

**IN THE REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MILIMANI**  
**ELCLC NO. E430 OF 2025**

**THOMAS KABIRU**

**GITHUMBI.....PLAINTIFF/RESPONDENT**

**AND**

**HON. PATRICK M.**

**MACHARIA.....DEFENDANT**

**THE REGISTERED TRUSTEES OF**

**MASJID HAMZA TRUST.....APPLICANT/PROPOSED INTERESTED  
PARTY**

**RULING**

**1.** Before this court for determination is the notice of motion dated 3<sup>rd</sup> December, 2025 filed by the proposed interested party/applicant, and it is expressed to be brought under **Order 1 Rule 10(2), Order 51 Rule 1** of the **Civil Procedure Rules** and **Section 3A** of the **Civil Procedure Act** seeking the following orders:-

- 1. The proposed interested party herein, the Registered Trustees of Masjid Hamza Trust, be joined in this suit as an interested party.***
- 2. Costs of this application be provided for.***
- 3. Any other orders this honourable court deems just, fair and in the interest of justice to provide.***

2. The application is premised on the grounds on its face. It is further supported by the affidavit of Juma Mohamed Ali one of the registered trustees of the proposed interested party/applicant sworn on even date. He deposed that the proposed interested party has been in occupation of LR No. 209/4401/740 since the year 2007, and that they have since developed the suit property by constructing a mosque and madrassa which continues to serve the residents of Hamza/Maringo ward whereby the defendant is their ward representative.
3. It was further deposed that the plaintiff/respondent continues to give threats to the proposed interested party on demolishing and/or evicting them from their property that has been a source of conducting their religious activities, and that they are apprehensive that they are at the very verge of negative repercussions if they are not included in this suit. The proposed interested party/applicant averred that they are a relevant party to the suit as they have legal interests in the suit property, and the same can only be protected by the court, and their presence before this court is necessary to enable the court

to effectively and completely adjudicate upon and settle all questions involved in the suit especially touching on the suit property.

4. The application was opposed vide the replying affidavit of the plaintiff sworn on 10<sup>th</sup> February, 2026. He deposed that the proposed interested party/ applicant has come to court with unclean hands, as they occupy Land Parcel LR. No 209/4401/740, even though the court in suit no. 192 of 2004 declared him the rightful owner of the suit property and that the proposed interested party/applicant are trespassers. He deposed that the proposed interested party/applicant's continued occupation on the suit property amounts to contempt of court since they did not appeal the decree. Further, that their joinder in this suit will only cloud the issues at hand as the suit has nothing to do with their occupation and that the cause of action is against the defendant.

5. The application was canvassed through written submissions. The proposed interested party/ applicant filed their submissions dated 13<sup>th</sup> April, 2026. By the time of writing this ruling, the plaintiff/respondent had not filed his written submissions. Be

that as it may, I have considered the application, the reply thereto and the written submissions. The issue for determination is *whether the proposed interested party joinder in this suit is necessary.*

6. The rules governing joinder of a party to a suit are found in **Order 1 of the Civil Procedure Rules. Order1 Rule 10** provides that:-

***“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.”***

7. The Black’s Law Dictionary 8<sup>th</sup> Edition defines an “interested party” as

***“A party who has a recognizable stake (and therefore standing) in the matter.”***

8. It also defines a “Necessary Party” as

***“a party who being closely connected to a lawsuit should be included in the case if feasible but whose absence will not require dismissal of proceedings.”***

9. An interested party is someone who is identified as being directly affected by the case (in particular, the relief that may or may not be granted by the court depending on whether it finds for or against the claimant). See the case of **Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others [2017] eKLR**).
10. The Supreme Court in the case of **Judicial Service Commission v Speaker of the National Assembly & another [2013] eKLR** quoted as such:-

