinder application:

**“Hon. Alice Mukenga DR:**

***Alright, Counsels I have heard you on that issue which affects compliance on the main Petition and the Cross Petition and the directions that I give are as follows:***

...

**Meanwhile I have also noted that there is a pending application by the intended Interested parties and a decision had not been made on that application and there is full compliance with regard to that application. I therefore direct that we hold compliance on the main Petition and the Cross Petition in abeyance so as to await the decision of the Court on that pending application by the intended Interested Parties. Ruling on that application by the Intended Interested Parties will be delivered on notice.**

[Emphasis added]

The applicant's counsel who was present simply responded that -

**“Ms. Muthoni  
We are most obliged”**

- v. Based on the foregoing, the record evinces that on 16<sup>th</sup> June 2025 when the directions of compliance were first issued, the applicant's counsel experienced technical issues during the virtual proceedings of the said day. To that extent, I give the benefit of doubt to the applicant that its counsel may for the aforesaid reason not have heard or been aware of the directions that parties had fully complied with filing of responses and submissions to the joinder application. Equally, the Deputy Registrar cannot be blamed as, once the applicant's counsel connection was stable, she sought leave to file an application to challenge the proposed interested parties' *locus standi*, which was granted.
- vi. However, on 11<sup>th</sup> July 2025, the Deputy Registrar reiterated her directions that the parties had fully complied with directions for

the joinder application and that the ruling thereof would be delivered on notice. As clearly set out in the proceedings of the said day, reproduced hereinabove, the applicant's counsel neither explicitly confirmed that the foregoing was the correct position nor did she object to the same. However, she did indicate that "**we are much**

**obliged**". In the circumstances, can the error or oversight alleged by the applicant be squarely placed on the Deputy Registrar. I do not think so. It is a fundamental principle that litigation/suits/appeals belong to the parties and as such, the applicant by itself or through its counsel bore the responsibility of pointing out the correct position or at the very least seeking the Deputy Registrar's indulgence/leave to file its written submission.

- vii. Equally, this Court cannot remain indifferent to its paramount duty to dispense substantive justice. In the prevailing circumstances, the interests of justice demand that all parties be afforded a full opportunity to ventilate their positions regarding the joinder application. In my view, permitting the applicant to file written submissions ensures a comprehensive hearing without occasioning prejudice to the proposed interested parties.

**[12] CONSEQUENTLY** and for the reasons afore-stated, I am inclined to issue the following Orders:

- i. The Notice of Motion dated 18<sup>th</sup> July 2025 and filed on 30<sup>th</sup> July 2025 is allowed in the following terms:***
- a) The directions of the Hon. Deputy Registrar dated 11<sup>th</sup> July 2025 to the effect that all the parties had fully complied with the directions relating to filing of responses and submissions to the Notice of Motion dated 16<sup>th</sup> April, 2025 by the proposed interested parties is hereby set aside.***
- b) The applicant shall file and serve written submissions with respect to the Notice of Motion dated 16<sup>th</sup> April, 2025 within 7 days of the date of this ruling.***

***c) The proposed interested parties are at liberty to file and serve further submissions in response thereto within 7 days from the date of service.***

***d) No further pleadings shall be filed by the parties in relation to the Notice of Motion dated 16<sup>th</sup> April, 2025.***

***ii. Costs shall abide by the outcome of the Notice of Motion dated 16<sup>th</sup> April, 2025.***

It is so ordered.

**DATED and DELIVERED at NAIROBI this 20<sup>th</sup> day of February, 2026.**

.....

**M. K. KOOME  
CHIEF JUSTICE &  
PRESIDENT OF THE  
SUPREME COURT**

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

**REGISTRAR  
SUPREME COURT OF KENYA**

