



**Ali v Sunpalm Limited & 3 others; Siaka & 2 others (Interested Parties); Mugambi (Intervener)  
(Environment & Land Case 663 of 2005) [2024] KEELC 5722 (KLR) (29 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5722 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 663 OF 2005**

**JO MBOYA, J  
JULY 29, 2024**

**BETWEEN**

**MOHAMED SIAKA ALI ..... PLAINTIFF**

**AND**

**SUNPALM LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**ISSA TIMAMY T/A TIMAMY & CO. ADVOCATES ..... 2<sup>ND</sup> DEFENDANT**

**STEWART MADZAYO T/A MADZAYO & CO. ADVOCATES .. 3<sup>RD</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> DEFENDANT**

**AND**

**SAID SEIF SIAKA ..... INTERESTED PARTY**

**SOUD SEIF SIAKA ..... INTERESTED PARTY**

**ALI SEIF SIAKA ..... INTERESTED PARTY**

**AND**

**DAVID PIUS MUGAMBI ..... INTERVENER**

**RULING**

1. The Applicants herein [who are the Proposed Interested Parties] have approached the Court vide Notice of Motion Application dated 9<sup>th</sup> May 2024 brought pursuant to the provisions of Order 1 Rule 10 (2); Order 21 Rule 7; Order 40 Rules 1, 2, and 3 of the *Civil Procedure Rules*, Sections 1A, 1B, 63e and 99 of the *Civil Procedure Act* and Article 159 2(d) of the *Constitution* 2010 and wherein the Applicant have sought the following reliefs [verbatim]:

1. Spent



2. That Said Seif Siaka, Soud Seif Siaka and Ali Seif Siaka be joined in the proceedings as Interested Parties.
  3. That this Honourable Court be pleased to issue an injunction restraining the 4<sup>th</sup> Defendant County (sic) from transferring, charging and/or dealing in any manner with the property known as land parcel No Kilifi/Jimba/669 pending the hearing and determination of this Application.
  4. That this Honourable Court be pleased to issue and order directing the 4<sup>th</sup> Defendant to cancel and/or rectify the register of land parcel No Kilifi/Jimba/669 (the suit property) so as to expunge any illegal and/or irregular entries of the name of David Pius Mugambi as the registered and/or beneficial owner of suit property.
  5. That this Honourable Court be pleased to issue an order directing the 4<sup>th</sup> Defendant through Land Registrar – Kilifi County to register Said Seif Siaka, Soud Seif Siaka and Ali Seif Siaka as joint owners of land parcel No Kilifi/Jimba/669 and a Title Deed be issued to them forthwith.
  6. That the costs of this Application be in the cause.
2. The subject Application is anchored on the grounds which have been enumerated in the body thereof. Furthermore, the Application beforehand is supported by the joint Affidavit sworn by the proposed Interested Parties [Applicants] on 9<sup>th</sup> May 2024 and to which the deponents have annexed four [4] documents thereto.
  3. Upon being served with the Application beforehand, David Pius Mugambi, who was the Advocate for the Plaintiff [now deceased] and who has been described for ease of reference as an Intervener filed a Replying Affidavit sworn on 16<sup>th</sup> May 2024. Instructively, the deponent has attached a total of five [5] documents in support of the averments adverted to in the Replying Affidavit.
  4. Other than David Pius Mugambi, who has filed the Replying Affidavit [details in terms of the preceding paragraph] the rest of the Respondents have not filed any document in opposition to the Application beforehand.
  5. Fast forward, the Application beforehand came up for hearing on 19<sup>th</sup> June 2024 whereupon the advocates for the parties agreed to ventilate the Application by way of written submissions. In this regard, the Court thereafter ventured forward and circumscribed the timelines for the filing and exchange of the written submissions.
  6. Pertinently, the parties thereafter filed their respective written submissions. Nevertheless, and for good measure, it suffices to underscore that only the proposed Interested Parties and the Intervener filed their written submissions.

### **Parties's Submissions:**

#### **a. Applicants' Submissions:**

7. The Applicants/Proposed Interested Parties filed written submissions and wherein same have adopted and reiterated the grounds contained at the foot of the Application as well as the averments highlighted in the body of the Supporting Affidavit.
8. Furthermore, learned counsel for the Applicants has thereafter raised, highlighted and canvassed four [4] salient issues for consideration and determination by the court.



