

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KAJIADO
ELCLPET E015/2025

IN THE MATTER OF: ARTICLES 2, 3, 10, 19, 20, 21, 22, 23, 24, 27, 28, 35, 40, 42, 43, 47, 60, 63, 69 AND 258 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF: THE COMMUNITY LAND ACT, NO. 27 OF 2016

AND

IN THE MATTER OF: THE COMMUNITY LAND REGULATIONS, 2017

AND

IN THE MATTER OF: THE LAND REGISTRATION ACT, NO. 3 OF 2012

AND

IN THE MATTER OF: IN THE MATTER OF: THE LAND (GROUP REPRESENTATIVES) ACT (REPEALED), CAP 287, LAWS OF KENYA

AND

IN THE MATTER OF; UNCONSTITUTIONAL, UNLAWFUL, FRAUDULENT AND ULTRA VIRES ALIENATION, SUBDIVISION, ALLOCATION AND TRANSFER OF COMMUNITY LAND PARCELS RESERVED FOR PUBLIC UTILITIES, WATER POINTS, GRAZING, CONSERVATION AND TOURISM WITHIN ELANGATA WUAS GROUP RANCH, KAJIADO COUNTY

-BETWEEN-

JOHN KALEYIA OLE KEPAS1ST
 PETITIONER
 WILSON IPITET LETEMA..... 2ND
 PETITIONER JUDAH ORDINATION NCHARO.....
 3RD PETITIONER YIAPAS OLE
 SHUNGEYA..... 4TH PETITIONER NEGARUA
 OLE LIKAMA TIKOE.....5TH PETITIONER

AND

KANCHORI OLE SINKEEN DANIEL NKINYI SAMPERU
 OLE NKONGONI (Sued in their Personal and Official
 Capacities as the Trustees of Elangata
 Wuas Group Ranch).....1st
 RESPONDENT
 THE HON. ATTORNEY GENERAL.....2nd
 RESPONDENT
 THE REGISTRAR OF LANDS, KAJIADO3rd
 RESPONDENT
 THE COUNTY GOVERNMENT OF KAJIADO.....4th RESPONDENT

AND

PETER NJUNGE MUTUNGI.....1ST PROPOSED RESPONDENT
 GEOFREY KAHURIA NJUNGE.....2ND PROPOSED RESPONDENT
 NJUNGE NG'ANG'A LIKAMA3RD PROPOSED RESPONDENT

RULING

(In respect of the 1st, 2nd and 3rd Proposed Respondents' Motion dated 11th September, 2025 brought under Order 1 Rule 10(2) of the Civil Procedure Rules; Rule 5 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and

Procedure Rules; Sections 23 and 39 of the Community Land Act 2016; and Articles 40 and 50 of the Constitution seeking to be joined as Respondents in the petition)

Introduction

1. This Ruling is in respect to the 1st, 2nd and 3rd Proposed Respondents' Notice of Motion dated 11 November, 2025 brought under Order 1 Rule 10(2) of the Civil Procedure Rules; Rule 5 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules; Sections 23 and 39 of the Community Land Act 2016; and Articles 40 and 50 of the Constitution seeking issuance of the following orders:
 - (a) *That the Applicants Peter Njunge Mutungi, Geoffrey Kahuria Njunge, Njunge Ng'ang'a Likama be enjoined as Respondents in this Petition, or otherwise as such party as the court may deem fit.*
 - (b) *That upon such joinder, the Applicants be served with all the pleadings and applications filed in the present Petition to enable them respond to the same.*
 - (c) *That further upon such joinder, the Respondent be granted leave to file the necessary responses to the Petition and pending Applications served and any further pleadings relevant to the present petition.*
 - (d) *That costs of this Application be provided for and awarded against the Petitioners.*
2. The Application is premised on grounds on the face of it as well as the Supporting and Supplementary Affidavits of Peter Njunge Mutungi Geoffrey Kahuri and Njunge Ng'ang'a Likama sworn on 11 November, 2025 and 8 December, 2025. It is alleged that the 2nd and 3rd Proposed Respondents who are sons of the 1st Proposed Respondent reside on KAJIADO/ELANGATA/WUAS/3666. The 1st Proposed Respondent became

the registered proprietor of KAJIADO/ELANGATA/WUAS/3666 following its lawful subdivision by the 1st Respondent from KAJIADO/ELANGATA/WUAS/794 by virtue of his membership of the Elangata Wuas Group Ranch, number 349.

