



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MOMBASA

COUNTY COURT NAME: MOMBASA ENVIRONMENT AND LAND COURT

CASE NUMBER: ELCEPPET/E001/2026

KHANSAM APARTMENTS AND MANAGEMENT CO. LIMITED VS COUNTY GOVERNMENT OF
MOMBASA AND CHARLES CHANGAWA

RULING

RULING

This ruling is in respect of the Applicant's Notice of Motion application dated 31st March, 2026 which seeks the following orders:

- a. Spent
- b. Ali Abubakar Rashid be joined in these proceedings as an Interested Party so as to enable him to effectively and effectually defend his rights in matters raised in this Petition.
- c. Upon grant of prayer (b) above, the Applicant be allowed to file all relevant documents and fully participate in these proceedings before any Orders, whether interim or otherwise are made therein.
- d. The costs of this application be met by the Petitioner.

The application is supported by the annexed affidavit of Ali Abubakar Rashid, the Applicant, sworn on 31st March, 2026. He deponed that he is the owner of the property known as Mombasa/Block XXVII/949 situated in Kizingo within Mombasa County. He deponed that the Petitioner has made reference to him at paragraph 8 of the Petition. He deponed that the same Petitioner has through the Supporting Affidavit sworn by Sammy K Mukuri in support of the Notice of Motion dated 10th March, 2026 reproduced the averments in paragraph 8 of the Petition of the same date and made reference to him. He deponed that the Petition which is referred to by Petitioner is one which was filed by him on 16th September, 2024 being Petition Number E021 of 2024.

It is the Applicant's deposition that the allegation by the Petitioner in Petition Number E001 of 2026 that the withdrawal of Petition Number E021 of 2024 that allowed it to commence construction works on its plot number Msa/Block XXVI/351 is not correct. The applicant deponed that because of the findings in Petition Number E021 of 2024 and the failure by the Petitioner to disclose the tenor and effect of the Ruling of 8th April, 2025, it is necessary that he participates in these proceedings to protect his rights and interests which led him to file the earlier Petition.



Sammy Kamuio Mukuri, a director of the Petitioner, filed a Replying Affidavit sworn on 10th April, 2026. He deponed that the Intended Interested Party voluntarily withdrew his petition and therefore ought not to seek a bite of the cherry for the second time. He deponed that the court can adjudicate the matter in issue between the Petitioner and the Respondents without the involvement of the Intended Interested Party.

APPLICANT'S SUBMISSIONS

Counsel for the Applicant filed submissions dated 13th April, 2026. Counsel submitted that the Applicant was the Petitioner in Petition E021 of 2024 where he was opposing any development on Msa/Block XXVII/351 without Khansam Apartments first procedurally obtaining valid Development permission from the County Government of Mombasa. Counsel submitted that the above matters and details have been omitted by the Petitioner in Petition E001 of 2026. Counsel submitted that the Petitioners has also omitted the ruling of 8th April, 2025.

Reliance was placed on the Article 50 (1) of the Constitution of Kenya and the following cases: Jacob Mukunyu & 122 others vs District Land Adjudication & Settlement Officer ELC Petition No 16 of 2016 and Meme vs Republic (2004) EA 124. Counsel asked the court to allow the application as prayed.

PETITIONER'S SUBMISSIONS

Counsel for the Petitioner filed submissions dated 14th April, 2026 and identified the following issues for determination:

- a. Whether the Applicant has demonstrated a proximate and identifiable stake in these proceedings within the meaning of Rule 2 and Rule 7 (1) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013?
- b. Whether the Applicant has shown prejudice that cannot adequately be addressed without his joinder?
- c. Whether the Applicant's intended participation would assist the Court or would merely replicate the Respondents case and amount to an attempt to re-litigate matters from Petition No E021 of 2024?

