



**Mutungi & another v Kamina & 2 others (Environment and Land Case 85B of 2006) [2026] KEELC 2073 (KLR) (16 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2073 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT AND LAND CASE 85B OF 2006**

**EO OBAGA, J  
APRIL 16, 2026**

**BETWEEN**

**JUSTUS KILONZI MUTUNGI ..... 1<sup>ST</sup> PLAINTIFF**

**JUSTUS KILONZI MUTUNGI (SUING AS THE ADMINISTRATOR  
OF THE ESTATE OF THE LATE KITILO MUTUNGI KAMINA –  
DECEASED) ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**MUTUA KAMINA ..... 1<sup>ST</sup> DEFENDANT**

**KIMONDIU KISYANGA ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**DOMITILA MWIKALI KITAI & CHALO MUTISO MULINGE (AS  
THE LEGAL REPRESENTATIVE OF THE ESTATE OF MUTISO  
MULINGE ) ..... INTENDED INTERESTED PARTY**

**RULING**

1. The Interested Parties/Applicants filed the Notice of Motion dated 20<sup>th</sup> February, 2026 under the provisions of Order 1 Rule 10, Order 12 Rule 7 and Order 22 Rule 22 of the Civil Procedure Rules.
2. The following orders were sought: -
  1. [Spent]
  2. That there be a stay of execution of the judgment of this court delivered on 30/9/2025 pending the hearing and determination of this application.
  3. That the Intended Interested Party/Applicant be allowed to join this suit as an interested party.



4. That the judgment delivered on 30/9/2025 and all consequential orders be set aside and the suit begins de novo with the interested party on board.
5. THAT the costs of this application be provided for.
3. In support of the application, a joint supporting affidavit was sworn by Domitila Mwikali Kitai and Chalo Mutiso Mulinge on 31<sup>st</sup> October, 2025. They averred that this court delivered its judgment on 30/9/2025 over the suit property known as NZAUI/KALAMBA/55 without the involvement of the estate of Mutiso Mulinge (deceased). That the estate of the deceased is a necessary party to this suit as it still holds the original title deed of the suit property.
4. The Applicants contended that the transfer and registration of the suit property into the Plaintiffs' name was fraudulent, illegal and highly irregular as the deceased never sold the suit property to them. It was contended that the estate of Mutiso Mulinge (deceased) was condemned unheard and therefore, it is in the interest of justice that the court grants the application.
5. Opposing the application, a replying affidavit was sworn by Justus Kilonzi Mutungi on 6<sup>th</sup> March, 2026 and filed on even date. He averred that the application smacks of the Defendants' hand at trying to stall execution of the judgment delivered on 30/9/2025. That the Defendants were given 180 days before eviction which is set to expire on or before 09/03/2026.
6. The deponent averred that the intended interested parties have never been in occupation of the suit property and hence the stay sought is clearly for the Defendants. It was further averred that this court is functus officio as a final judgment was delivered after a full hearing and no appeal has been filed. The deponent contended that the Applicants simply want this court to sit on appeal of its judgment by relitigating the matter. He urged the court to dismiss the application with costs.
7. The Defendants did not file any replies to the intended interested parties' application.
8. The Applicants seek joinder as interested parties in these proceedings in addition to the setting aside of the entire proceedings and judgment of this court. On the other hand, the main contention by the Plaintiff is that the court is functus officio after hearing the matter on merit and making a final determination. The Plaintiff further argues that there is no suit pending which warrants the filing of the instant application.
9. Joinder of parties to proceedings is governed by Order 1 of the Civil Procedure Rules. In respect of joinder of defendants to a suit, Order 1 Rule 3 of the Civil Procedure Rules 2010 outlines as follows: -

“All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.”
10. Order 1 Rule 10 (2) goes on to provide as follows: -

“(2) 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."

11. In the present application, the Applicants have made the application for joinder about one hundred and forty-three days after judgment was delivered on 30<sup>th</sup> September, 2025 and from the record, it appears that a notice of appeal has not been filed.
12. In the case of *Everton Coal Enterprises Limited v Karanja & 5 others* [2023] KESC 98 (KLR), the Supreme Court expressed itself at length on the stage at which a party may apply for joinder to proceedings in the following terms: -

"Strictly speaking, though joined, the applicant was not a party to "the proceedings" in the Court of Appeal having been joined post-judgment, yet a joinder contemplates a situation where proceedings are still pending before the court and in terms of rule 5(d)(ii) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (Mutunga Rules) which is in pari materia with order 1 rule 10(2) of the Civil Procedure Rules, a party will only be added to on-going proceedings in order to enable the court adjudicate fully upon and settle all the questions involved in the particular proceedings before it.

Noting that the original dispute between the 1<sup>st</sup> to 4<sup>th</sup> respondents and the 5<sup>th</sup> and 6<sup>th</sup> respondents having been settled in a judgment rendered on July 29, 2016, there were no proceedings to which the applicant could properly join four years later on June 5, 2020, when the ruling by the first bench of the Court of Appeal was rendered. This question has been settled in a long thread of past decisions. For example, in *JMK v MWM & another* [2015] eKLR, the court stressed that;

"...an application for joinder of parties can be filed only in pending proceedings; that the power of the court to add a party to proceedings can be exercised at any stage of the proceedings, either before, or during the trial; and that it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable".