9. Firstly, learned counsel for the Applicants has submitted that the Applicants herein were duly appointed and constituted as the lawful administrators of the estate of Mohamed Siaka Ali, now deceased, and who was the Plaintiff in respect of the instant matter. In this regard, counsel has thereafter invited the attention of the court to the Certificate of Confirmation of Grant which was issued by the Principal Kadhi, Lamu County.
10. To the extent that the Applicants herein are the lawful administrators of the estate of Mohamed Siaka Ali, now deceased, learned counsel for the Applicants has submitted that the Applicants are therefore the only persons entitled to partake of and benefit from the estate of the deceased.
11. At any rate, it has been contended that Mohamed Shaibu Shosi, was only granted a Special Grant of Letters of Administration to prosecute the suit but same [Mohamed Shaibu Shosi] is not a beneficiary of the estate of Mohamed Siaka Ali. Besides it has also been submitted that David Pius Mugambi, the advocate herein, is also not a beneficiary of the estate of the deceased Plaintiff.
12. Secondly, learned counsel for the Applicants has submitted that to the extent that the Applicants are the lawful heirs and beneficiaries of the estate of the deceased, same [Applicants] are therefore entitled to ownership of the suit property and hence the transfer and registration of the suit property in favour of Mohamed Shaibu Shosi and by extension David Pius Mugambi, ought to be cancelled and revoked.
13. Thirdly, learned counsel for the Applicants has submitted that the transfer and registration of the suit property to and in favour of Mohamed Shaibu Shosi who thereafter transferred same to David Pius Mugambi was illegal for all intents and purposes.
14. Fourthly, learned counsel for the Applicants has also submitted that the 4<sup>th</sup> Defendant/Respondent, namely the Chief Land Registrar, should be ordered and directed to cancel the Certificate of Title that was issued in favour of David Pius Mugambi and thereafter to rectify the register pertaining to and concerning the suit property, namely, Kilifi/Jumba/669.

**b. Intervener's Submissions:**

15. The Intervener herein, namely, David Pius Mugambi, who was the advocate for the Plaintiff has filed written submissions and in respect of which same has reiterated the contents of the Replying Affidavit sworn on 16<sup>th</sup> May 2024. Furthermore, the said Intervener has thereafter highlighted three [3] pertinent issues for consideration.
16. Firstly, the Intervener has submitted that the Application by and on behalf of the Proposed Interested Parties/Applicants is premature and misconceived, insofar as same [Applicants] are seeking to be joined in respect of a matter which has since been heard and concluded.
17. On the other hand, the Intervener has submitted that to the extent that the judgement has not been set aside and/or varied, the Applicants herein cannot be joined into the suit in whatsoever capacity. For good measure, it has been posited that joinder of parties in whatsoever capacity can only be undertaken during the pendency of the suit and not otherwise.
18. The Intervener has also submitted that though same [Intervener] acted for the Plaintiff in respect of the instant matter, same [Intervener] has never been a party in respect of the instant matter. Consequently, it has been contended that insofar as same has never been a party in respect of the instant matter, no precipitate orders can be sought for and obtained against same, either in the manner contended or at all.
19. Thirdly, the Intervener has submitted that the suit property was transferred to and registered in his name by one Mohamed Shaibu Shosi who was constituted as the administrator of the estate of the Plaintiff, now deceased, and thereafter prosecuted the suit to its conclusion.



20. Additionally, it has been submitted that at the conclusion of the suit, the Court granted judgement in favour of the Plaintiff [Mohamed Shaibu Shosi], to whom the property was ordered to be transferred and registered. For clarity, it was posited that the suit property was thereafter transferred to and registered in the name of Mohamed Shaibu Shosi.
21. Arising from the foregoing, the Intervener has contended that the transfer and registration of the suit property to and in his favour was lawful and legitimate and hence same [ transfer] cannot be impugned and/or impeached in the manner sought vide the instant Application.
22. Finally, the Intervener has invoked the doctrine of functus official and contended that the subject matter is closed following the delivery of the judgement, and which judgement has never been set aside, varied and/or quashed.
23. Owing to the forgoing, the Intervener has therefore implored the court to find and hold that the Application beforehand is misconceived, constitutes and amounts to an abuse of the due process of the court and thus same [Application] ought to be dismissed with costs.

