



M’Igweta v Land Registrar – Meru & 5 others (Environment and Land Petition E002 of 2020) [2026] KEELC 1213 (KLR) (26 February 2026) (Ruling)

Neutral citation: [2026] KEELC 1213 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND PETITION E002 OF 2020
JO MBOYA, J
FEBRUARY 26, 2026**

BETWEEN

JOYCE KARUTHU M’IGWETA PETITIONER

AND

LAND REGISTRAR – MERU 1ST RESPONDENT

COUNTY SURVEYOR 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

AND

PASKWALINA KARIMI KATHURIMA 1ST INTERESTED PARTY

HENRY THURANIRA IGWETA 2ND INTERESTED PARTY

AND

GEOFFREY GIKUNDI MUTUNGI INTENDED INTERESTED PARTY

RULING

1. The Supreme Court of the Republic of Kenya [the Apex Court] has delineated the parameters; elements; and ingredients to be established /proved by an interested party seeking to be joined in a particular matter. The ingredients were highlighted in the case of Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) (Petition15 & 16 of 2015 (Consolidated)) [2016] KESC 12 (KLR)
2. The Apex court stated thus:
 41.we are of the opinion that any party seeking to join proceedings in any capacity, must come to terms with the fact that the overriding interest or stake in any matter is that of the primary/



principal parties' before the Court. The determination of any matter will always have a direct effect on the primary/principal parties. Third parties admitted as interested parties may only be remotely or indirectly affected, but the primary impact is on the parties that first moved the Court. This is true, more so, in proceedings that were not commenced as Public Interest Litigation (PIL), like the proceedings now before us.

42. Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed by the Court from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues, or introduce new issues for determination by the Court. One of the principles for admission of an interested party is that such a party must demonstrate that he/she has a stake in the matter before the Court. That stake cannot take the form of an altogether a new issue to be introduced before the Court.”
3. The subject application touches on and concerns joinder of a party as an interested party. The application dated the 10.12.2025 seeks the following reliefs:
 - i. That Leave be granted to the firm of M/s Kelvin Nyerire & Co. Advocates to come on record for Applicant i.e. Geoffrey Gikundi Mutungi
 - ii. That the Intended Applicant be enjoined in these proceedings as an Interested Party pursuant to Order Rule 10[2] of the Civil Procedure Rules.
 - iii. That the judgment delivered in this matter be set aside in its entirety, or the extent that it affects the Applicant's parcel of Land known as Kiirua/Nkando/5597.
 - iv. That the matter be reopened for hearing, and the intended Applicant be granted leave to file all necessary pleadings, including a Defence, Counterclaim [if any], and supporting documents.
 - v. That costs of this application be in the cause.
 4. The subject application is premised on the various grounds which have been enumerated in the body thereof. In particular, the Applicant has highlighted the following grounds: The Applicant was never a party to the subject petition; the judgment in the petition affects the Applicant's property rights; the judgment seeks to nullify the Applicant's title to and in respect of LR No. Kiirua/Nkando/5597; the orders of the court shall affect the Applicant's rights; the Applicant is desirous to be joined in the matter; the Applicant desires to be allowed to file pleadings; defence and counter claim.
 5. Additionally, it has been contended that unless the Applicant is joined as an interested party, the Applicant will not be able to protect and vindicate his rights. To this end, the Applicant has sought the intervention of the court to join same as interested party; set aside the judgment; and grant liberty to the Applicant to file pleadings including defence and counter claim.
 6. The Petitioner /Respondent has opposed the application. The Petitioner /Respondent has posited inter alia: The Applicant herein has neither met nor established the basis for joinder; the Applicant herein is a busy body; the intended orders cannot issue; and an interested party cannot file defence and counter claim. Moreover, the Petitioner /Respondent has also contended that the intended joinder will serve no meaningful purpose insofar as the suit/petition has since been heard and concluded. It has been contended that the court is functus officio.
 7. Based on the foregoing, the Petitioner /Respondent has implored the court to find and hold that the Applicant has neither met nor established the basis for joinder. The court has been invited to dismiss the application and award costs to the Petitioner /Respondent.