***“The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2012, defines an interested party as “a person or entity that has an identifiable stake or legal interest in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation”. From the foregoing it is clear that an interested party as opposed to an amicus curiae or a friend of the court may not be wholly indifferent to the outcome of the***

*proceedings in question. He is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to urge the court to make a determination favourable to his stake in the proceedings.... It is however a requirement that a person who intends to be joined to existing legal proceedings ought to show that he has “an identifiable stake or legal interest in the proceedings before the court.”*

11. In determining whether an interested party can be joined to a civil suit, a party ought to demonstrate that their presence is necessary to effectually and completely to adjudicate upon and settle all questions involved in the suit, but their absence would not result in the dismissal of the suit and that they must have an identifiable stake or legal rights or duties in the suit.

12. The Supreme Court in the case of **Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] eKLR** broke down who an interested party is as follows:-

*“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...”***

***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.”***

***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?"***

**13.** By reason of the proposed interested party/applicant occupation on the suit property, a fact which is not denied by the plaintiff/respondent, I am not persuaded that their joinder in this case is necessary for the court to effectually and conclusively determine all the issues. While the plaintiff/respondent did not annex a copy of the judgment delivered by the court, the same is available on the kenyalaw website which the court has had a perusal of the same.

**14.** There was a judgment delivered by this court on 10<sup>th</sup> November, 2017 in **Thomas Kibiru Gathumbi v Jumia Mosque [2017] KEELC 312 (KLR)**, the same concerns the suit property which is the subject of this suit. The court determined as follows:-

***"24. In the absence of any proof of ownership by the defendant's, I find that such occupation of the suit premises is unlawful and amounts to trespass.***

***25. In my view the plaintiff has established his claim on balance of probabilities. I therefore***

***enter judgement for the plaintiff against the defendant as prayed in the plaint.***

***26. For clarity, I therefore issue the following orders:***

***(a) It is hereby declared that the plaintiff is the legal owner of plot number 209/4401/740.***

***(b) It is hereby declared that the defendant is a trespasser on the said LR Number 209/4401/740.***

***(c) The defendant shall remove itself and its property from the said LR number 209/4401/740 within 30 days and in default the defendant shall be evicted from the premises.***

***(d) The claim for general damages is not allowed for lack of proof.***

***(e) The defendant shall bear the costs of this suit."***

**15.** The judgment of this court declared the plaintiff/respondent the legal owner of the suit property. I have seen no appeal setting aside these orders and the same remain lawful and valid. More so, is that this judgment discredits the claims by the proposed

interested party/applicant as having legal rights over the suit property.

**16.** More importantly is the plaint dated 18<sup>th</sup> August, 2025 filed against the defendant wherein the plaintiff/respondent seeks the following orders:-

***a. A permanent injunction against the defendant by himself, his servants, his agents, employees and or their hirelings restraining them from inciting the members of the public from continuing to sit on the suit property.***

***b. An order compelling the defendant to withdraw any motion set before the Nairobi County Assembly seeking to set aside the judgment made in ELC Case no. 192 of 2014 terming the suit property as private land.***

***c. Costs of this suit.***

***d. Any other relief and remedy this honourable court may deem fit and just to grant.”***

**17.** Having carefully read this plaint, the claim as pleaded by the plaintiff/respondent is against the defendant and I see no nexus between the proposed interested party's interest in this suit

and the plaintiffs' claim against the defendant. If anything, I believe the defendant will be able to represent their interests as the representative of the ward.

- 18.** From the above, I find the notice of motion dated 3<sup>rd</sup> December 2025 without merit and it is dismissed with costs to the plaintiff/ respondent.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY  
THIS 4<sup>TH</sup> DAY OF MAY, 2026.**

**HON. MBOGO C.G.  
JUDGE  
04/05/2026.**

***In the presence of:***

*Ms. Benson Agunga - Court assistant*

*Mr. Nassir for the Intended Interested Party*

*Mr. Irungu Mwangi for the Plaintiff/Respondent*