#### **Issues for Determination :\_\_**

24. Having appraised and reviewed the Application beforehand as well as the response thereto, and upon consideration of the written submissions filed on behalf of the parties, the following issues do emerge and are thus worthy of consideration.
  - i. Whether the Application by the Proposed Interested Parties herein to be joined as Interested Parties is competent and legally tenable;
  - ii. Whether the orders sought at the foot of the Application can be granted and/or issued by the court; and
  - iii. Whether the Application beforehand constitutes and/or amounts to an abuse of the court process.

#### **Analysis and Determination**

##### **Issue Number One (1)**

##### **i. Whether the Application by the Proposed Interested Parties herein to be joined as Interested Parties is competent and legally tenable**

25. From the background of the matter, it is apparent that the instant suit was filed and or commenced by one Mohamed Siaka Ali, now deceased, who was the original Plaintiff. Furthermore, it is evident that the original Plaintiff passed on and/or died prior to the hearing and determination of the suit.
26. Subsequently, the Plaintiff, now deceased, is reported to have been replaced and/or substituted by one Mohamed Shaibu Shosi, in whose favour the court issued a Special Grant of Letters of Administration for purposes of prosecuting the suit beforehand.
27. Pertinently, upon the joinder of Mohamed Shaibu Shosi as the Plaintiff, the suit herein was heard and determined vide judgement rendered by the Court. For good measure, the fact that judgement was rendered and delivered in respect of this matter is not in contest.
28. Be that as it may, the Applicants herein have approached the court and same are now seeking that the Court be pleased to admit same [Applicants] as Interested Parties herein and upon their admission, the



Court to proceed and decree that same [Applicant] are lawfully entitled to be issued with the Certificate of Title in respect of the suit property.

29. Suffice it to point out, that the Applicants herein, who are knowledgeable of the existence of the judgement, are not seeking to vary, set aside and/or quash the judgement. Simply put, the Applicants are only keen to be joined as Interested Parties and upon such joinder, a decree be issue directing the transfer and registration of the suit property in their name.
30. To my mind, the question that must be addressed and resolved relates to whether or not the proposed Interested Parties/Applicants herein can be joined and admitted as Interested Parties into a suit which has long been heard and determined. Furthermore, the incidental question would be the purpose for such joinder and whether a court of law can join parties in whatsoever capacity for aesthetic/cosmetic purposes.
31. To start with, there is no gainsaying that a court of law is vested with the requisite jurisdiction to join and include any party into the proceedings, whether as a Co-Plaintiff, Co-Defendant, Interested Party or Necessary Party. Nevertheless, the joinder and/or admissions of such a party in whatsoever capacity ought to be undertaken with a view to enabling the court to effectively and effectually determine the issues in controversy in the suit.
32. In my humble view, the joinder and/or admission is a precursor and/or prelude to enable the persons joined in whatsoever capacity to assist the court to unmask the issues in dispute and thereafter to arrive at an effective determination of the dispute beforehand after taking into account the evidence and the contribution, [if any], from the joined parties.
33. Nevertheless, the question is, can joinder or admission of a party be made and/or undertaken when all the issues in dispute have been heard and determined and a final judgement delivered in the matter. Notably, the entry of a judgement terminates and concludes issues in dispute and ex post facto, the proceedings are deemed to have terminated, save for auxiliary proceedings, inter alia, execution and enforcement proceedings.
34. Arising from the foregoing, it is my finding and holding that an application for joinder, like the one before hand, can only be mounted and lodged at any stage of the proceedings, provided that the suit is still in existence and the proceedings are continuing, so that the joined parties are able to assist the court in the adjudication of the dispute.
35. To this end, it suffices to underscore that the provisions of Order 1 Rule 10 (2) of the [Civil Procedure Rules](#) are explicit. Instructively, the Rules Committee highlighted the timelines for filing an application for joinder and underscored that same ought to be filed at any time [stage] during the proceedings.
36. Given the significance of the provisions of Order 1 Rule 10 (2) of the [Civil Procedure Rules](#), 2010; to the instant Application and particularly on the question of joinder, it is imperative to reproduce same. Consequently, same are reproduced as hereunder:

[Order 1, rule 10.] Substitution and addition of parties. 10.

