

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ELC NO. E010 OF 2024

**MICHAEL MUSAU MUSYOKIPLAINTIFF/
RESPONDENT**

-VERSUS-

**JOSEPHINE KANINI MUSYOKI
.....DEFENDANT/RESPONDENT**

-AND-

**PATRICK MUMO KILONZO1ST INTENDED INTERESTED
PARTY**
**MUAMBA KIOKO2ND INTENDED INTERESTED
PARTY**

RULING

1. Before this court for determination is the Notice of Motion dated 5th March, 2025 filed by the 2nd Intended Interested Party/Applicant. It is brought under Article 159 (2) of the Constitution in addition to Sections 1A, 1B, 3A and 63 of the Civil Procedure Act.
2. The Applicant primarily seeks issuance of the following Orders:
 - 1) **[SPENT]**
 - 2) **[SPENT]**
 - 3) **THAT the 2nd Intended Interested Party Muamba Kioko be and is hereby enjoined in this suit.**
 - 4) **Costs of this application be provided for by the Plaintiff.**
3. The application is premised on the grounds appearing on its face together with the supporting affidavit of Muamba Kioko sworn on 23rd October, 2024. He

averred that contrary to the Plaintiff's allegations; he is the bona fide purchaser/owner of land Parcel No. Mbooni/Iiani/825 which was purchased from the late Michael Musyoki Muoki in 1991. That the Plaintiff lied to the County Criminal Investigation Officer (CCIO) about being issued with a certificate of confirmation of grant relating to his late father's estate from the public trustee upon which he transferred a portion of land Parcel No. Mbooni/Iiani/45 to the 1st Interested Party.

4. The deponent contended that he has an identifiable and proximate interest in the proceedings. He added that he stands to suffer irreparable damages if he is not joined in the proceedings to defend his right of ownership and participate in the suit.
5. Opposing the application, the Plaintiff filed a replying affidavit sworn by himself on 29th April, 2025. He averred that the deceased Musyoki Muoki died on 20th April, 1990 and hence, the 2nd Intended Interested Party could not have purchased land from the deceased in 1991. It was further alleged that the 2nd Intended Interested Party had not annexed the alleged agreement for sale to his application. The Plaintiff contended that the title to land Parcel No. Mbooni/Iiani/825 is in the name of Michael Musau who has an indefeasible interest under the applicable statute. He urged the court to dismiss the application with costs.
6. The application was disposed of by way of written submissions.
7. In the Applicant's submissions dated 15th October, 2025, Counsel contended that the Plaintiff and Defendant, who are family members of the estate of Musyoki Muoki (Deceased), have proceeded with the present suit without notifying him thus risking a determination which may adversely affect the 2nd Intended Interested Party's proprietary interest in land Parcel No. Mbooni/Iiani/825.

8. Counsel submitted that the 2nd Intended Interested Party having purchased land which formed part of the original suit property, Parcel No. Mbooni/Iiani/45, he squarely fits within the definition of an Interested Party. A further submission was made that joinder will not occasion any prejudice upon the Plaintiff or the Defendant but contrastingly, it will ensure that the court has the necessary parties before it to ensure a just and binding determination. Counsel urged the court to allow the application as prayed.
9. The Defendant filed submissions dated 5th November, 2025 in support of the Applicant's case for joinder in the proceedings. On her behalf, Counsel affirmed the position that the 2nd Intended Interested Party purchased land Parcel No. Mbooni/Iiani/825, a portion emanating from the original title in 1991 where he has since been in peaceful occupation. Counsel submitted that it would be unjust to proceed without the Applicant's participation when the outcome of the suit directly affects his lawful occupation and interest in the suit property.
10. The only question for determination is whether the 2nd Intended Interested party has satisfactorily demonstrated the legal threshold for joinder as an Interested Party.
11. The term 'interested party' is defined in **Black's Law Dictionary, 9th Edn, at pg. 1232** as: -
"A party who has a recognizable stake (and therefore standing) in a matter."
12. The Supreme Court in the case of **Attorney General v David Ndi & 73 Others (Petition 12 (EO16) of 2020) [2021] KESC 17 (KLR)**, enumerated the guiding principles in an application for joinder of an interested party as follows:
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"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”*

13. This application is in respect of joinder of the 2nd Intended Interested Party who wishes to participate in the proceedings alleging a proprietary interest in land Parcel No. Mbooni/Iiani/825 which he purportedly purchased from Michael Muoki Musyoki (Deceased) in 1991. The Applicant contended that he

purchased the said portion of land which formed part of the larger title known as land Parcel No. Mbooni/Iiani/45.

14. Having perused the application, there is no evidence in the form of a sale agreement verifying that the Applicant purchased land Parcel No. Mbooni/Iiani/825 from the deceased. Again, from a perusal of the Plaint dated 29th April, 2024, these proceedings are in respect of land Parcel No. Mbooni/Iiani/1196 which was originally part of land Parcel No. Mbooni/Iiani/45. Similarly, the Defendant's counterclaim makes no reference to the Applicant's land which he claims ownership of. The Applicant's case is in relation to an unrelated subject matter as can be seen from the primary pleadings.
15. In paragraphs 9, 10 and 11 of the Plaintiff's replying affidavit, the Plaintiff strenuously defended his registered proprietorship of land Parcel No. Mbooni/Iiani/825 whose title has not been impeached or cancelled in accordance with the law.
16. It therefore remains evident that the Applicant has failed to demonstrate an identifiable and proximate enough stake in the present proceedings which is at risk of exposure to loss or damage if joinder is not allowed.
17. The introduction of land Parcel No. Mbooni/Iiani/825 into the present proceedings stands to convolute the issues for determination in the present case. No nexus between land Parcel No. Mbooni/Iiani/825, land Parcel No. Mbooni/Iiani/45 and land Parcel No. Mbooni/Iiani/1196 has been demonstrated to the satisfaction of this court.
18. If the Applicant is apprehensive about the security and personal interest in land Parcel No. Mbooni/Iiani/825, then perhaps the best recourse is to file a separate suit.

19. After due consideration of the pleadings, the application and the respective submissions, it is the finding of this court that the Applicant has not met the threshold for joinder as an interested party. No identifiable or legal stake has been demonstrated to warrant the court to exercise its discretion in the Applicant's favour.

20. The application is accordingly dismissed with costs to the Plaintiff.

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HON. E. O. OBAGA

JUDGE

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS
THIS 12TH DAY OF FEBRUARY, 2026.**

IN THE PRESENCE OF:

Ms. Okinyi for Mr. Kivindyo for Plaintiff.

Court assistant – Steve Musyoki