Counsel submitted that the central questions in this Petition are whether the Respondents unlawfully harassed the Petitioner, disobeyed court orders, arrested its personnel and interfered with its development and whether the Petitioner is entitled to constitutional reliefs against the Respondents. Counsel submitted that those questions can be determined without the Applicant's presence. Counsel submitted that the Applicant has not shown any prejudice if he is not joined. Counsel submitted that the application is an improper attempt to resuscitate Petition No E021 of 2024. Reliance was placed on the case of Francis Karioki Muruatetu & another vs Republic & 5 others [2016] eKLR and Meme vs Republic [2004] 1 EA 124. Counsel prayed that the Notice of Motion application dated 31st March, 2026 be dismissed with costs to the Petitioner.

ANALYSIS AND DETERMINATION

The issues for determination are:

- a. Whether the Applicant should be joined to this petition as an interested party?
- b. Who should bear the costs of this application?

The law on joinder of parties is found in Order 1 Rule 10(2) of the Civil Procedure Rules states as



follows: -

“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 or settle all questions involved in the suit, be added.”

Rule 2 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 defines an interested party as;

“Interested party” means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation;

In *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others* [2014] eKLR, the Supreme Court in defining an interested party stated;

“...while an interested party has a ‘stake/interest’ directly in the case, an amicus’s interest is its ‘fidelity’ to the law: that an informed decision is reached by the Court, having taken into account all relevant laws, and entertained legal arguments and principles brought to light in the Courtroom. ‘Consequently, an interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. On the other hand, an amicus is only interested in the Court making a decision of professional integrity. An amicus has no interest in the decision being made either way, but seeks that it be legal, well informed, and in the interest of justice and the public expectation. As a ‘friend’ of the Court, his [or her] cause is to ensure that a legal and legitimate decision is achieved.”

The Supreme court of Kenya in *Francis K. Muruatetu and another v. Republic & 5 others* (2016) eKLR after an analysis of legal provisions and case law set out factors for consideration in an application for joinder as an Interested Party. The Learned Judges held as follows;

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 submission 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.”

In *Skov Estate Limited & 5 others v Agricultural Development Corporation & another* [2015] eKLR the Court in dealing with the question of an Interested Party seeking to be joined in a suit stated as



follows;

“In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party.

...The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.”

The Petitioner herein in the Petition dated 10th March, 2026 is seeking the following orders:

- a. A declaration that the Respondents illegal acts by themselves, their agents, employees, servants or such other persons acting under them of issuing unwarranted stay orders, harassment of the Petitioner or its workers and/ or agents stoppage or halting of the development on plot No. Mombasa Block XXVI/351 is unconstitutional and ought to stay.
- b. A permanent injunction restraining the Respondents their agents, employees, servants and/or such other persons acting under their directions from the illegal issuance of stay orders and or in any manner harassing and/or stopping or halting the Petitioners' development on plot No. Mombasa Block XVI/351.
- c. An order directing the officers commanding Central Police Station and Likoni ferry Police Station in Mombasa County jointly or severally, to enforce the orders of this court.
- d. Costs of the Petition be provided for.
- e. Such other reliefs the court shall deem fit to grant in the circumstances.

This court has looked at paragraph 8 of the Petition and the Petitioner contends that the withdrawal of the Petition filed by the Applicant (Petition No E021 of 2024) paved way for the development. The Applicant intends to submit that the Petition herein intends to circumvent the effect of the ruling delivered on 8th April, 2025 in Petition E021 of 2024.

According to the Petitioner, it's cause of action would not have crystalized without withdrawal of the Applicant's Petition No E021 of 2024. I find that the Applicant has demonstrated that he has a clear and identifiable interest and stake in the present suit. Consequently, the application dated 31st March, 2026 is hereby allowed with costs awarded to the Applicant. It is so ordered.

SIGNED BY/FOR:
HON. JUSTICE ANTONY O. OMBWAYO



★ THE JUDICIARY OF KENYA ★
**HON. JUSTICE ANTONY O.
OMBWAYO**
Mombasa Environment and Land Court
Environment and Land Court
Date: 2026-04-17 13:10:14