- (1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.
- (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.

37. At any rate, it is not lost on this court, that the import and tenor of the provisions of Order 1 Rule 10 (2) of the Civil Procedure Rules have been highlighted and elaborated upon in a number of decisions.

38. In this respect, it is appropriate to take cognizance of the holding of the Court of Appeal in the case of Pravin Bowry v John Ward & another [2015] eKLR wherein the Court stated as hereunder:

Order I rule 10 of the Civil Procedure Rules provides for substitution and addition of parties to suits. Under rule 2 thereof the court may at any stage of proceedings either upon or without the application of either party and on such terms that 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 to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit to be added. Rule 4 provides for the manner in which the plaint is to be amended where a defendant has been added to the suit.

39. Likewise, the consideration attendant to an Application for admission of a party in whatsoever capacity and the timelines for mounting such an Application were also elaborated upon by the Court of Appeal in the case of Civicon Limited v Kivuwatt Limited & 2 others [2015] eKLR (Civil Appeal No 45 of 2014) wherein the Court stated as hereunder:

“Again the power given under the Rules is discretionary which discretion must of necessity be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined.”

.....

From the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I Rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”

40. Without belabouring the point, it is also instructive to take cognizance of the holding in the case of Mayfair Holdings Ltd v Municipal Council of Kisumu; Pauline Mauwa Akwacha (Interested Party/ Applicant) [2020] eKLR where the court referenced the decision of Nyamweya J in Lilian Wairimu Ngatho & another v Moki Savings Co-Operative Society Limited & another [2014] eKLR and proceeded to hold thus:

“The provisions of Order 1 Rule 10(2) state that joinder of a party can be made “at any stage of the proceedings”. “Proceedings” are defined in Black’s Law Dictionary Ninth Edition at



page 1324 as “the regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment”. A party can therefore only be joined to a suit at any time during the pendency of the suit, but not after the same has been concluded. This finding is premised on the basis that the purpose for joinder is to enable the court effectually and completely adjudicate upon and settle all questions involved in a suit. It is therefore of no use if a party seeks to be joined when the court has already made its findings on the issues arising.

Similarly, the main purpose for joining a party as a Defendant under Order 1 Rule 3 of the *Civil Procedure Rules* is to claim some relief from the said party, and therefore such joinder can only be made during the pendency of a suit. As this court has declined to set aside the judgment herein, there is no suit pending before this court, and the Applicants cannot therefore be joined as parties at this stage.”

The upshot is therefore that the Applicant herein cannot be joined to this suit, the proceedings having been long concluded and judgment delivered.

41. In a nutshell, there is no gainsaying that the Proposed Interested Parties herein could only apply to be joined as Interested Parties albeit during the pendency of the suit. However, to the extent that the suit herein has long being adjudicated upon and determined, the proposed joinder would serve no useful purpose and thus same [joinder] if decreed shall be an exercise in futility.
42. Other than the foregoing, there is also the issue that despite seeking joinder into the matter, the Proposed Interested Parties are not seeking to set aside and/or vary the judgement which has since been granted in respect of the instant matter. In this regard, the question that arises is what then shall the Proposed Interested Parties do in a matter where there is judgement which same [Proposed Interested Parties] are not setting aside.
43. Arising from the foregoing, my answer to issue number one is to the effect that the Application by and on behalf of the Proposed Interested Parties, who are seeking to be joined into the matter long after the delivery of the judgement, is actually incompetent and legally untenable.

## **Issues Number Two (2)**

### **ii. Whether the orders sought at the foot of the Application can be granted and/or issued by the court**

44. Other than the holding in respect of issue number one [1] and wherein the court has since found and held that the Application by the Proposed Interested Parties is incompetent and legally untenable, it is worthy to venture forward and still consider whether the reliefs sought at the foot of the Application are indeed maintainable and awardable.
45. To start with, the proposed Interested Parties even before their joinder in respect of the instant matter are seeking an order of injunction directed against the 4<sup>th</sup> Respondent from transferring the suit property. However, there is no gainsaying that an order of injunction can only issue or be issued in favour of a primary/principal party and furthermore, only when there is a suit anchoring such a prayer for injunction. [See Order 40 Rule 1 of the *Civil Procedure Rules*, 2010].
46. Additionally, it is not lost on this court, that whether joined as interested parties, the Applicants herein while bearing the title of Interested Parties cannot espouse and ventilate a cause of action of their own. For good measure, the role of an Interested Party even when same have been joined is secondary to the rights of the primary parties.



