



Kenya Wildlife Service v County Government of Taita Taveta & another (Environment and Land Case 160 of 2010) [2026] KEELC 2418 (KLR) (30 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2418 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE 160 OF 2010**

**JO OLOLA, J
APRIL 30, 2026**

BETWEEN

KENYA WILDLIFE SERVICE PLAINTIFF

AND

COUNTY GOVERNMENT OF TAITA TAVETA DEFENDANT

AND

STEPHEN KIWINDA MCHARO INTERESTED PARTY

RULING

1. By a Notice of Motion dated 24th September 2025, Stephen Kiwinda Mcharo (the Intended Interested Party/Applicant) prays for an order that upon hearing and the determination of this application the Applicant be admitted as a party to the suit.
2. The application which is supported by an Affidavit sworn by the Applicant is premised on the grounds:
 - i. That on or about 1st April 2010, the Applicant paid Kshs 4,000/= to the Defendant for an Application for a Plot at Tsavo Man Eaters which forms part of the suit property herein;
 - ii. That the subject matter has been on-going since 2010 without his participation since the Defendant has not been providing sufficient information as to the same; and
 - iii. That the Applicant is therefore a necessary party in this suit as his constitutional right to own property and have quiet enjoyment of the same shall be further breached in the event that the suit proceeds without his participation and contribution.
3. The Kenya Wildlife Service (the Plaintiff) is opposed to the application. By its Grounds of Opposition dated 11th November 2025, the Plaintiff asserts that:



- a. The Applicant's claim, if any, is barred by the Statute of Limitations and as such non-existent in law;
 - b. The Application is misconceived and ill-advised as the Applicant has not demonstrated any interest capable of enforcement and worthy of protection over the suit property;
 - c. The Applicant is neither a proper nor necessary party to this suit and the suit herein can be adjudicated with finality and a decree issued without his input;
 - d. The delay in filing the application is inordinate and is an afterthought having been filed fifteen (15) years after the transaction between the Applicant and Defendant;
 - e. The application is meant to arrest the process of finalizing the consent already entered into between the parties that awaits the approval of the Attorney General;
 - f. The Applicant has not shown any prejudice he will suffer if not enjoined to these proceedings;
 - g. The Applicant is not relevant to the proceedings herein and in any event the reason he has advanced for joinder will lead to the convolution of the proceedings herein.
4. The County Government of Taita Taveta (the Defendant) is equally opposed to the application. By their Grounds of Opposition dated 1st November 2025, the Defendant is opposed to the application on the grounds inter alia:-
- i. That the Application is incompetent, misconceived and bad in law having been brought in contravention of the mandatory provisions of law governing contempt proceedings (sic);
 - ii. That the proposed interested Party has not demonstrated any identifiable stake, legal interest, or duty in the proceedings as required under Rule 2 of the Mutunga Rules;
 - iii. That the mere desire to participate or the fact that the outcome of the case may indirectly affect the proposed interested party is insufficient to warrant joinder as an interested party;
 - iv. That the issues in dispute are strictly between the existing parties and can be effectively and completely determined without the participation of the proposed interested party since the allegation of payment has not disclosed the property that the payment was effected upon;
 - v. That allowing the application will unnecessarily delay the expeditious disposal of the matter contrary to Article 159 (2) of the Constitution and Section 1A and 1B of the Civil Procedure Act; and
 - vi. The joinder sought has been brought sixteen (16) years later which is unreasonable for someone who really had an interest in the matter.
5. I have carefully perused and considered both the application and the response thereto. By his application before the Court, the Applicant prays for an order that he be enjoined as a party to this suit. It is the Applicant's case that sometime on or about 1st April 2010 he had paid the sum of Kshs. 4,000/= to the Defendant herein for a plot of land at Tsavo Man Eaters, which plot forms part of the suit property. The Applicant accuses the Defendant of failing to provide sufficient information on the matter and avers that his constitutional right to own property will be infringed upon if the suit herein continues without his participation.
6. Both the Plaintiff and the Defendant are opposed to the application. It is their case that the Applicant's claim is statute-barred and that the Applicant has not demonstrated any interest capable of enforcement or worthy of protection over the suit property. The two parties insist that the issues



in dispute are strictly between them and that the same can be effectively and completely determined without the participation of the proposed Interested Party.

7. On matters of joinder, Order 1 Rule 10 (2) of the Civil Procedure Rules 2010, provides 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.”

8. In *Joseph Njau Kingori –vs- Robert Maina Chege & 3 Others* (2002) eKLR, Nambuye J., (as she then was) gave the guiding principles to be followed in an application to enjoin an intended interested party as follows:

- “(1) He must be a necessary party;
- (2) He must be a proper party;
- (3) In the case of the Defendant there must be a relief flowing from that Defendant to the Plaintiff;
- (4) The ultimate order or decree cannot be enforced without his presence in the matter; and
- (5) His presence is necessary to enable the Court to effectively and completely to adjudicate upon and settle all questions involved in the suit”.

9. Considering a similar matter in *Communications Commission of Kenya & 3 Others –vs- Royal Media Services Limited & 7 Others* (2014) eKLR, the Supreme Court of Kenya delivered itself as follows:

“22. In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court’s Ruling in the *Mumo Matemo* case where the Court (at paragraphs 14 and 18) held:

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...”

23. Similarly, in the case of *Meme v. Republic*, 2004 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- (i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
- (ii) joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;



(iii) joinder to prevent a likely course of proliferated litigation.”

24. We ask ourselves the following questions:

- (a) what is the intended interested party’s stake and relevance in the proceedings? And
- (b) will the intended interested party suffer any prejudice if denied joinder?”

10. In support of his case, the Applicant herein avers as follows at Paragraphs 2 and 3 of his Supporting Affidavit:

“2. That on or about 1st April 2010, I made payments to the Defendant then known as the County Council of Taita Taveta for the Application of a Plot at Tsavo Man Eaters, which property forms part of this suit.

3. That since then, the Defendant has been in court over the said property, but has not been providing adequate information as to the proceedings.”

11. As it were, the Applicant has not annexed anything to demonstrate that he had sought any information from the Defendant and that the same went unanswered. From the Applicant’s averments, he has been aware of the existence of this suit ever since it was filed in the year 2010 but he chose to wait for some fifteen (15) years to apply to enjoin the same.

12. From a perusal of both the Supporting Affidavit and the Supplementary Affidavit sworn by the Applicant on 10th January 2026, it was apparent to me that even where the Applicant had any claim against the Defendant, the same was stale having arrived more than three (3) years outside the time allowed under the *Limitation of Actions Act*, Cap 22 of the Laws of Kenya, to make a claim for land.

13. Even if that were not so, it was evident from a perusal of the pleadings as filed between the Plaintiff and the Defendant herein that the Applicant is not relevant to the proceedings and that he would not suffer any prejudice if the order for joinder were denied. The Applicant has not produced any sale agreement to demonstrate that the Defendant had offered him any part of the land and I was not persuaded that a determination as to who between the Plaintiff and the Defendant County Government was the proper owner of the land would prejudice him in any manner as to require his joinder in the present proceedings.

14. In the premises I was not persuaded that there was any merit in the Motion dated 24th September 2025. The same is misconceived and without basis. It is hereby dismissed with costs.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 30TH DAY OF APRIL, 2026.

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J.O. OLOLA

JUDGE

In the presence of:

a. Ms. Firdaus Court Assistant.

b. Ms. Shisia holding brief for Mr. Lutta SC Advocate for the Plaintiff



c. Ms. Indesia holding brief for Kihimo Advocate for the Defendant

d. Mr. Thuo Advocate for the Interested Party/Applicant

