



**Sumba & another (Suing on behalf of 30 Mumias Residents) v Inspector General of Police & 4 others; County Government of Kakamega (Intended Interested Party) (Environment and Land Petition E001 of 2024) [2025] KEELC 5523 (KLR) (23 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5523 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND PETITION E001 OF 2024**

**A NYUKURI, J  
JULY 23, 2025**

**BETWEEN**

**SULEIMAN SUMBA ..... 1<sup>ST</sup> PETITIONER  
ABDALLA OWUOTSI ..... 2<sup>ND</sup> PETITIONER  
SUING ON BEHALF OF 30 MUMIAS RESIDENTS**

**AND**

**THE INSPECTER GENERAL OF POLICE ..... 1<sup>ST</sup> RESPONDENT  
CABINET SECRETARY OF INTERIOR AND NATIONAL  
ADMINISTRATION ..... 2<sup>ND</sup> RESPONDENT  
OCS MUMIAS POLICE STATION ..... 3<sup>RD</sup> RESPONDENT  
OCPD MUMIAS DIVISION ..... 4<sup>TH</sup> RESPONDENT  
THE HON. ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**COUNTY GOVERNMENT OF KAKAMEGA .... INTENDED INTERESTED  
PARTY**

**RULING**

**Introduction**

1. Before court is a notice of motion dated 6<sup>th</sup> May 2024 filed by the intended interested party seeking to be joined to these proceedings as interested party so as to protect its interest as custody of Government property comprised in the suit property. The application is supported by the affidavit sworn by



Vivianne MMBaka Komwoyo, the County Attorney Kakamega County Government, on 6<sup>th</sup> May 2025. The applicant's case is that, it is the custodian of Government property located at the famously known triangle area within Mumias Town which comprises the suit property and all government developments thereon including a modern bus park. That the applicant is the custodian, beneficiary and owner of the suit property and that therefore it was arbitrarily excluded from this suit by the petitioners due to their selfish interests. That the applicant needs to add input in this suit so as to protect its interest as it has been adversely mentioned in the suit. It maintained that the petitioners' claim herein was res judicata as they have had previous suits including Kakamega HCC NO. 22 of 1995, Kakamega HCC No. 45 of 2006, Kakamega ELC Case No. 20 of 2018; Kakamega CMCC No. 185 of 2005, Kakamega HCC Succession Cause No. 225 of 2002, Mumias SRMC No. 1222 of 2006, Bungoma HCC No. 79 of 2009 and Eldoret ELC Petition No. 20 of 2019.

2. That the petitioners excluded the applicant by collusion so as to use this suit to come into government land in disregard of previous court orders made against them involving the applicant and in disregard of the fact that original owners of the suit property were adequately compensated. That the applicant only learnt of the existence of this suit recently after due diligence and after being informed by the OCS Mumias Police Station. That they have come to court in good faith and approached court timeously and that they have a prima facie case with high chances of success.
3. The application is opposed. Suleiman Sumba, the 1<sup>st</sup> Petitioner filed replying affidavit dated 18<sup>th</sup> June 2024 opposing the application. He stated that the application does not meet the necessary threshold for joinder as the applicant has failed to demonstrate having an identifiable stake in these proceedings. That the applicant only made a mere allegation that it is the custodian of the suit property but has failed to present evidence before this court to show that the suit property is public land compulsorily acquired, and state the persons from whom the land was acquired and the manner in which it is custodian of the same.
4. He stated that the applicant and the petitioners had another case being Eldoret ELC Case No. 20 of 2019 *Musa Ndaliro Muchelule & Others v Kakamega County Government & Others* in respect of the suit property and that the applicant will have opportunity to raise its issues in that case. That in the said suit, issues raised include whether the applicants acquired the suit property compulsorily, custody of the suit property and ownership and occupation of the suit property. That however, in the presents suit, the issues raised by the petitioners and the parties are different.
5. The 1<sup>st</sup> Petitioner further averred that in this suit, apart from the raised issues of ownership, compulsory acquisition, custody and occupation, the petitioners also raised other issues including illegal attempted eviction, denial of access to the suit property, shooting and teargassing the petitioners, and confiscation of farm implements and tools by the respondents contrary to the law that guides police operations. That that was the reason the applicant was excluded as it has nothing to do with the above. That the respondents have not indicated anywhere that the applicant has filed any complaint with the police prompting the police to act against the petitioners That the respondents have failed to comply with the process of eviction.
6. Further that the petitioners did not mention the applicants in their pleadings. That the petitioners are not aware of the applicant's involvement in the respondents' violation of the petitioners' rights. Further that the applicant has not demonstrated by submissions, the nature of the input it intends to present. That the applicant has never filed suit against the petitioners.
7. That the applicant wants to come to this suit through the backdoor.
8. Parties filed submissions in support of their respective positions. The court has duly considered the same.