See also the Court of Appeal judgment in *Kenya Airport Authority v Mitu- Bell Welfare Society & 2 others* [2016] eKLR on the finality of a judgment as a decision of a court resolving all the contested issues and settling the rights and liabilities of the parties before it..."

13. In the present application, the Applicant avers at paragraph 8 of the supporting affidavit that the suit concerns the ownership of the parcel of land known as NZAUI/KALAMBA/55 adding that the estate of Mutiso Mulinge (Deceased) still holds the original title deed for the suit property. It was further contended at paragraph 9 that the transfer and registration of the suit property in the Plaintiffs' names was fraudulent, illegal and highly irregular as the deceased never sold any part of the land.
14. Vide the judgment and decree dated 30<sup>th</sup> September, 2025, an eviction order was issued against the Defendants. The Applicants herein are not the Defendants as per the original pleadings in the court record. Accordingly, they cannot seek substantive orders to set aside proceedings and stay of execution when they were not originally impleaded as parties to the suit.



15. In the case of Bellevue Development Company Limited v Vinayak Builders Limited & another [2014] KEHC 5507 (KLR), the Court observed as follows:-

“(22) In its attempts in further creativity, the applicant has sought to join Mr. Mwaniki Gachoka, Arbitrator as a party to the current proceedings way after judgment in a matter in which the said Arbitrator was not a party in the first place and where his appointment was made way after judgment. It is the 1<sup>st</sup> Respondent’s considered Submissions that joinder of a party cannot issue after judgment particularly after the case has been heard and conclusively determined. The Law on joinder of parties in civil proceedings is governed by Order 1 of Civil Procedure Rules, 2010. Rule 10(2) therefore is explicitly clear on when joinder can obtain. This can only obtain during the pendency of the suit. [23] Joinder is usually followed by amendment of pleadings so as to specifically make allegations and include prayers seeking relief against the joined party. For this reason alone joinder cannot obtain. Not only can the pleadings not re-open but also that judgment has already been entered herein. The suit is concluded. Joinder is not of any help to the Plaintiff. Perhaps the only course available to the Plaintiff is to file a fresh suit particularly since the proceedings it seeks to impugn are fresh Arbitral proceeding commenced after this suit and which are subsequent to the terminated proceeding.”

16. In the above case, the court went on to outline some instances when a party may be joined to a suit post-judgment. The court aptly stated as follows: -

“(42) Joinder of parties is possible after judgment. I will give some example where such joinder of parties is permitted; 1) in cases of representative suits; or 2) substitution of one or more parties, for instance, in case of death, or incapacity of a party or change of status of a party; or 3) in execution process. In the broader sense, it is deemed to be a kind of joinder of parties where a contemnor was not a party in the suit where judgment has already been entered and for which he is being cited for contempt of court. Equally, it is a joinder of parties where an objector raises objection to execution under Order 22 rule 51 of the CPR. However, any joinder of parties post-judgment will have to surmount any possible constitutional objections on the front of rules of natural justice and the principle of finality of litigation. Applying the said test on the present case, I find that Mr. Paul Mwaniki Gachoka was not the subject of the earlier arbitral proceedings which were the subject of these proceedings. I have also found he was not a successor of the 2<sup>nd</sup> defendant although his appointment was after the resignation of the 2<sup>nd</sup> defendant herein. Although the 1<sup>st</sup> Respondent alludes to some sort of contempt, I have also found that Mr. Gachoka has not been cited for contempt of court as by law required and this application is not one for contempt of court. I hold that he is not even a necessary party and should not be joined as a party in these proceedings.”

17. In light of the foregoing, it is manifestly clear that the Applicants have no locus standi in these proceedings and the application for joinder cannot issue since the suit has already been heard and determined. An order for joinder of the Applicants cannot issue at this stage post-judgment.



18. While making a determination on the question of functus officio, the court in the Bellevue case (supra) aptly observed as follows: -

“ [w]hereas the court becomes functus officio when it has exercised its authority over a matter and has completely determined the real issues in controversy, nevertheless, care should be taken not to inadvertently or otherwise overstretch the application of the concept of functus officio; for, in all senses of the law, it does not foreclose proceedings which are incidental to or natural consequence of the final decision of the court such as the execution proceedings including contempt of court proceedings, or any other matter on which the court could exercise supplemental jurisdiction. Therefore, in determining whether the court is functus officio one should look at the order or relief which is being sought in the case despite that judgment has already been rendered by the court.”

19. In the present suit, the Court has performed its duties as pertains the dispute between the Plaintiffs and the Defendants. A decree was issued on 30<sup>th</sup> October, 2025 which has not been set aside by a higher court. There has therefore been a finality to the litigation in respect of the suit property. Therefore, the Applicant does not have locus standi to seek joinder and moreover, this court is functus officio.

20. The upshot is that the application dated 20<sup>th</sup> February, 2026 is devoid of merit and is dismissed with costs.

It is so ordered.

.....

**HON. E. O. OBAGA**

**JUDGE**

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 16<sup>TH</sup> DAY OF APRIL, 2026.**

In The Presence Of:

Mr. Mathuva for Interested Party/Applicant.

Court assistant - Deodata

