



**Khamis & another (Administrator of the Estate of Salmin Khamis Bin Salman) v Omar  
(Trustee of the Estate Of Malim Bin Hero) & 5 others (Environment & Land Case 247 of 1964  
& 265 of 1967 (Consolidated)) [2024] KEELC 1360 (KLR) (7 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1360 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 247 OF 1964 & 265 OF 1967 (CONSOLIDATED)  
LL NAIKUNI, J  
MARCH 7, 2024**

**BETWEEN**

**MOHAMED SALMIN KHAMIS ..... 1<sup>ST</sup> PLAINTIFF  
RAMLA SALMIN KHAMIS ..... 2<sup>ND</sup> PLAINTIFF  
ADMINISTRATOR OF THE ESTATE OF SALMIN KHAMIS BIN SALMAN**

**AND**

**ABDULLA BIN OMAR (TRUSTEE OF THE ESTATE OF MALIM BIN  
HERO) ..... 1<sup>ST</sup> DEFENDANT  
MOHAMED BIN OMAR ..... 2<sup>ND</sup> DEFENDANT  
COMMISSIONER OF LANDS ..... 3<sup>RD</sup> DEFENDANT  
DIRECTOR OF SURVEY ..... 4<sup>TH</sup> DEFENDANT  
ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT**

**AS CONSOLIDATED WITH  
ENVIRONMENT & LAND CASE 265 OF 1967**

**BETWEEN**

**MOHAMED SALMIN KHAMIS ..... 1<sup>ST</sup> PLAINTIFF  
RAMLA SALMIN KHAMIS ..... 2<sup>ND</sup> PLAINTIFF  
THE LEGAL ADMINISTRATOR OF THE ESTATE OF SALMIN KHAMIS BIN  
SALMAN**

**AND**



**SALMIN MOHAMED OMAR BASITY OMAR (THE LEGAL ADMINISTRATOR  
OF THE ESTATE OF MOHAMED BIN OMAR) ..... DEFENDANT**

**RULING**

**I. Introduction**

1. Before this Honourable Court for determination is the Notice of Motion application by the Intended Interested Parties/ Applicants herein, dated 12<sup>th</sup> July, 2023 brought under Sections 1A, 1B, 3A, 6, 63 and Order 1 Rule 10 and Order 51 of the Civil Procedure Act and Rules.
2. Upon service of the Notice of Motion application to the Respondents, who tendered a response to the Application through a Replying Affidavit dated 22<sup>nd</sup> October, 2023.

**II. The Intended Interested Parties' case**

3. The Applicants sought for the following orders:-
  - a. Spent
  - b. That the court be pleased to enjoin the following persons as Interested Parties in this suit;
    1. Karisa Banda Mwakilago a.k.a Hamza Karisa Banda
    2. Kahindi Karisa Kitsao
    3. Machaku Karisa Kitsao
    4. Akiba Morris Ngundo
    5. Faith Samuel Masumbuko
    6. Joseph Kinuthia Kubai
    7. Shehe Dina Mwakubambaya
    8. Rukia Shehe Rashid
    9. Ahmed Landi Mwakanjalu
    10. Joseph Nzioki Kuta
    11. Paul Mutuku Mwau
    12. Irene Nyagitha Ngaruya
    13. Catherine Ntinyari Kithinji
    14. Leah Makena Kithinji
    15. Lilian Gakii Kithinji
    16. Joseph Kitao Benard
    17. Sophie Mose Benard
    18. Johana Muye Mwangombe



19. Edward Mwamuye Mwadzoya
20. Esther Chepkorir Mulwa
21. Abubakar Zein Abubakar
22. David Mwangi Ndirangu
23. Pauline Nanjoe Sisa
24. Hamisi Karisa Kitsao
25. Hassan Juma Badi
26. Kassim Abdalla Mohamed
27. William Kamiti Gathinji
28. Iddi Karisa Kitsao

