

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELCC E110 OF 2019

HANNAH WANJIRU NJAU.....1<sup>ST</sup>

PLAINTIFF JOHN NDUNGU KINUTHIA.....2<sup>ND</sup>

PLAINTIFF

PETER NG'ANG'A KIMANI.....3<sup>RD</sup>

PLAINTIFF

*(suing in their capacity as officials and members of Haraka Mengo Group)*

VERSUS

SAMUEL NGUGI WAITITU.....1<sup>ST</sup>

DEFENDANT

PETER WAWERU SILANKE .....2<sup>ND</sup>

DEFENDANT

SALANGA .....3<sup>RD</sup> DEFENDANT

J.W. SAYIORE.....4<sup>TH</sup> DEFENDANT

THE ATTORNEY GENERAL.....5<sup>TH</sup> DEFENDANT

AND

MARY SILANKA LOSHORWA ..... 1<sup>ST</sup> PROPOSED INTERESTED PARTY

DAVID KIMOHU WAITITO .....2<sup>ND</sup> PROPOSED INTERESTED PARTY

CHRISTINE CHEMUTAI.....3<sup>RD</sup> PROPOSED INTERESTED PARTY

WILLY KIPROTICH TONUI .....4<sup>TH</sup> PROPOSED INTERESTED PARTY

JAMES GATURU KIARIE .....5<sup>TH</sup> PROPOSED INTERESTED PARTY

GITHAIGA MUHIU .....6<sup>TH</sup> PROPOSED INTERESTED PARTY

JOHNSON MWACHARIA GIKONYO...7<sup>TH</sup> PROPOSED INTERESTED PARTY

ELIUD MWANGI MWERI .....8<sup>TH</sup> PROPOSED INTERESTED PARTY

RULING

*(In respect of the 1<sup>st</sup> to 8<sup>th</sup> Proposed Interested Parties' Notice of Motion dated 29<sup>th</sup> September, 2025 post-judgement)*

Introduction

1. The application under consideration is the Notice of Motion dated 29th September, 2025 by the nine (9) proposed Interested Parties. The application is brought under Section 63(e) of the Civil Procedure Act (Cap. RULING KAJIADO ELCC/110/2019

21) and Order 1 Rule 1 and 2; Order 13 Rule 1; Order 22 Rule 25; Order 36 Rule 10 and Order 51 Rule 1 of the Civil Procedure Rules. The proposed Interested Parties seek various prayers, namely;

- a) *That the court be pleased to join the proposed interested parties herein as Defendants to the suit;*
- b) *That pending the hearing and determination of this suit, this honorable court be pleased to issue an order of stay of execution restraining the Plaintiffs/Respondents, their agents, or anyone acting on their behalf from enforcing or executing the judgement dated 28th September, 2023 and the decree issued on 15th March, 2024 or any other consequential orders therein;*
- c) *That the judgment delivered by this Honorable Court in Environment and Land Case Number 110 of 2019; Hannah Wanjiru Njau and 2 others versus Samuel Ngugi Waititu and 4 Others on 28th September 2023 and Decree Issued on 15th March, 2024 be set aside on account of material non-disclosure and misrepresentation of facts;*

*d) That this honorable court be pleased to order for a re-trial of the entire suit;*

*e) That this honorable court be pleased to grant the proposed interested parties leave to file their pleadings;*

*f) Costs of this application be provided for; and*

*g) Any other or further orders that the Honorable Court may deem fit and just to grant.*

2. The motion is premised on grounds that the proposed Interested parties only became aware of the judgement of this court after they were summoned by the Kajiado County District Surveyor on 28<sup>th</sup> August 2025 concerning the implementation of this courts' judgment and the resultant decree. They aver that the summons were issued to the them as title owners of KJD/KITENGELA/2989 to 2991; 34189 to 34192; 22487 to 22492; 30381 and 30397.

3. The Applicants state that once they perused the court file, they discovered that the Plaintiffs had filed a lawsuit seeking various orders including a declaration that the Plaintiffs are registered owners of KJD/KITENGELA/2989; rectification of the register; reversion of certificate of title(s) to the Plaintiffs as trustees of Haraka Mengo Society/Group; and a

permanent injunction preventing the Defendants from dealing with the property in whatsoever manner.

4. The proposed Interested Parties state that as at the time the Plaintiffs lodged their lawsuit the title No. KJD/KITENGELA/2989, the disputed property herein, was not in existence because the original title KJD/KITENGELA/1884, originally belonging to Mr. Saiyore Waititu, a registered member of the Kitengela Group Ranch had been split into three (3) portions of KJD/KITENGELA/2989, 2990 and 2991 but the same portions were later amalgamated into KJD/KITENGELA/22485. After that, KJD/KITENGELA/22485 was sub-divided into KJD/KITENGELA/22486 to 22492. Additionally, further subdivision of KJD/KITENGELA/22486 gave rise to KJD/KITENGELA/34189 to 34192.
5. The Applicants accuse the Plaintiffs of concealing and misrepresenting material facts to this court regarding the non-existence of KJD/KITENGELA/2989 as a result of amalgamation and subsequent subdivision. The Plaintiffs further had never had possession of the suit property at any one time.
6. The Proposed Interested Parties assert that they have been in occupation of their individual portions for 15 years and undertaken substantial

developments therein. They implore the court to issue the orders sought to give them an opportunity to present their respective cases before the court.