## Analysis and determination

9. Having considered the application, response and submissions, the only issue that arise for the court's determination is whether the applicant has met the threshold of joinder as interested party.
10. The law in respect of joinder of parties for Constitutional petitions is provided for in *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 referred to as the Mutunga Rules. Rule 5 of the Rules, which mirrors provisions of Order 1, Rule 10 of the Civil Procedure Rules, 2010, provides as follows:

“The following procedure shall apply with respect to addition, joinder, substitution and striking out of parties—

- a. Where the petitioner is in doubt as to the persons from whom redress should be sought, the petitioner may join two or more respondents in order that the question as to which of the respondent is liable, and to what extent, may be determined as between all parties.
  - b. A petition shall not be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every proceeding deal with the matter in dispute.
  - 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—
    - i. Order that the name of any party improperly joined, be struck out; and
    - 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.
  - (e) Where a respondent is added or substituted, the petition shall unless the court otherwise directs, be amended in such a manner as may be necessary, and amended copies of the petition shall be served on the new respondent and, if the court thinks, fit on the original respondents.”
11. Therefore, where it is necessary to join a party to a suit so that the court may effectually and completely determine all the matters in question, such necessary party may be added to such proceedings, on application by either of the parties or by the court on its own motion. To be added to proceedings as interested party, an applicant must demonstrate that they have a recognizable stake in the proceedings.
  12. In the case of *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 Others* [2015] e KLR the Supreme Court held that to succeed in an application for joinder as interested party, the interest or stake of the party must be evident in the application for joinder; the prejudice to be suffered by the



intended interested party must be demonstrated to the court's satisfaction; and the applicant must set out its case in the application which should not be a mere replication of the primary parties case.

13. In the case of *EG v Attorney General; David Kuria Mbote & 10 others (Interested Parties)* [2021] eKLR, the Court of Appeal reiterated the prerequisites for joinder of a party as follows;

The core of the court's power to join a party to any proceedings including at the appellate stage, as aptly discussed in *Hamisi Yawa & 36,000 others v Tsangwa Ngala Chome & 19 others* [2018] eKLR, is to bring on board a necessary party for purposes of determining the real issue(s) in dispute. Also, a joinder of a party is not an automatic right, but one which is granted upon exercise of the discretion of the court concerned. Nonetheless, the court exercises such discretion under defined parameters, that is, it must be satisfied that: -

- 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.

14. Similarly, the Court of Appeal in *JMK v MWM & another* [2015] eKLR, stated that: -

“...This Court adopted the same approach in *Central Kenya LTD. V Trust Bank & 4 Others*, [\*CA No. 222 of 1998\*](#), when it affirmed that the guiding principle in amendment of pleadings and joinder of parties is that:

“all amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs.”

15. In the instant case, the applicant states that it is the custodian, beneficiary and owner of the suit property which is at Mumias Triangle area comprising among other Government developments the modern bus park. The applicant stated that this suit is res judicata as there have been eight other cases regarding the suit property between the applicant and the petitioners which have been decided against the petitioners. The petitioners conceded that there is a case being Eldoret Petition No. 20 of 2019 where they sued the applicant in regard to the suit property and that issues therein revolve around ownership, occupation and custody of the suit property as well as whether the suit property was compulsorily acquired by Government, hence the applicant has a forum in that suit to ventilate its issues and should not be joined to this suit.

16. The applicants state that the suit property herein is public land having public buildings constructed by Government including a bus park. The fact that there are projects on the suit property put up by Government on the allegation that the suit property is public land was not disputed by the respondents and therefore it is clear that the applicant has an identifiable stake in the subject matter. The respondents concede that there is in fact pending Eldoret Petition No. 20 of 2019 wherein they have sued the applicant disputing the applicant's position that the suit property is public land having been compulsorily acquired. Essentially, the petitioners confirm that they have had grievances regarding the suit property as against the applicant culminating in several court cases apart from this petition. That alone, in my view is proof enough that the applicant has a stake in the proceedings before



this court, as the subject matter in the previous cases where the petitioners have sued the applicant is the same as that in the instant case. Besides, the petitioners confirm that the questions of ownership, occupation, custody of the suit property and whether the suit property was compulsorily acquired by government are issues that arise both in this case and in the other cases where they had sued the applicant. Although parties herein extensively argued on whether or not this suit is res judicata, it is my view that that question is a question for another day. Today the issue that is before court is whether or not the applicant should be joined to these proceedings as interested party. If they are joined, that is when they can file pleadings and or application and plead res judicata, which can then be considered.

17. For the above reasons, I am satisfied that the applicant has an identifiable stake in the proceedings herein and ought to be joined to these proceedings as interested party.
18. Ultimately, I find and hold that the application dated 6<sup>th</sup> May 2024 is merited and the same is hereby allowed as follows;
  - a. That the applicant is hereby joined to these proceedings as an interested party
  - b. The Interested party shall file and serve its pleadings, witness statement and documents in 21 days of today.
  - c. The applicant shall have the costs of this application.
19. It is so ordered

**DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 23<sup>RD</sup> DAY OF JULY, 2025**

**A. NYUKURI**

**JUDGE**

In the presence of;

Mrs. Chungu for the applicant

Mr. Kongani holding brief for Mr. Mandala for the petitioners

No appearance for the respondents

Court Assistant: M. Nguyai