- c. That costs of this application be provided for.
4. The application by the Applicants was premised on the grounds, facts and testimony on the face of the application and further supported by the 16 Paragraphed annexed affidavit of Karisa Banda Mwakilago a.k.a Hamza Karisa Banda the Intended Interested Parties/Applicant herein. The averred that:-
- a. Most of the persons named herein lived in the portions of land arising from sub - divisions of the suit property.
  - b. Despite of the Plaintiffs having the knowledge that they were in occupation in the said property and having sued them in the Civil Suit ELC NO. 135 of 2018 pending in Malindi as Mwatundo Villagers had left them out of this suit.
  - c. The Applicants would be greatly prejudiced if they were not allowed to join these proceedings and participate in the application by Mohamed Salmin Khamis and Ramla Salmin Khamis.
  - d. The Applicants had known the Plaintiffs/Applicants and their late father for a long time and had useful information to give to this court to assist it arrive at fair decision.
  - e. Both Mohamed Salmin Khamis and Ramla Salmin Khamis the Applicants in the application were misleading the court about the true identity of their late father.
  - f. The Applicants feared that the said Mohamed Salmin Khamis and Ramla Salmin Khamis want to obtain orders of this court and subsequently evict them from the land they lived in, since that was the order they were seeking in the Civil Case Malindi ELC NO. 135 OF 2018.
  - g. The Applicants wanted to join this suit to protect their own interest which they believe they would be able to demonstrate.
  - h. The interest of justice required that this application be allowed as prayed.

### **III. The Replying Affidavit by the Plaintiffs/Respondents**

5. While opposing the application, the Plaintiffs/Respondents filed 14 Paragraphed Replying Affidavit dated 22<sup>nd</sup> October, 2023 and sworn by Mohamed Salmin Khamis Alias Mohamed Salmin Mbiyo together with five (5) annexures marked as “MS – 1 to 5” annexed thereto. He stated as follows:



- a. He was the Co - Plaintiff herein suing as the Legal Representative of the Estate of Salmin Khamis Bin Salman. He was well versed with the matters herein hence competent to swear this affidavit.
- b. He had full authority of Ramla Salmin Khamis, the Co -Plaintiff, to swear this affidavit.
- c. He had read the motion dated 12<sup>th</sup> July 2023 by the Intended Interested Parties. He had understood where he could and where not clear, he had sought insight from Counsel on record which insight he verily believed.
- d. He wished to say as follows in opposing the motion:-
  - i. An Interested Party must demonstrate identifiable stake or legal interest in the proceedings before the court before they could be joined.
  - ii. The Intended Interested Parties had no demonstrable stake or legal interest in these proceedings.
  - iii. He stated so because the property the subject of these proceedings was MN/IV/86/R and MN/IV/23. The property was distinct and identifiable. He annexed and marked as “MS -1” a copy of the Deed Plan showing the location of these parcels of land.
  - iv. The Intended Interested Parties had not shown any stake of legal interest in the two properties viz. MN/IV/86/R and MN/IV/23.
  - v. The Intended Interested Parties at best occupy an adjacent Plot MN/IV/151 albeit unlawfully. He was aware that this unlawful occupation was the subject of proceedings in the civil case “ELC (Malindi) No. 135 of 2018” which litigation was still underway.
  - vi. The property MN/IV/86/R and MN/IV/23, the subject of the proceedings before this court were not the subject of any prayers before the ELC in Malindi No.135 of 2018 nor were they subject to any other proceedings other than the proceedings before this court.
  - vii. The motion by the Interested Parties was an attempt to gag and obfuscate the simple Issue before this court by litigating the issues pending in “ELC (Malindi) No.135 of 2018”. He annexed and marked as “MS – 2” was a Statement of Defence dated 29<sup>th</sup> November 2019 in aforesaid Civil case at Malindi drawn by Learned Counsel for the Intended Interested parties on behalf of Defendants in the case.
  - viii. One Karisa Banda, who had sworn the supporting affidavit to the motion had issued a witness statement in the afore stated Malindi civil case. Besides confirming that he had lived on Plot No.MN/IV/151 all his life, he had raised the same matters he was now raising before this court. He annexed and marked as “MS – 3” was a copy of the witness statement dated 29<sup>th</sup> November 2019.
  - ix. Similarly, one Akiba Morris Ngundo, who was one of the Intended Interested Parties had issued a witness statement in the afore stated Civil case at Malindi, stating that he lived on Plot No.MN/IV/151. He also raised the same matters that were being raised in this motion. He annexed and marked as “MS – 4” was a copy of the witness statement dated 29<sup>th</sup> November 2019.
  - x. On the advice of his Counsel, this Court had no jurisdiction to deal with the issues pending before the court the Civil Case at Malindi.