47. Put differently, the law does not allow an interested party to propagate a cause of action separate and distinct from the one being canvassed by the primary parties. In any event, an interested party can also not procure and or partake of a substantive order in a suit, either in the manner propagated by the proposed interested parties herein or otherwise.
48. To this end, I beg to adopt and reiterate the succinct holding of the Supreme Court of Kenya [the apex court] in the case of *Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others* [2014] eKLR where the court stated and held thus:
- (27) We cannot exercise our discretion to enjoin a party that disguises itself as an Interested Party, while in actual fact merely seeking to institute fresh cause. On this point, we are guided by the principle which we had pronounced in the Mumo Matemo case (at paragraph 24), as follows:
- “A suit in Court is a ‘solemn’ process, ‘owned’ solely by the parties. This is the reason why there are laws and Rules, under the Civil Procedure Code, regarding Parties to suits, and on who can be a party to a suit. A suit can be struck out if a wrong party is enjoined in it. Consequently, where a person not initially a party to a suit is enjoined as an interested party, this new party cannot be heard to seek to strike out the suit, on the grounds of defective pleadings.”
49. Likewise, the legal position that an interested party cannot partake of and procure substantive order in a suit was also highlighted and elaborated by a Five-judge bench of the High Court in the case of *Philomena Mbete Mwilu v Director of Public Prosecutions & 3 others; Stanley Muluvi Kiima (Interested Party); International Commission of Jurists Kenya Chapter (Amicus Curiae)* [2019] eKLR where the court held thus:
415. What emerges from the above decisions is that an interested party is a peripheral party and cannot introduce new issues for determination by the court. Further, that in determining the matters before it, the court will only consider the issues raised in the pleadings by the principal parties. This rule will be particularly unyielding when the matter before court is a private as opposed to a public interest claim.
416. Notwithstanding that the Interested Party before us was joined in the matter from the outset by the Petitioner, he is still only an interested party within the meaning ascribed to that phrase by the law and judicial precedents which we have set out above. His joinder ab initio does not elevate his position in the matter. The court can only grant reliefs as sought by the Petitioner or as it deems appropriate as provided under Article 23(3) of the *Constitution*.
50. In short, it is evident and apparent that an interested party cannot partake of a substantive and/or precipitate order in a matter wherein same remains an interested party.
51. Finally in this aspect, it is also common ground that the court heard and determined the subject matter culminating into a judgement which was delivered in favour of the Mohamed Shaibu Shosi, who was substituted in place of the deceased Plaintiff. Notably, the said judgement has never been challenged and/or set aside.
52. Nevertheless, the Proposed Interested Parties are before the court and same are seeking to be declared as the lawful proprietors and owners of the suit property and thereafter to be issued with a Certificate of Title.
53. In my humble view, the orders by and on behalf of the Proposed Interested Parties, would if granted, be tantamount to sitting on appeal on the decision of the trial court and I dare say the decision of the



Court of Appeal vide Civil Appeal No 240 of 2015. Quite clearly such kind of an endeavour would occasion violence to the rule of law and breed anarchy, as well as legal absurdity.

54. In a nutshell, it is my finding and holding that the reliefs sought by and on behalf of the Proposed Interested Parties/Applicants herein are not only misconceived but are not awardable.

