



**Esikar Gardens and Hotels Limited v Intona Investments Company Limited & 2 others  
(Environment and Land Case E014 of 2022) [2026] KEELC 2627 (KLR) (4 May 2026) (Ruling)**

Neutral citation: [2026] KEELC 2627 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT AND LAND CASE E014 OF 2022**

**MN MWANYALE, J**

**MAY 4, 2026**

**BETWEEN**

**ESIKAR GARDENS AND HOTELS LIMITED ..... PLAINTIFF**

**AND**

**INTONA INVESTMENTS COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**GEOFFREY MAKANA ASANYO ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**MOSES SANINGO NAIGURAN (LEGAL ADMINISTRATOR OF THE ESTATE  
OF JOHN LEMUTA NAIGURAN - DECEASED) ..... INTERESTED PARTY**

**RULING**

1. Coming up for determination is the Notice of Motion application dated 20<sup>th</sup> of January 2020 for joinder of Moses Saningo Naiguran (Legal Administrator of the Estate of John Lemuta Naiguran) as an interested party in this matter; and upon such joinder the interested party to file a Response and/or pleadings as may be necessary for the purposes of effectively participating in the issues in controversy and a prayer that costs of the application be in the cause.
2. The application is premised on grounds inter alia that
  - i. The proposed interested party/Applicant is an Administrator of the Estate of John Lemuta Naiguran (deceased) who is a joint owner of Narok/Transmara/Intona/5 the subject matter of the suit herein.
  - ii. That the Estate of the deceased holds a stake in the suit property and any adverse orders that may be granted without their participation would greatly affect its beneficiaries; thus the Applicant has a direct and substantial interests in this suit and a just and fair decision can only



be reached after due consideration of his interests as the administrator of the deceased's Estate hence his participation will ensure that all issues are settled satisfactory with finality.

- iii. That no prejudice shall be occasioned to the plaintiff and Defendant but prejudice will be occasioned to the proposed interested party/Applicant if he does not participate in the proceedings.
3. The application is further supported by the supporting affidavit of the Applicant who reiterates the grounds in support of the application in his depositions and has annexed a Certificate of Confirmation of Grant and an Authority to plead, a decree in ELC Case No. E007/2022 (Formerly Narok ELC Case No. 28 of 2020).
4. Both the Plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as Respondents in this application are opposed to the same.
5. The Plaintiff/Respondent filed a Replying affidavit; through its director Mr. Charles Talengo Sunkuli who in his depositions deponed interalia; -
  - i. Of his knowledge of the Judgment issued on 1<sup>st</sup> December 2003 in Kilgoris ELC E007/2022 that decreed to John Lemuta Naiguran a portion of land equivalent to 975,000/= within Narok/Transmara/Intona/5.
  - ii. That aware of the said judgment the Plaintiff/Respondent amended its Plaint and sought a declaration that the Plaintiff is rightful owner of 100 acres to be excused from the 2<sup>nd</sup> Defendant's share of parcel No. Narok/Transmara/Intona/5 measuring approximately 161.8 Ha or hereabout situated in Transmara; and thus the Plaintiff's claim is very specific in the amended Plaint on the portion owned by the 2<sup>nd</sup> Defendant and not the whole of Transmara/Intona/5.
  - iii. That the Plaintiff is in possession of 100 acres of the suit property which is within the Applicant's knowledge, hence the Applicant has failed to demonstrate any identifiable or proximate personal interest as the Plaintiff's claim is limited to the portion belonging to the 1<sup>st</sup> and/or 2<sup>nd</sup> defendants and does not affect portion awarded to the Applicant by the judgment delivered on 1<sup>st</sup> December 2023 hence the claim on prejudice by the Applicant is speculative and remote.
6. The 2<sup>nd</sup> Defendant/Respondent equally opposed the application, he filed a Replying affidavit in which he deposed interalia,
  - i. That the suit is premised purely on a contractual dispute arising from a sale Agreement dated 21<sup>st</sup> September entered between the Plaintiff and 2<sup>nd</sup> Defendant, the Applicant was neither a signatory, guarantor, beneficiary nor party to the sale Agreement so as to bring out issues of privity of contract.
  - ii. No relief had been sought against the applicant and issues for determination do not relate and/or touch the applicant, hence the Applicant has not direct, proximate or identifiable interests in the issues before the court.
  - iii. That the judgment conferring interests on the Estate of John Lemuta Naiguran is subject of an Appeal hence it is not a final judgment, the interested party's claim is limited to 195 acres out of the 400 acres, that the dispute herein relates to 100 acres which will leave a balance of 300 acres unaffected out of which the Applicant's 195 acres would not be prejudiced by their absence.