8. The Respondents filed grounds of opposition dated the 04.02.2026. The Respondents have stated: The subject suit is already disposed of; the intended joinder shall be in vain; the Applicant has not established a basis for joinder; the application is omnibus; and the application constitutes an abuse of the due process of the court. The Respondents have invited the court to find and hold that the application is meritless.
9. The application came up for directions on the 26.01.2026, whereupon the advocates for the parties proposed to canvass the application by way of written submissions. Thereafter, the court ventured forward and issued directions pertaining to and concerning the filing and exchange of the written submissions.
10. The interested party Applicant filed written submissions dated the 26.01.2026 and wherein same has highlighted three [3] key issues. The issues highlighted by the interested party/Applicant are: The Applicant is an interested party in respect of the subject matter; the orders of the court have affected and impacted upon the Applicant's property; and the Applicant is entitled to joinder in respect of the instant matter.
11. The Petitioner /Respondent filed written submissions dated the 16.02.2026 and wherein same has raised three [3] key issues. The issues raised are: the Court is functus officio; the Applicant has not established a basis for joinder; the Applicant is not entitled to the orders/reliefs sought.
12. The Respondents represented by the Honourable Attorney General filed written submissions dated the 04.02.2026 and wherein same have highlighted two [2] key issues. The issues highlighted by the Respondents are: The Applicant has not demonstrated his interests in the suit matter; and no basis has been established to warrant the intended joinder.
13. Having reviewed the application dated the 10.12.2025; the supporting affidavit thereto; the grounds of opposition filed; and the written submissions on record, I come to the conclusion that the determination of the subject Applicant turns on three [3] key issues. The issues are: Whether the application before the court is omnibus and thus bad in law; whether the Applicant herein has established a basis to warrant joinder as an interested party or otherwise; and whether an interested party can [sic] be granted leave to file a defence and counter claim [if all].
14. Regarding the first issue, it is important to state and underscore that the subject petition was heard and determined vide judgment delivered on the 11.05.2022. Suffice it to state that the court found merit in the petition and proceeded to grant prayers [a], [c] and [d] of the petition dated the 11.09.2020.
15. It is also imperative to highlight that the Applicant herein was not a party to the said petition. The Applicant has now approached the court seeking various reliefs. The reliefs being sought by the Applicant include; setting aside of the judgment; reopening of the matter for hearing de novo; and liberty to file a statement of defence and counter claim. The said orders are being sought alongside a prayer for joinder.
16. I beg to state that even though the Applicant is seeking the setting aside of the judgment and liberty to file statement of defence and counter claim, it is common ground that the Applicant has not been made a party yet. The critical question that does arise is whether a person, who has not been joined yet, can partake of and accrue precipitate orders in a matter. There is no gainsaying that only a party, who has been joined, can seek to partake of and accrue orders before a court of law.
17. In respect of the instant matter, I hold the view that the Applicant herein could only venture forward and seek joinder and thereafter, subject to joinder, proceed to move the court for purposes of inter alia; setting aside of [sic] the judgment. As it is, the prayer for setting aside the judgment, being sought



before joinder, is tantamount to placing the cart before the horse. Such a situation is unconventional; unorthodox; and antithetical to the rule of law.

18. Additionally, there is also the question as to whether a person joined, as an interested party, can be allowed to file a statement of defence and counter claim. It suffices to state that an interested party cannot raise and/or implead a counter claim. Simply put, an interested party [who has been joined] cannot bring forth any new issue or canvass any cause of action, which is at variance with the cause of action that was raised by the primary parties.
19. In the case of *Muruatetu & another v Republic; Kenya National Commission on Human Rights & 20thers (Interested Parties); Death Penalty Project (Intended Amicus Curiae)* (Petition 15 & 16 of 2015 (Consolidated) [2016] KESC 12 (KLR)), the Apex Court stated thus:

An interested party may not frame its own fresh issues, or introduce new issues for determination by the Court. One of the principles for admission of an interested party is that such a party must demonstrate that he/she has a stake in the matter before the Court. That stake cannot take the form of an altogether a new issue to be introduced before the Court
20. In my humble view, the orders sought by the Applicant cannot issue and/or be granted in the manner pleaded. Moreover, there is no gainsaying that the Applicant cannot seek to partake of and accrue substantive [precipitate] orders before being joined in the proceedings.
21. Turning to the second issue, I wish to state that any person, the Applicant not excepted, who seeks to be joined as an interested party, must clearly state and demonstrate the stake or interest [if any] which he/she has in the matter. The stake/interest must be clearly captured and substantiated in the body of the application and the supporting affidavit. Moreover, the stake/interested must be proximate to the issues in dispute. The stake must not be peripheral in nature. Thereafter, the Applicant must demonstrate that in the event of non-joinder, same shall be disposed to suffer prejudice. [See *Francis Karioko Muratetu & another Versus Republic & 15 others* [2015] eKLR; *Communication Commission of Kenya versus Royal Media Services Limited and 7 others* [2014] eKLR and *Trusted Society of Human Rights Alliance Versus Mumo Matemo and 5 others* [2014] eKLR, respectively]
22. Has the Applicant demonstrated or established any stake or interest in the dispute that was before the court? The Applicant has posited that same is the registered proprietor of LR No. Kiirua/Nkando/5597. Furthermore, it has been contended that the judgment of the court has affected the said property. However, it is important to state that the Applicant has not substantiated the manner in which the suit judgment affects his title. It was incumbent upon the Applicant to substantiate the said assertion.
23. It is equally important to highlight that the substantiation of the claim, if at all, is to be undertaken on the basis of the affidavit filed. For good measure, the Applicant cannot purport to introduce factual issues vide the submissions. It suffices to underscore that submissions cannot take the position of pleadings; or evidence. Instructively, submissions are confined to analysis of evidence and the applicable law. I repeat submissions cannot be deployed for purposes of introducing new issues or fresh matters. [See the holding of the Court of Appeal in the case of *Daniel Toroitich Arap Moi versus Mwangi Stephen Mureithi* [2014] eKLR; *Frank Logistics Limited Versus Golden Lion Real Estates Limited* [2025] KECA and *Williams and Kennedy Limited versus David Kimani Gicharu and others* [2026] KECA]
24. I have looked at the application and the supporting affidavit by the Applicant. There is nowhere where same has demonstrated the correlation or nexus between plot number LR Kiirua/Nkando/5597 and