- e. He urged this court to find that the Intended Interested Parties were merely busy bodies out to complicate the matter before this court and have the application dismissed.

#### **IV. Submissions**

6. On 28<sup>th</sup> September, 2023 while the Parties were present in Court, they were directed to have the Notice of Motion application dated 12<sup>th</sup> July, 2023 be disposed of by way of written submissions and all the parties complied. Pursuant to that all the parties obliged and on 15<sup>th</sup> January, 2024 a ruling date was reserved on 4<sup>th</sup> March, 2024 by Court accordingly.

#### **A. The written submission of the Intended Interested Parties**

7. The Intended Interested Parties through the Law firm of Messrs. Stephen Oddiaga & Company Advocates filed their written submissions dated 3<sup>rd</sup> October, 2023. Mr. Oddiaga Advocate commenced their submissions by stating that the Intended Interested Parties relied on the grounds on the face of the application and the supporting affidavit sworn by Karisa Banda Mwakilago. He submitted that they had made a case for being joined in this suit as parties.
8. He averred that the application was for joinder basically under the provision of Order 1 Rule 10 of the Civil Procedure Rules, 2010 and other supportive provisions of the law. According to the Applicants, they were seeking to be enjoined as interested parties to this suit on the basis that they owned portions of this land. They had title deeds to those portions. Therefore, they had a stake in the proceedings. The joining of the Applicants would assist the Court in arriving at a final and fair settlement of the application before it. The Interested parties were raising very serious issue of capacity of the new Plaintiffs who purported to be the duly appointed Legal Administrators of the estate of the late Salmin Khamis Bin Salman. The Intended Interested Parties were disputing this claim and were challenging the capacity of the Plaintiff to participate in this suit.
9. To buttress on this point, the Learned Counsel relied on the Black Law Dictionary 8<sup>th</sup> Edition which defines “an Interested Party” as follows;

“A party who has a recognisable stake (and therefore standing) in a matter” Pg.1154.
10. *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 makes a reference to the term Interested Party. The rules further provides under Part II clause 7 how such a party can be enjoined in the proceedings and says;

“A person with leave of the court may make an oral or written application to be enjoined as an Interested Party”.
11. Further, the Learned Counsel cited the case of:- “Kenya Medical Laboratory Technicians and Technologists Board and 6 Others – Versus - Attorney General and 4 Others (2017) eKLR” whereby Justice Mativo explained when an Interested Party would be joined in the proceedings by stating that:-

“A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights.<sup>4</sup> In determining whether or not an applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an Interested Party the true test lies not so much in an analysis of what are the constituents of the Applicant’s rights, but rather in what would be the result on the subject-matter of the action if those rights could be established.[5] It is apparent that a party claiming to be enjoined in proceedings must have an interest in the pending litigation,



but the interest must be legal, identifiable or demonstrate a duty in the proceedings directly identifiable by examining the questions involved in the suit. From my analysis above, the applicant has demonstrated a legal and identifiable interest and also a duty to participate in the proceedings. An interested party may also be added to the case by the court itself, where it appears to the court that it is desirable to do so to resolve a dispute or an issue. I hold the view that the presence of the applicant will assist the court to resolve the issues raised in this petition”.