### Issue Number Three (3)

#### iii. Whether the Application beforehand constitutes and/or amounts to an abuse of the court process.

55. The Proposed Interested Parties/Applicants and their learned counsel are indeed aware that the orders which are sought at the foot of the Application are precipitate and substantive orders and which cannot be issued and/or be granted on the basis of an application but nevertheless, same [Proposed Interested Parties] have the temerity to approach the court seeking for same.
56. Furthermore, the Proposed Interested Parties are aware that the suit property was transferred and registered in the name of one David Pius Mugambi, who was not a party, but yet again the Applicants are seeking to procure orders against a person who was and is not a party. Instructively, it is implicit in the mind of the Applicants that the provisions of Article 50 of the Constitution which underpins fair hearing, fair trial, due process of the law and natural justice, ought not to be applied.
57. Nevertheless, it must be recalled that prior to and/or before a court of law can cancel and revoke a title which has since been issued, there must no doubt be a substantive suit raising the issues pertaining to the revocation of such title. For coherence, it is worth recalling that revocation of a title which is underpinned by the provisions of Section 80 of the Land Registration Act, has serious consequences and thus cannot be decreed for the mere asking.
58. In short, I hold the humble view that the Application before the court, which is being propagated contrary to and despite the established provisions of the law; and which are presumably within the knowledge of the Proposed Interested Parties as well as their counsel, constitutes an abuse of the due process of the court.
59. To buttress the foregoing exposition of the law, it suffices to adopt and reiterate the erudite holding of the Supreme Court of Kenya [ the apex Court] in the case of Rutongot Farm Ltd v Kenya Forest Service & 3 others (Petition 2 of 2016) [2018] KESC 27 (KLR) (19 September 2018) (Ruling) where the court discussed the extent and scope of the concept of abuse of court process.
60. For coherence, the court stated thus:
27. In *Kenya Section of the International Commission of Jurists v Attorney General & 2 others* Criminal Appeal No 1 of 2012; [2012] eKLR, this Court, on the issue of abuse of the process of the Court, held inter alia:

“The concept of “abuse of the process of the Court” bears no fixed meaning, but has to do with the motives behind the guilty party’s actions; and with a perceived attempt to manoeuvre the Court’s jurisdiction in a manner incompatible with the goals of justice. The bottom line in a case of abuse of Court process is that, it “appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak to be beyond redemption...”....Beyond that threshold, lies an unlimited range of conduct by a party that may more clearly point to an instance of abuse of Court process.”



61. Other than the foregoing decision, the infinite perspective[s] and nuances that denote the concept of abuse of the court process were also elaborated upon by the Court of Appeal in the case *Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 others* [2009] eKLR where the court stated thus:

To re-inforce the point, abuse of process has been defined in Wikipedia, the free encyclopedia:

“The person who abuses process is interested only in accomplishing some improper purpose that is collateral to the proper object of the process, and that offends justice.”

In *Beinosi v Wiyley* 1973 SA 721 [SCA] at page 734F-G a South African case heard by the Appeal Court of South Africa, Mohomad CJ, set out the applicable legal principle as follows:

“What does constitute an abuse of process of the court is a matter which needs to be determined by the circumstances of each case. There can be no all-encompassing definition of the concept of “abuse of process.” It can be said in general terms, however, that an abuse of process takes place where the proceedings permitted by the rules of court to facilitate the pursuit of the truth are used for purposes extraneous, to that objective.”

62. To surmise, I come to the conclusion that the Application beforehand which essentially seeks precipitate and substantive reliefs; and which cannot issue on the basis of an application, clearly constitutes and amounts to an abuse of the due process of the court.

#### **Final Disposition:**

63. Flowing from the discussion, [who details have been highlighted in the body of the Ruling], it is evident and apparent that the Application beforehand is not only premature and misconceived, but same [Application] also amounts to an abuse of the due process of the court.
64. Consequently and in the premises, the Application dated 9<sup>th</sup> May 2024 be and is hereby dismissed with costs. Furthermore, the costs attendant to the Application are assessed in the sum of Kenya Shilling Thirty Thousand Only (Kshs 30,000/-) payable to one David Pius Mugambi only.
65. It is so ordered.

**DATED, SIGNED AND DELIVERED ON THE 29<sup>TH</sup> DAY OF JULY 2024**

**OGUTTU MBOYA**

**JUDGE**

In the presence of:

Benson – Court Assistant.

Mr. Ondabu for the Proposed Interested Parties/Applicants.

Mr. Mugambi for the Intervener [David Pius Mugambi].

Mr. Mohamed Timamy for the 2<sup>nd</sup> Defendant/Respondent.

Ms. Jadi for the 3<sup>rd</sup> Defendant/Respondent.



N/A for the 1<sup>st</sup> Defendant/Respondent.

N/A for the 4<sup>th</sup> Defendant/Respondent.

