



Gikonyo & 14 others v National Land Commission & 12 others (Petition 9 of 2019) [2026] KEELC 1189 (KLR) (5 February 2026) (Ruling)

Neutral citation: [2026] KEELC 1189 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
PETITION 9 OF 2019
AA OMOLLO, J
FEBRUARY 5, 2026**

BETWEEN

PETER MARIRA GIKONYO & 14 OTHERS PETITIONER

AND

NATIONAL LAND COMMISSION RESPONDENT

AND

WILFRED KIPTUM KIMALAT (AS THE DULY APPOINTED ATTORNEY OF JAMES KIPKOECH KIMALAT) 1ST PROPOSED RESPONDENT

ANDREW K KIMALAT 2ND PROPOSED RESPONDENT

AND

THE CHIEF LAND REGISTRAR 1ST INTERESTED PARTY

NAIROBI CITY COUNTY & 8 OTHERS & 8

OTHERS 2ND INTERESTED PARTY

RULING

1. The Applicants have vide their application dated 25th September, 2025 moved the court under the provisions of article 35, 40, 48 50 and 159 of *the Constitution* and sections 1A, 1B and 3A of the *Civil Procedure Act* to be granted the following orders:
 - a. Spent
 - b. Spent
 - c. The court be pleased to join the 1st and 2nd Applicants as the 10th and 11th Respondents respectively in these proceedings.



2. The reasons for bringing the application are stated to include, that the Applicants have subdivided the suit parcels and sold the subdivided plots (Umoja/Block 107/1118-1134) to third parties who have since developed the same and will be directly affected by the decision to be rendered by this court. That the Applicants have never been served with any pleadings in these proceedings despite the ones who are in actual possession of the suit plots Nairobi/Umoja/Block 107/1131 and 1132
3. The Applicants stated that they will suffer great injustice and an infringement of their right to a fair hearing if judgment was to be delivered without being given a chance to present their case.
4. Mr Wilfred Kiptum Kimalat swore the affidavit in support of the application reiterating that they are registered owners of L.R. No NBI/Umoja Block/107/1131 and 1132 as per copies of certificates of leases they attached as WKK-3. He deposed that they have been in possession from the time they were allotted the suit parcels by the 2nd Interested Party. The Applicants state that the two suit parcels were the subject of proceedings in Milimani ELC E431 of 2021 (Mercy Wanjiru & Peter Maina Ndegwa) filed by the 12th and 15th Petitioners/Respondents, hence the present petition is filed to cause confusion and undermine the integrity of this court.
5. They continued to plead that they have learnt of the existence of this Petition that had been reserved for judgment. It is their case that they be given an opportunity to argue their case before the matter is concluded.
6. The Petitioners opposed the application vide the replying affidavit of Michael Thiong'o Kinyanjui sworn on 26th November, 2025. He deposed that joining the Applicants to the suit would cause delay and embarrass the proceedings. That the application has been brought too late in the day after the Petitioners had filed written submissions in support of the Petition and a judgment date issued.
7. It is the Petitioners' deposition that the Applicants knew of the existence of this matter since when they obtained the order in 2019, they conspicuously displayed the same at the suit premises. They also assert that the Applicants have not demonstrated what they intend to do in the proceedings once they are joined or what materials they have that might be relevant in the matters concerning this petition.
8. According to the Petitioners, the Applicants should pursue a separate recourse against the Petitioners, if at all, in a separate forum and not in these proceedings. They aver that the Applicants have not shown how they will be affected if the orders they seek are not granted. The Petitioners urged the court to dismiss the application for being misconceived, vexatious and incompetent.
9. The Applicants/Proposed 10th and 11th Respondents filed submissions dated 5th December 2025 in support of their application. The Petitioners filed none (as at the time of writing this ruling on 2nd & 3rd February 2026). The Applicants cited the provisions of order 1 rule 10(2) which allows this court to order the addition or removal of parties at any stage of the proceedings. They also placed reliance in the case of Pravin Bowry V John Ward & another, (2015) KECA 215 (KLR).
10. The Applicants highlighted their right to be heard by citing the case of JMK v MWM & another (2015) KECA 524(KLR) where the Court of Appeal quoted the holding in the case of Mbaki & others v. Macharia & Another (2005) 2EA 206, thus;

“The right to be heard is a valued right. It would offend all notions of justice if the rights of a party were to be prejudiced or affected without the party being afforded an opportunity to be heard.”



Analysis and Determination:

11. The Applicants have, by way of affidavit in support of the application, exhibited copies of certificates of leases showing they hold an interest in land reference Nairobi/Umoja block 107/1131 and 1132. In this Petition, the parcels of land in dispute are listed to run from numbers Nairobi/Umoja Block 107/1118 to 1134. The inference drawn is that the two parcels of land registered in the Applicants' name form part of the land in dispute.
12. In their replying affidavit, the Petitioners' said nothing about the Applicants deposition that they are in physical occupation of the two mentioned parcels of land and or the copies of certificates of leases annexed. Instead, the Petitioners accuse the proposed Respondents of undue delay in bringing the present application despite the Applicants being aware of the existence of this Petition.
13. Order 1 rule 10(2) of the Civil Procedure Rules provides that:

“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 the 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.”
14. The Applicants have demonstrated an interest in some part of the land forming the subject of this dispute. Therefore, any order or decree that will issue will directly affect them, making them necessary parties. The prudent step for the Petitioners would have been to join them from the initiation of these proceedings, rather than to argue that a copy of the order issued in an interlocutory application was displayed on the suit premises, thereby providing a basis for refusing the application for joinder. It is thus imperative that they be joined as parties so that they are not condemned unheard.
15. In addressing the delay raised by the Petitioners, it is not in dispute that this application was filed after the judgment date had been reserved. However, the hearing of the Petition had proceeded by way of affidavit evidence and written submissions. Hence, joining the Applicants will occasion minimal delay in the prosecution of the Petition rather than closing them out, leaving with applications to restart the matter after judgment.
16. In conclusion, I hold that the application is merited and is granted in terms of prayer (c), which was the only pending issue, as the judgment date had been set aside. I further order that the two Applicants shall file and serve their respective responses to the Petition within 14 days of this Ruling. The Petitioners have leave to file a supplementary affidavit within 10 days of receipt of the replying affidavit.
17. Given the facts presented by the Applicants, I order that each party bear their respective costs.

DATED, SIGNED AND DELIVERED AT KISII, VIRTUALLY THIS 5TH OF FEBRUARY, 2026

A. OMOLLO

JUDGE