12. Additionally, the Learned Counsel referred Court to the case of:- “Habiba W. Ramadhan & 7 Others – Versus - Mary Njeri Gitiba (2017) eKLR” Nairobi High Court ELC No.119 of 2014, where the court stated as follows:-

“As already observed by the court Order 1 Rule 10 (2) the Court has discretion to order joinder of any party to a suit at any stage of the proceedings so long as the presence of that party before the Court is necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions in dispute However, the said discretion must be exercised judiciously”.

13. It was his contention that, the participation of the Interested Party in this suit was essential as it would assist the court in determination of all the issues raised by the Plaintiff in a truthful and honest manner. The Plaintiffs should not fear their participation if they were also interested in the truth coming out of these proceedings.
14. In conclusion, the Learned Counsel submitted that he had read the Replying Affidavit and he had not seen anything substantial to oppose the joinder application and subsequent order being made and he urged the Honourable Court to allow the application as prayed.

## V. Analysis and Determination

15. I have considered the Notice of Motion application dated 12<sup>th</sup> July, 2023 by the Intended Interested Parties, the Replying affidavit and the rival submissions, the relevant provisions of *the Constitution* of Kenya, 2010 and statutes. The three (3) issues falling for determination in the application are: -
- a. Whether the Notice of Motion application dated 12<sup>th</sup> July, 2023 by the Applicants has any merit.
  - b. Whether the parties are entitled to the reliefs sought.
  - c. Who bears the costs of the Notice of Motion application dated 12<sup>th</sup> July, 2023.

### Issue No. a). Whether the Applicants should be enjoined as interested parties in the proceedings herein

16. Under this sub – title there is only a singular substrata for the consideration by this Court being joinder of parties. This aspect of law is governed by the provision of Order 1 Rule 10 (2) of the Civil Procedure Rules, 2010 which states as follows:

“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 or settle all questions involved in the suit, be added.”

17. According to the Applicants herein, the property subject matter of this suit is in Mtwapa within Kilifi County. The area is locally known as Mwatundo. Mohamed Salmin Khamis and Ramla Salmin Khamis late father was a Chief of the larger Mtwapa area for a long time and he had no connection and or relationship with Salmin Khamis Bin Salman or at all. The late Salmin Mbiyo Salmin who died in Majengo Kanamai on 24<sup>th</sup> June 2001 is not one and the same person known as the Plaintiff Salmin Khamis Bin Salman. Salmin Mbiyo Salmin was a Kenyan who lived and died in Kenya while Salmin Khamis Bin Salman was a resident of Mwanza Tanzania as shown in a copy of Title Deed herein which part of it they were in occupation and where the purported Administrators want to get a decree of this Court and probably evict them. Annexed marked “B-2” in a bundle of Letter of Administration, death Certificate and copy of the Title.
18. They indicated that the Applicant wanted to revive this suit and get a decree have sued them in Malindi and that suit is still pending. They have opposed their masquerading as Administrators of this Estate of the late Salmin Khamis Bin Salman and they have not disclosed pendency of that suit in this court. Annexed marked as “B-3” was a copy of the Plaint. The deponent had been shown the letters and documents the Applicants were relying upon to secure reopening of the suit and extending the decree time lines and all are suspicious and particularly letters from Chalalu Advocate which are different from the ones filed in the Malindi Court matter. Annexed hereto and marked as “B - 4” are letters of 10<sup>th</sup> October 1968, 19<sup>th</sup> December 1969, 27<sup>th</sup> January 1972 filed in the Malindi case all those letters they believed were not genuine.
19. The above assertion notwithstanding, the first step will be to define who an Interested Party. In so doing, the Court will be to consider whether the Applicant herein falls in the same category/definition. Rule 2 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 thus:-

“interested party” means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation;
20. Black’s Law Dictionary defines an Interested Party as “a party who has a recognizable stake (and therefore standing) in the matter.”
21. Further, The Supreme Court of Kenya in “Communications Commission of Kenya and 4 Others – Versus - Royal Media Services Limited & 7 Others Petition No. 15 OF [2014] eKLR” relied on its earlier decision in the “MUMO MATEMO case” where the Court in defining who an Interested Party is, and held as follows:

“ 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 question 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 party's state and relevance in the proceedings and
- b) will the intended interested party suffer any prejudice if denied joinder.?"