3. In support of the application, the 1st Respondent filed a Notice of no Objection dated 4 December, 2025 stating as follows;

(a) That the 1st Intended Respondent is the registered proprietor of the parcel of land known as KAJIADO/ELANGATA/WUAS/3666 which he avers is a subdivision of parcel number KAJIADO/ELANGATA/WUAS/794 that was subsequent to a lawful subdivision process undertaken by the officials of the 1st Respondent.

(b) The subject 1st, 2nd and 3rd Proposed Respondents/Applicants herein are in possession and occupation of parcel of land KAJIADO/ELANGATA/WUAS/3666 and having had sight of the orders their prayer sought herein seeking to be joined in the suit herein has no conflict whatsoever with their the 1st Respondent's and for the purposes to safeguard their property rights, it is only fair and just that their relief sought be granted.

4. The application is partly opposed by the Petitioners through their grounds of opposition dated 8 December, 2025 premised on grounds that;

(a) The Application is fundamentally misconceived as there is no procedural or legal provision for a party to be joined in a constitutional petition as a Respondent, the Mutunga Rules being explicit that only an Interested Party may be joined under Rule 7. The

request to be enjoined “as Respondents” is therefore unknown in law, untenable, and renders the Application defective ab initio.

(b) Without prejudice to the foregoing, the Petitioners raise no objection to the joinder of the 1st Proposed “Respondent” as an Interested Party on account of the alleged title to parcel number KAJIADO/ELANGATA WUAS/3666 as already disclosed in the documents filed herein.

(c) However, the Petitioners oppose the joinder of the 2nd and 3rd Proposed “Respondents” as their application discloses no identifiable, direct, or legally cognizable interest in the subject land sufficient to satisfy the threshold for joinder.

(d) The 2nd and 3rd Proposed Parties expressly state (Supporting Affidavit pp. 7–10) that they are merely sons of the 1st Proposed Interested Party and reside on the land only by virtue of that relationship, and not by any independent allocation, ownership, or statutory entitlement.

(e) The alleged derivative occupation or residence does not confer any legal or proprietary interest in the suit property, nor does it meet the joinder criteria under Rule 7 of the Mutunga Rules, which requires a party to demonstrate a personal stake or prejudice directly connected to the issues under adjudication.

(f) Any interest the 2nd and 3rd Proposed Parties claim is already fully represented by the 1st Proposed Interested Party, who is the alleged title holder. Their participation is therefore unnecessary, superfluous, and duplicative, contrary to the overriding objective of efficient disposal of proceedings.

- (g) *Their proposed joinder would add no value, facts, or legal perspective to the adjudication of this Petition, which primarily concerns the lawfulness of the land allocation and subdivision process, administrative action, and compliance with statutory procedure; matters which turn on public law principles and not family occupation.*
- (h) *The participation of the 2nd and 3rd Proposed Parties risks unreasonable delay, multiplicity of issues, and prejudice to the Petitioners, while offering no corresponding benefit to the Court or the ends of justice.*
- (i) *The application as far as it concerns the 2nd and 3rd Proposed Interested Parties is misconceived, frivolous and an abuse of the court process, and fails to meet the legal threshold for joinder as set out in Trusted Society of Human Rights Alliance v Mumo Matemu and subsequent jurisprudence.*
- (j) *The Court can effectually and completely adjudicate the issues in this Petition without the involvement of the 2nd and 3rd Proposed Parties, and no prejudice whatsoever will be occasioned to them by their exclusion.*
- (k) *The application for their joinder is otherwise devoid of merit and ought to be dismissed with costs.*

Issue for determination

5. Upon careful consideration, the only key issue for determination is ***whether the 1st, 2nd and 3rd proposed Respondents have met the threshold for joinder in these proceedings.***

Determination

6. Joinder of parties in constitutional petitions is governed by Rules 5(c) and (d) (ii) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, commonly referred to as the “*Mutunga Rules*” which I reproduce below;

“(c) Where proceedings have been instituted in the name of the wrong person as petitioner, or where it is doubtful whether it has been instituted in the name of the right petitioner, the Court may at any stage of the proceedings, if satisfied that the proceedings have been instituted through a mistake made in good faith, and that it is necessary for the determination of the matter in dispute, order any other person to be substituted or added as petitioner upon such terms as it thinks fit.