7. The Plaintiffs oppose the application by way of grounds of opposition dated 15<sup>th</sup> December, 2025 stating that;

*(a) The application does not lie and has been overtaken by events;*

*(b) The application is an abuse of the court process judgement having been rendered in this matter;*

*(c) The application is brought in gross misinterpretation of the law for the matter has long been concluded.*

#### **Courts Directions**

8. The court's directions were that the application be canvassed by way of written submissions. The Applicants and the Plaintiffs duly complied and filed their respective submissions which the court has had occasion to consider in writing this ruling.

#### **Issues for Determination**

9. All the subsequent prayers by the proposed interested parties are dependent on the outcome of the first prayer; 'That the court be pleased to join the proposed interested parties herein as Defendants to the suit'.

10. The pertinent question then that arises for determination in this case is whether an application for joinder is legally tenable, post-judgement.

### **Analysis and determination**

11. Judgment in this matter was delivered way back on 28<sup>th</sup> September, 2023 by my predecessor, Gicheru J. So, and as a matter of fact, there are no pending proceedings to which the intended proposed interested parties may be joined into.

12. In the case of **JMK vs. MWM & ano (2015) eKLR**, the Court of Appeal had occasion to consider a similar scenario as in this case. I find it worthy quoting verbatim the holding of the court as follows:-

*“We would however agree with the Respondent that Order 1 Rule 10(2) contemplates an application for amendment or joinder of parties where proceedings are still pending before the court. Sarkar’s Code (supra) quoting as authority, decisions of Indian courts on the provision, expresses the view that an application for joinder of parties can be filed only in pending proceedings. In the same vein, the Court of Appeal of Tanzania, while considering the equivalent of Order 1 Rule 10(2) of our Civil Procedure Rules, In **TANG GAS DISTRIBUTORS LTD VS. SAID & OTHERS (2014) EA 448**, stated that the power of the*

*court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before or during the trial; that it can be done even after Judgement where damages are yet to be assessed; that it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that the rules becomes inapplicable; and that a party can even be added at the appellate state.”*

13. Mutungi J (as he then was), in *Kimwele vs. Kubora & Another; Mwasya & 5 Others (interested Parties) {2025} KEELC 5636 KLR.* while agreeing with the above proposition further stated that;

*“Regarding the prayer for joinder as interested parties, the court in my view is functus officio in this matter as the matter was heard and concluded and a judgement was rendered. Order 1 rule 10(2) of the Civil Procedure Rules allows for joinder, only during ongoing proceedings.”*

14. The Supreme Court of Kenya on its part in *Everton Coal Enterprises Ltd vs. Rose Wakanyi Karanja & 5 others, Application NO.E026 of 2023,* cited with

approval, the Court of Appeal's holding in *JMK Vs. MWM & Another (2015) eKLR*, stating that,

*“This question has been settled in a long thread of past decisions. For example, in JMK VS. MWM & Ano (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.”*

15. The Supreme Court of Kenya further pointed to a number of other decisions including the Court of Appeal decision in *Kenya Airports Authority Vs. Mutubell Welfare Society and 2 Others (2016) eKLR*, stressing on the finality of a judgement, as a judgement of the court resolving all the contested issues and settling the rights and liabilities of the parties before it, as well as its own decision in *University of Eldoret & another vs. Hosea Sitienei & 3 Others, Supreme Court application No. 8 of 2020; {2020} eKLR*, emphasizing the finality of the litigation process. The Supreme Court too

noted its own pronouncement in *CCK & 4Others vs. Royal Media Services Ltd & 7 Others (2014) eKLR*, relying on *Trusted Society of Human Rights Alliance vs. Mumo Matemu & 5 others (2015) eKLR*, on the place of an interested party in any proceedings.

16.Guided by the provisions of Order 1 rule 10(2) of the Civil Procedure Rules, and the above cited binding and persuasive decisions, the court finds and holds that the application by the proposed interested parties to be joined into this suit, post- judgement, is untenable in law; it is incompetent and without legal basis. It must therefore fail.

17.That said, the subsequent prayers in the application too fail as a matter of course.

18.The proposed interested parties must rethink their litigation strategy.

19.The upshot is that the Notice of Motion dated 29th September, 2025 is hereby dismissed with costs to the Plaintiffs.

Orders accordingly.

**Dated Signed and Delivered at Kajiado Virtually this 23<sup>rd</sup> Day of April 2026.**

**M.D. MWANGI  
JUDGE**

**In the virtual presence of:**

Mr. Opiyo for the Applicants/proposed interested parties

Dr. Kinyanjui for the Plaintiffs/Respondents

N/A by the Defendants

Court Assistant: Peninah

**M.D. MWANGI**  
**JUDGE**

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