



Mbugua v Mbugua & 2 others; Keter (Interested Party) (Environment and Land Case 169 of 2007) [2026] KEELC 1813 (KLR) (24 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1813 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 169 OF 2007**

CK NZILI, J

MARCH 24, 2026

BETWEEN

MARY MUTHONI MBUGUA PLAINTIFF

AND

LILIAN WANGARE MBUGUA 1ST DEFENDANT

SARAH JEPTEPKENY BUSIENEI 2ND DEFENDANT

EMILY JEPKEMBOI MUTWOL 3RD DEFENDANT

AND

MESHACK KIMUTAI KETER INTERESTED PARTY

RULING

1. By an application dated 9/3/2026, the court is asked to reopen the defence case and allow the interested party to testify and produce his evidence. The grounds are on the face of the application and in a supporting affidavit of Meshack Kimutai Keter, sworn on 9/3/2026.
2. The applicant deposes that he was not accorded an opportunity to be heard, yet he is the registered owner of the land. Further, the applicant deposes that he was not a party when the plaintiff testified or her witnesses, including a surveyor who made a report dated 3/9/2018, when he was not a party to the suit.
3. The applicant says that he was not able to cross-examine the said surveyor when he testified and that his report appears inclusive by saying that there exists no boundary between parcels No. 200 and 137, which needs re-establishment.
4. The applicant deposes that the area for parcel No. 200 was not determined for lack of an existing boundary with parcel No. 137. The applicant deposes that there will be no prejudice if the case is



reopened, for the parties will have a chance to cross-examine him and the witnesses, so that the court can conclusively determine the suit after hearing all the parties.

5. The applicant deposes that the application is made in good faith, in the interest of justice and fair play. The applicant has attached annexures marked MKK-(1), which is the surveyor's report dated 3/9/2018, and another unsigned survey report for parcel No. 137 by the Geomatician Town & County Surveyors.
6. The application is opposed by a replying affidavit sworn by Mary Muthoni Mbugua on 18/3/2026 for incompetence, and as made in bad faith. The plaintiff deposes that the 3rd defendant firm has been on record for the interested party, and on 11/12/2025, leave was granted to the interested party and the 3rd defendant to file an independent survey report if need be, while they were aware of the hearing on 23/2/2026.
7. The plaintiff deposes that the interested party was not in court on 11/12/2025 and on 23/2/2026.
8. The plaintiff deposes that after DW1 testified, the counsel on record sought an adjournment to obtain a surveyor's report in terms of the order dated 11/12/2025, which application was opposed and a ruling made dismissing the request or the adjournment, after which the 3rd defendant and the interested party closed their defence. In view of that ruling, the plaintiff deposes that it is surprising that the interested party, who was not even in court, to state that he was ready to testify or not, is making such an application.
9. The plaintiff deposes that an interested party is not the same as a defendant, and in this case, if he bought any land, he has nothing to lose since the acreage could be intact, but the extra 15 acres comparison of parcel No. 200 should not form part of parcel No. 137. The plaintiff deposes that no case has been made to reopen the matter.
10. The court record shows that by an application dated 30/6/2025, Meshack K. Keter joined as an interested party in this suit, after the 3rd defendant's counsel brought to the attention of the court that he had bought the suit land during the pendency of the suit, measuring 6.07 Ha. Annexed to the application was an official search certificate showing that the interested party became a registered owner on 19/6/2020, while aware of a temporary injunction against the title as evidence.
11. An affidavit of service sworn on 9/12/2025 shows that the interested party was served with a hearing notice dated 13/10/2025 for a hearing on 11/12/2025. Court records of 9/10/2025 show that Mr. Momanyi told the court that he was appearing for the interested party. Learned counsel adjourned the matter as he said his client has a young child. The court acceded to the request. No application was made for a recall of a witness or intention by the interested party to cross-examine the past witnesses, or for a fresh County Surveyor's Report. A further hearing date for 11/12/2025 was set by consent of the parties.
12. Come 11/12/2025, the court was told of an affidavit of service to all the defendants, including the interested party. Learned counsel for the defendants and the interested party said that he was not ready to proceed. He raised the issue of the survey report and said that his client, the interested party, needed another surveyor's report to cater to his interest.
13. Learned counsel for the plaintiff opposed the application as coming too late and as made in bad faith to adjourn an old matter. Learned counsel also said that he was sick. The matter was reluctantly adjourned as the surveyor was already in court. An order was made for the plaint to be amended and served, the interested party to make any response thereto, file a witness statement and documents, if any, within 15