- iv. A joinder would re-open issues that are subject of an appeal and delay the expeditious hearing of the suit in contravention of the overriding objectives of the *civil procedure Act* and Article 159 of *the constitution*, that the application is meant to delay hearing of the matter.
7. Oral submissions were heard in respect of the application, Ms. Mburu learned counsel for Applicant, in her submissions reiterated the depositions in the Applicants affidavit and placed reliance in the decisions in the case of E.G Vs. Attorney General, David Kuria Mbote and 10 others, and urged the court to allow the application.
8. On her part, Ms. Wanjiku learned counsel for Plaintiff/Respondent submitted that joinder was at the discretion of the court and placing reliance on the Muruatetu decision submitted that an interested party must have identifiable stake in the matter, The Application is not enhancing anything in the matter and urged the court to dismiss the Application.
9. Last but not least, Mr. Ekisa Learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents, submitted that joinder is governed by necessity to enable court to effectual adjudicate a claim. He placed reliance on the Muruatetu decision on the Principles to guide court on an application for joinder, which here stated to be
  - i. The proposed interested party must have an identifiable stake,
  - ii. Prejudice to be suffered
  - iii. State their case.
10. Mr. Ekisa submitted that the Applicant in the present case did not have an interest that was proximate to issues for determination, he was not privy to the Agreement for sale, and the issues to be determined did not affect the interested party, hence the interested party would not offer any value to issues before court.
11. He placed reliance on the decision in Banda Homes Ltd Vs. Asal Limited and Benson Karanja and 62 Others (2021) eKLR, he submitted that the interested party had not meet the threshold for joinder and urged the court to dismiss their application.

### **Issues for Determination**

12. Having analysed the application, the rival affidavits and submissions, and considered the law, the court frames the issue for determination as follows;
  - i. Whether the application is merited, and in determining this issue, the court shall determine whether or not the Application meets the threshold for joinder of an interested party.
  - ii. What reliefs ought to issue.
  - iii. Who bears the costs of the application.

### **Analysis and Determination**

13. As rightly submitted by Mr. Ekisa for the Defendant's/Respondents the test for joinder of an interested party was set out by the Supreme court in its decision in the case of Muruatetu and Another Vs. Republic; Kenya National Commission on Human Rights and 2 Others (Interested parties); Death



Penalty Project (intended Amicus curial) petition 15 and 19 of 2015 (consolidated 2016 KESC 12 KLR, where at paragraph 37, the court observed as follows;

“From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined on proceedings as an interested party.

One must move the court by way of a formal application. Enjoyment is not a 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.

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. The prejudice to be suffered by the interested party in case of non-joinder must all be demonstrated to the satisfaction of the court. It must be clearly outlined and not something remote. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the court and demonstrate the relevance of the submissions...that the same are not a mere replication of the submissions of other parties...”

14. Turning to the present application. The Applicant/Intended party has indicated in their application that they are entitled to a portion worthy Ksh.950,000 by virtue of the decree in Kilgoris ELC No. E007/2022 (Formerly Narok ELC Case No. 28/2020)
15. The Respondents do concede of the existence of the said decree, which the Defendants/Respondents argue that it is not final as an Appeal against it was preferred and is pending before the court of Appeal, while the Plaintiff/Respondent argue that in their Amended Complaint, it specifically sought for specific performance of the Agreement between itself and the Defendants and sought relief against the Defendant’s portion in Transmara/Intona/5.
16. Has the Applicant demonstrated a stake in the present case? While the Applicant has demonstrated entitlement to a portion of the suit property (Transmara/Intona/5) which entitlement this court recognised in a past Ruling in this case delivered on 27<sup>th</sup> of January 2025 at paragraph 21 thereof, the question thus arising is whether the interest demonstrated by the Applicant is proximate to the case or is remote.
17. Black Law’s dictionary 11<sup>th</sup> edition defines proximate cause:
  - “1. A cause that is legally sufficient to result in liability; an act or Omission that is considered in law to result in consequence so that liability can be imposed on the actor.
  2. A cause that directly produces an event and without which the event would not have occurred...Also term (in both senses) direct cause; direct and proximate cause.”
18. While Remote cause, is defined by the same edition of Blacks Law dictionary as

“A cause that does not necessarily or immediately produce an event or injury...a wrongful cause that is too far removed to constitute the basis of a legal claim, as by reason of an independent intervening circumstances.”
19. Applying the above definitions to the facts of the application before court, the court finds that the interests demonstrated by the Applicant in this application is a remote interest as opposed to a proximate interests for reasons that;



20. In the Amended Plaint the Plaintiff seeks redress against the Defendants and reliefs in respect of the portion in Transmara/Inona/5 only.
21. The suit property measures about 400 acres, out of which the Plaintiff is claiming 100 acres out of the Defendant's entitlement which if it succeeds will leave about 300 acres, unaffected as deponed at paragraph 12 and 13 of the Replying affidavit of Geoffrey Asanyo. The Plaintiff/Respondent deponed has being in occupation of the said 100 acres.
22. Since the Plaintiff's claim is specific to the portion owned by the Defendants the Applicant's interests in Transmara/Intona/5 cannot be linked to the dispute, so as to attach any liability to the Applicant hence his interest is thus remote.
23. From the above analysis, the Applicant would not suffer any prejudice, once the court makes its finding after trial.
24. The outcome would not affect the Intended interested party's portion in Transmara/Intona/5 for reasons that the Plaintiff have sought specific performance against the portion by the Defendant/Respondent and parties are bound by their pleadings, in any event. Hence no prejudice will be occasioned to the intended interested party so as to warrant their joinder.
25. The answer to issue No. 1 is that the court finds that the applicant has not met the threshold for joinder as an interested party having not demonstrated proximate cause and prejudice to be suffered and the application thus lacks merit and it is hereby dismissed with costs to the Respondents.

**DATED AT KILGORIS THIS 4<sup>TH</sup> DAY OF MAY 2026**

**HON. M.N. MWANYALE**

**JUDGE**

In the presence of

CA – Sylvia/Clara

Ms. Wanjiku for the Plaintiff/Respondent

Mr. Ekisa for the Defendant/Respondent

Ms. Mburu for the Intended Party/Applicant