22. Subsequently, having defined who an Interested Party is, it is important to then determine whether the Applicant satisfies the criteria for joinder as an Interested Party in the proceedings. The law on joinder of interested parties to suits has been settled by the Supreme Court of Kenya in the case of "Francis K. Muruatetu and another – Versus - Republic & 5 others (2016) eKLR", the court set out identifiable key elements for consideration in an application for joinder as an Interested Party. The elements are as follows: -

- a. 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.
- b. The prejudice to be suffered by the intended Interested Party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
- c. Lastly, a party must, in its application, set out the case and/or submission it intends to make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the court."

23. In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party.

24. In other words, there needs to be a demonstration that the interest of the person goes further than "merely being affected" by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent Plaintiff and Defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.



**Issue No. b). Whether the parties are entitled to the reliefs sought.**

25. The Honourable Court having spelt out the legal principles on joinder of parties, now wishes to deliberate on its application to the instant case. According to the Intended Interested Parties Learned Counsel submitted that they owned portions of the suit property. They have title deeds of those portions. They therefore have a stake in the proceedings. The joining of the Applicants will assist the court arrive at a final and fair settlement of the application before it. The Interested parties are raising very serious issue of capacity of the new plaintiffs who purport to be the Administrators of the estate of the late Salmin Khamis Bin Salman. The Intended Interested Parties are disputing this claim and are challenging the capacity of the Plaintiff to participate in this suit.
26. The ‘Mutunga Rules’, *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, Legal Notice No. 117 of 2013, defines an interested party as;
- “A person or an entity that has an identifiable stake or legal interest or duty in the proceedings and may not be directly involved in the litigation”
27. The Rules further at Part II Clause 7 provides that, a person with leave of the Court may make an oral or written application to be joined as an interested party or the Court, on its own motion, may also join an interested party to the proceedings before it. The Party applying must show that they are a necessary party to the suit. The Black’s Law Dictionary, 9<sup>th</sup> Edition defines a “Necessary Party” as being:-
- “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”
28. In “Kenya Medical Laboratory Technicians and Technologists Board & 6 others – Versus - Attorney General & 4 others [2017] eKLR”, Mativo. J. explained when an interested party ought to be enjoined in a proceeding. He stated: -
- “A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights. In determining whether or not an applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party the true test lies not so much in an analysis of what are the constituents of the applicant’s rights, but rather in what would be the result on the subject-matter of the action if those rights could be established. It is apparent that a party claiming to be enjoined in proceedings must have an interest in the pending litigation, but the interest must be legal, identifiable or demonstrate a duty”.
29. In my view, being an interested party is more important to the court than summoning a party to attend and testify as a witness. The interested party will participate in the proceedings and assist the court with crucial information that may help the court in determining the dispute at hand. A witness may decide not to attend and if he attends, he/she may decide to give evidence depending on his/her personal opinion on the matter. Although this is a civil dispute, I see no harm in having the twenty eight interested parties participate in the proceedings. Should the interested party’s participation be seen to be an impediment to the hearing and determination of the case, the court has powers under Order 1 Rule 10 (2) of the civil procedure Rules to strike out the names of the interested parties and stop them from participating in the case.
30. Be that as it may, in this Present case, the Intended interested parties have sought for joinder as parties in the suit after the court had heard the case and rendered judgment. A party under Order 1 Rule 10 (2) of



the Civil Procedure Rules, 2010 can either be joined as a Plaintiff and/or Defendant. It is not difficult to appreciate why the rule makes that provision. If a party is being enjoined, it would be because either he is making a claim, in which case he would be a Plaintiff or because someone is making a demand against him and wants some relief from him, in which case he would be enjoined as a defendant. The rule has no provision for a party being enjoined as an interested party. What would be the role of such a party in the suit?