(d) 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 just—

(ii) that the name of any person who ought to have been joined, or whose presence before the court may be necessary in order to enable the court adjudicate upon and settle the matter, be added.”

7. The Court of Appeal discussed the parameters for joinder in the case of *EG vs Attorney General; David Kuria Mbote & 10 others (Interested Parties)* [2021] KECA 425 (KLR) as follows;

a) *The intended party has a personal interest or stake in the matter in question; and that interest is clearly identifiable and proximate enough and not merely peripheral.*

b) *The intended party's presence would enable court to resolve all the matters in the dispute.*

c) *The intended party would suffer prejudice in case of non-joinder.*

d) *The joinder of the intended party will not vex the parties or convolute the proceedings with unnecessary new matters and grounds not contemplated by the parties or envisaged in the pleadings.*

8. Similar arguments were also advanced by F. Gikonyo J, in *Lucy Nungari Ngigi & 128 others v National Bank of Kenya Limited & another* [2015] KEHC 6117 (KLR) where the learned judge stated as follows;

“In law, joinder should be permitted of all parties in 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 such persons brought separate suits, any common question of law of fact would arise.The court may even in its own motion add a party to the suit if such party is necessary for the determination of the real matter in dispute or whose presence is necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit. The determining factor in joinder of parties is that a

common question of fact or law would arise between the existing and the intended parties.”

9. To demonstrate their stake in the disputed property which forms the substratum of the Petition, the Applicants have exhibited an application for Purko Land Control Board Consent, Letter of Consent dated 12 June, 2024 and mutation forms registered on 2 August, 2024 to demonstrate lawful and procedural subdivision of KJD/ELANGATA WUAS/794 into KJD/ELANGATA WUAS/3664 to 3669. Following the conclusion of this subdivision, the 1st Applicant asserts that he was issued with the title deed for *KAJIADO/ELANGATA/WUAS/3666* based on his membership No. 349 of the Elangata Wuas Group Ranch.
10. From the foregoing, the 1st Applicant being the registered proprietor of *KAJIADO/ELANGATA/WUAS/3666* has a personal interest or identifiable stake in this matter. The 2nd and 3rd Applicants do not have any proprietary interest in *KAJIADO/ELANGATA/WUAS/3666*; their proposed participation in this proceeding shall not in any way aid this court in arriving at a just, expeditious, proportionate and resolution of this Petition. Further, they do not have any distinct and independent claim of their own besides that which is being advanced by their father, the 1st Applicant herein.
11. Going by the glaring proprietary interests advanced by the 1st Applicant, his participation in the Petition is accordingly allowed but only in the capacity of an Interested Party.

Final disposition

12. The final disposition is that 1st, 2nd and 3rd Proposed Respondents Notice of Motion Application dated 11 November, 2025 is partially merited and the court allows it in the following terms:-

(a) The 1st Applicant only, Peter Njunge Mutungi is hereby joined to this Petition as an Interested Party.

(b) The Petitioners are hereby directed to forthwith serve Peter Njunge Mutungi with all the pleadings and applications filed in the present Petition within 14 days of this ruling.

(c) The Interested Party, Peter Njunge Mutungi is hereby granted leave to file the necessary responses to the Petition and Pending Applications and any further pleadings relevant to the present petition within 14 days of service.

(d) The costs of this application be shall be in the cause.

It is ordered.

Dated, Signed and Delivered Virtually this 23rd Day of April, 2026.

M.D. MWANGI
JUDGE

In the virtual presence of:

Mr. Kamau for the Plaintiff

Mr. Sakimpa for the Defendants

Court Assistant: Peninah

M.D. MWANGI
JUDGE

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