- the suit properties which were the subjects of the petition. In the absence of affidavit evidence to demonstrate the correlation, this court cannot proceed on the basis of supposition or inference and thereafter create a nexus. That is not the duty of a court of law.
25. It is not lost on me that each and every party, the Applicant not excepted, must succeed on the strength of his/her case. Moreover, the court cannot be called upon to fill in the gaps [if at all] for any party.
 26. In short, I have demonstrated that the Applicant herein has not established any stake; interest or connection between the property claimed and the properties, which were the subject of the petition. For good measure, the properties which were the subject of the petition and in respect of which the judgment relates are: LR Kiirua/Kiirua Nkando /424, 3682,2019 and 3683; which arose from the original parcel number 424.
 27. Furthermore, it is also important to underscore that where a property, which is the subject of the court proceedings, is subdivided and alienated during the pendency of the suit, the court has the jurisdiction to nullify such subdivision and consequential transfer. It then means that if and I say if, there were any subdivision[s] affecting the suit property during the pendency of the proceedings, then such sub-divisions must bow to the judgment of the court. [See the holding of the Court of Appeal in Mbugua Njuguna v Elijah Mburu Wanyoike & another [2004] KECA 92 (KLR); Naftali Ruthi Kinyua versus Patrick Gechure [2015] eKLR and Cooperative Bank of Kenya Limited versus Patrick Kangethe Njuguna and another [2017] eKLR].
 28. The last issue for consideration relates to the reliefs [if any] to be granted. I have found and held that the Applicant herein has neither established nor demonstrated any stake in the suit /petition beforehand. Furthermore, I have pointed out that the Applicant has not shown how his property is connected to the properties, which were the subject of the suit proceedings. Instructively, the connection or nexus [if any] could only be shown by way of affidavit evidence and not otherwise.
 29. Insofar as the Applicant has not demonstrated any interest or stake in the suit and by extension, the suit properties, I am afraid that the Applicant has not met the threshold for joinder as an interested party. In any event, the court does not merely join parties for the sake of it. The joinder must be intended to enable the court to effectively and effectually determine the dispute or controversy. Simply put, the Intended joinder is not ornamental.
 30. Having found and held that the Applicant cannot be joined as an interested party, it then means that the consequential reliefs and orders sought, cannot issue. The said orders/reliefs automatically fall by the wayside.
 31. Moreover, it is imperative to highlight that an interested party, cannot be granted liberty to file a statement of defence and counter claim. Notably, the filing of such a statement of defence and counter claim [if any] would be tantamount to propagating a new cause of action on behalf of an interested party.

Conclusion

32. The Applicant was chargeable with the obligation of establishing a basis for joinder as an interested party. Such basis could only be established in the conventional manner and by way of affidavit evidence. The obligation was not discharged. To this end, the application before the court is bereft of merits.

Final orders:

33. From the foregoing analysis, the final orders of the court are:



- i. The Application dated the 10.12.2025 be and is hereby dismissed.
- ii. Costs of the Application be and are hereby awarded to the Petitioner and the Respondents.
- iii. The Costs in terms of clause [ii] above shall be agreed upon and in default be taxed in the conventional manner.

34. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 26TH DAY OF FEBRUARY, 2026.

OGUTTU MBOYA, FCIArb;CPM [MTI-EA]

JUDGE

In the presence

Naserian: Court Assistant

Mr. Kelvin Nyenyire for the Proposed Interested Party/Applicant

Ms. Abubakar holding brief for Mr. Murango Mwenda for the Petitioner /Respondent

Ms. Miranda [Senior Litigation Counsel] for the Respondents.

Mr. Muchiri holding brief for Mr. Ouma for the 1st Interested Party.