31. The provision of Order 1 Rule 10 (2) of the Civil Procedure Rules, 2010 in my view envisages a situation where the suit has not been heard and determined and that is why it provides for joinder of a party either as Plaintiff or Defendant or a party 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 (emphasis added). Where a Judgment has been entered it is my considered opinion that a party cannot be enjoined to the proceedings unless the Judgment is either reviewed and/or set aside in a manner to accommodate the participation of the enjoined party. The joinder of the interested parties at that stage would not have enabled them to participate in the proceedings as parties.
32. In saying so, I rely on the case of:- “Onyango – Versus - Attorney General (1987-1989) E.A 456” the Court of Appeal as per Nyarangi, JA asserted thus:-

“I would say that the principle of natural justice applies where ordinary people who would reasonably expect those making decisions which will affect them to act fairly.”
33. The Judge went on to state thus:-

“A decision in breach of the rules of natural justice is not cured by holding that the decision would otherwise have been right. If the principle of natural justice is violated, it matters not that the same decision would have been arrived at.”
34. Additionally, in the case of:- “Mbaki & Others – Versus - Macharia & Another [2005] E.A 206” the Court of Appeal further stated:-

“The right to be heard is a valued right. It would offend all notions of justice if the rights of a party were to be prejudiced or affected without the party being afforded an opportunity to be heard.”
35. In that case, a party can apply for leave to add such persons whose presence will be vital in order to determine effectually the real issues in controversy. But the part of the provision that extends to cover the enjoinder of persons as interested parties is the last part of the phrase thereof that states “...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.” This phrase gives the court a wide path to including persons as interested parties in suits. Moreover, the learned authors of Sarkar’s Code of Civil Procedure (11th Ed. Reprint, 2011, Vol. 1 P. 887), making reference to Order 1 Rule 10(2) of the Indian Civil Procedure which is similar in all fours with Kenya’s, state that:

“The section should be interpreted liberally and widely and should not be restricted merely to the parties involved in the suit, but all persons necessary for a complete adjudication should be made parties.” The Court of Appeal has agreed with this interpretation in the case of JMK – Versus - MWM & another [2015] eKLR. This has also been followed by the persuasive authority of Temple Point Resort Limited – Versus - Accredo A G & 5 others [2018] eKLR.



36. The phrase is (to be) governed by a special procedure whose legal stem is the Mutunga Rules of 2013. Were the two processes similar, there would have been no need to give the definition of an Interested Party in Rule 2 and the procedure in the provision in Rule 7 of the said Rules to amplify how a proposed interested party can be brought into proceedings. Rule 7 provides for two ways in which a person may be enjoined in proceedings as an interested party. Sub-rule 1 envisages a situation where the person moves the court. The said sub-rule provides as follows: "A person, with leave of the Court, may make an oral or written application to be joined as an interested party." In that case, he has to be granted leave of the court first before applying to be enjoined. Sub-rule 2 refers to where the court is of the view that it would be in the interest of an individual that he be enjoined to proceedings as an interested party. In that case the court will, *suo motto*, make an order for the person to be enjoined.
37. The principles set out in paragraph 37 of the case of "Francis Kariuki Muruatetu & Another – Versus - Republic & 5 Others, Petition 15 as consolidated with 16 of 2013 [2016] eKLR" form the gravamen of the elements applicable where a party seeks to be enjoined in proceedings as an interested party. They are that the Applicant(s) must show:
- (i) 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.
  - (ii) The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
  - (iii) 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 those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.
38. I am satisfied that the proposed interested parties have met the threshold set out in the "Muruatetu case (Supra)". In considering whether or not to allow the prayers sought, this Court is enjoined to consider whether the prayers are couched in the manner that they would, if granted, give the proper result and finding of the Court. Therefore, in the interest of justice and taking the age of the matter - 1964, I do proceed to allow the Application. Thus, in the given circumstances, I proceed on to grant leave to the Applicants to be enjoined as Interested Parties in this suit.