- days of service, and for the 3rd defendant and the interested party to file any independent survey report 30 days before the hearing date. Hearing date was given for 23/2/2026.
14. When the matter came up on 23/2/2026, the interested party was not present. None of the previous directions by the court concerning the 3rd defendant and the interested party had been complied with. Explanation for non-compliance was not offered. PW3 testified and was not shown any other rival independent survey report. The court was not informed of the whereabouts of the interested party. There was no list of documents or witness statements filed by the interested party, even after he was given an opportunity to do so. The court record does not show if the interested party formally instructed any counsel to come on record for him after he was served with an amended amended plaint.
 15. Re-opening of a case to adduce fresh evidence is a serious matter. In *Attorney General v Zinj Ltd* Petition No. 1 of 2020, the court cited the parameters to apply as per *Mohamed Abid Mohamud v Ahmed Abdullahi Mohamad & Others* SCOK Petition No. 1 of 2018. The evidence must be directly relevant and shown not to have been available with the use of reasonable diligence. It should not be used to patch up or fill in gaps in the party's suit.
 16. In this suit, there is evidence that the interested party bought the land while the suit was pending, and so did the 2nd and 3rd defendants.
 17. The subject matter is on the encroachment of land belonging initially to parcel No. 137 to an extent of 15 acres. I do not understand how the report made an alleged encroachment in 2006, before the interested party came into the land until 2020, would require his input. Equally, a party that joins a suit as an interested party must come into terms with the *Mutuatetu v Attorney General* [2016] eKLR, dicta, that issues for a determination remain those of principal parties.
 18. In *Everton Coal Enterprises Ltd v Rose Wakanyi Karanja & Others* SCOK Appeal No. E026 of 2023, which cited *Muruatetu v Attorney General* (supra), an interested party may not frame their own fresh issues or introduce new issues for determination by the court. The interested party was notified of this suit and given an opportunity to file a response, a list of witness statements, and documents 30 days before the 23/2/2026. He ignored the court's directives. He must live with the consequences of his inaction.
 19. A party that has been given an opportunity of a fair hearing and squanders the same may not turn around without an explanation to blame the court for an unfair hearing. Since coming into the picture, the interested party knew of the prayers in the suit. He did not seek to have the matter start de novo or for the recall of witnesses for cross-examination. The interested party waited until after the closure of the plaintiff's case and the defence case to seek to go and look for fresh evidence to come and introduce too late in the day. The interested party has not filed any response. He never appeared in court expressing his intention to participate in the matter, even after he was granted an opportunity to do so.
 20. The court has inherent power to control its process, so that it is not abused by parties, by regulating its processes, proceedings, and by compelling observance of the process. A court has powers to implement its orders and, as held in *Trusted Society of Human Rights Alliance v Cabinet Secretary for Devolution & Others* [2017] eKLR, court orders are not made in vain and must not be seen to be in vain.
 21. The upshot is that I find no basis to grant the orders sought. The application is dismissed with costs.
 22. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 24TH DAY OF MARCH 2026.



In the presence of:

Court Assistant - Dennis

Mr. Kiarie for the plaintiff present

Wainaina for the 3rd defendant and Interested Party present

1st and 2nd defendants absent

HON. C.K. NZILI

JUDGE, ELC KITALE.