**Issue No. c). Who bears the costs of the Notice of Motion application dated 12<sup>th</sup> April, 2023**

39. Costs mean the award a party is awarded at the conclusion of a legal action or proceedings in any litigation. The Black Law Dictionary defines cost to means:-
- "the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other"
40. The proviso of Section 27 of the *Civil Procedure Act*, Cap. 21 grants the High Court discretionary power in the award of costs which ordinarily follow the event unless the Court for good reasons orders otherwise. Section 27 (1) provides as follows:-
- "(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or Judge, and the court or judge



shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”

41. Additionally, the provision provides for ‘costs of and incidental to all suit or application’ which expression includes not only costs of suit but also costs of application in suit as described by Mulla (supra) at 536. Furthermore, Rtd. Justice Richard Kuloba in his book Judicial Hints on Civil Procedure, 2<sup>nd</sup> Edition, 2005 at 95 notes that the words ‘the event’ means the result of all the proceedings incidental to the litigation. Accordingly, the event means the result of the entire litigation.
42. In this case, and from the unique facts of the case, there shall be no awarding of any costs to the Notice of Motion application dated 12<sup>th</sup> July, 2023.

## **VI. Conclusion and Disposition.**

43. Ultimately in view of the foregoing detailed analysis to the application by the Applicants, the Court arrives at the following decision and make below orders:-
  - a. That the Notice of Motion application dated 12<sup>th</sup> July, 2023 by the Intended Interested Parties be and is hereby found to have merit hence it is allowed in its entirety.
  - b. That the Honourable court be and is hereby pleased to join the following persons as Interested Parties in this suit:-
    - i. Karisa Banda Mwakilago a.k.a Hamza Karisa Banda
    - ii. Kahindi Karisa Kitsao.
    - iii. Machaku Karisa Kitsao.
    - iv. Akiba Morris Ngundo.
    - v. Faith Samuel Masumbuko
    - vi. Joseph Kinuthia Kubai.
    - vii. Shehe Dina Mwakubambaya.
    - viii. Rukia Shehe Rashid.
    - ix. Ahmed Landi Mwakanjalu.
    - x. Joseph Nzioki Kuta.
    - xi. Paul Mutuku Mwau.
    - xii. Irene Nyagitha Ngaruya.
    - xiii. Catherine Ntinyari Kithinji.
    - xiv. Leah Makena Kithinji.
    - xv. Lilian Gakii Kithinji.
    - xvi. Joseph Kitao Benard.



- xvii. Sophie Mose Benard
- xviii. Johana Muye Mwangombe.
- xix. Edward Mwamuye Mwadzoya.
- xx. Esther Chepkorir Mulwa.
- xxi. Abubakar Zein Abubakar.
- xxii. David Mwangi Ndirangu.
- xxiii. Pauline Nanjoe Sisa.
- xxiv. Hamisi Karisa Kitsao
- xxv. Hassan Juma Badi.
- xxvi. Kassim Abdalla Mohamed.
- xxvii. William Kamiti Gathinji.
- xxviii. Iddi Karisa Kitsao.

- c. That Leave granted to the 28 the Interested Parties to file and serve responses to the pending application dated 22<sup>nd</sup> February, 2023 filed by the Plaintiffs herein Within the Next 14 Days of the delivery of this Ruling.
- d. That thereafter the Plaintiffs granted 7 days corresponding leave to file and serve Supplementary Affidavit, if necessary, from the new issues raised from the replies.
- e. That matter be mentioned on 8<sup>th</sup> May, 2024 to ascertain compliance of these orders and further direction on the matter being the delivery of the final ruling.
- f. That each party to bear their own costs.

It is so ordered accordingly.

**RULING DELIEVERED THROUGH MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT MOMBASA THIS 7<sup>TH</sup> DAY OF MARCH, 2024.**

.....

**HON. JUSTICE L. L. NAIKUNI**  
**ENVIRONMENT AND LAND COURT AT**  
**MOMBASA**

**Ruling delivered in the presence of:**

- a). M/s. Firdaus Mbula, the Court Assistant;
- b) Mr. Mureithi Advocate for the Plaintiffs/Respondents
- c) No appearance for the Interested Parties/Applicants.

