



Denman Properties Limited & 4 others v Attorney General & 5 others; Kazomba & 28 Others (Interested Party); Furaha & another (Intended Interested Party) (Environment & Land Petition 11 of 2012) [2024] KEELC 14142 (KLR) (31 October 2024) (Ruling)

Neutral citation: [2024] KEELC 14142 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ENVIRONMENT & LAND PETITION 11 OF 2012

EK MAKORI, J

OCTOBER 31, 2024

**IN THE MATTER OF: CHAPTER FOUR ON THE BILL OF RIGHTS OF
THE CONSTITUTION OF THE SOVEREIGN REPUBLIC OF KENYA, 2010**

AND

**IN THE MATTER OF: THE CONSTITUTION OF KENYA (SUPERVISORY
JURISDICTION AND THE PROTECTION OF FUNDAMENTAL RIGHTS OF
THE INDIVIDUAL) HIGH COURT PRACTICE AND PROCEDURE RULES, 2006**

**IN THE MATTER OF: ARTICLES 1,2,3,10,12(1)
(A),19,20,21,22,23,27(4),35(2),40,47,50,64,73(1) (A, AND 129) OF THE
CONSTITUTION OF THE SOVEREIGN REPUBLIC OF KENYA, 2010**

AND

**IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF
FUNDAMENTAL RIGHTS AND FREEDOMS UNDER THE CONSTITUTION
OF KENYA - ARTICLES 19,21,22,23,27(4),35(2),40,47 AND 50**

AND

**IN THE MATTER OF: CONTRAVENTION OR
BREACH OF THE CONSTITUTION OF KENYA - 258**

AND

**IN THE MATTER OF: THE INTERPRETATION, IMPLEMENTATION, AND
ENFORCEMENT OF THE CONSTITUTION OF KENYA - ARTICLE 259**

AND

IN THE MATTER OF: LAND ACT, 2012 (ACT NO. 6 OF 2012)

AND

IN THE MATTER OF: THE LAND REGISTRATION ACT 2012 (ACT NO. 3 OF 2012)

AND



IN THE MATTER OF: REGISTERED LAND ACT CAP 300 (REPEALED)

AND

**IN THE MATTER: OF THE CONSTITUTIONALITY OR OTHERWISE OF THE
REPORT OF THE SPECIAL TASK FORCE ON KILIFI JIMBA AND CHEMBE
KIBABAMSHE SCHEMES IN MALINDI DISTRICT DATED JUNE 2010**

AND

**IN THE MATTER OF: THE EXISTING AND YET-TO-BE-LIFTED GENERAL EMBARGO,
MORATORIUM AND/OR RESTRICTION BY THE COMMISSIONER OF LANDS, THE 4TH
RESPONDENT HEREIN, APPEARING IN THE DAILY NATION ISSUE OF THURSDAY
AUGUST 12, 2010 WITH RESPECT TO LAND WITHIN CHEMBE KIBABAMSHE
LAND REGISTRATION SECTION AND JIMBA LAND REGISTRATION SECTION.**

AND

**IN THE MATTER OF: CONSTITUTIONALITY OR OTHERWISE IN THE MATTER
OF: OF THE LETTER BY THE HON. GIDEON MUNG'ARO, THE 7TH RESPONDENT,
DATED AUGUST 20, 2010, REFERENCED KILIFI JIMBA & KIBABAMSHE SCHEMES
ADDRESSED TO THE COMMISSIONER OF LANDS, THE 2ND RESPONDENT HEREIN**

AND

**IN THE MATTER OF: THE CONSTITUTIONALITY OR OTHERWISE OF TH ACTION
OF THE DISTRICT LAND REGISTRAR, KILIFI THE 4TH RESPONDENT HEREIN,
TO ISSUE CERTIFICATES OF LESES FOR PLOTS CONTAINED IN THE LETTER BY
THE HON. GIDEON M MUNG'ARO, DATED AUGUST 20, 2010 REFERENCED KILIFI
JIMBA & KIBABAMSHE SCHEMES ADDRESSED TO THE COMMISSIONER OF LANDS**

BETWEEN

**DENMAN PROPERTIES LIMITED 1ST PETITIONER
BOND STREET PROPERTIES LIMITED 2ND PETITIONER
GREEN LILY LIMITED 3RD PETITIONER
HOLBORN PROPERTIES LIMITED 4TH PETITIONER
ROYAL TULIA ESTATES LIMITED 5TH PETITIONER**

AND

**THE HON ATTORNEY GENERAL 1ST RESPONDENT
THE COMMISSIONER OF LANDS 2ND RESPONDENT
THE CHIEF LAND REGISTRAR 3RD RESPONDENT
THE DISTRICT LAND REGISTRAR, KILIFI 4TH RESPONDENT
THE MINISTERIAL TASK FORCE ON LAND ISSUES IN COAST
PROVINCE 5TH RESPONDENT
THE HON GIDEON M MUNGA'RO 6TH RESPONDENT**



AND

CHARO MASHAKA KAZOMBA & 28 OTHERS INTERESTED PARTY

AND

SAMUEL KAMANGU FURAHA INTENDED INTERESTED PARTY

**DR BENARD MICHAEL ODUOL ANDIEGO (SUING IN HIS PERSONAL
CAPACITY AND AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF
THE LATE WILBRODA ODUOL AKUMU) .. INTENDED INTERESTED PARTY**

RULING

1. For consideration are two Notices of Motion applications dated 19th September 2022 and 6th March 2024, significantly seeking joinder of the Applicants – Samuel Kamangu Furaha and Dr. Bernard Michael Oduol Andiego, respectively. The applications also seek a raft of orders, including injunctions and status quo orders regarding land titles Kilifi Jimba/319 – subdivisions Nos. 1880, 1881, and 1882 (in the initial application) and land parcels No. Kilifi/Jimba/323 - subdivisions Nos. 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, and 2492 (in the second application) to be halted and the same not to be leased or sold or transferred until the petition herein is reopened and heard de novo for purposes of allowing the said parties to be heard and propagate their rights over the suit properties. And that the costs of the applications be provided.
2. The first application is premised on the grounds listed at the foot of the motion and supported by the affidavit sworn by Samuel Kamangu Furaha, deposed on 23rd November 2023, who averred that he purchased the suit property from one Jumwa Saidi Mupuani, who had the original letter of offer of title Kilifi/Jimba/319. He and Nichodemus Teddy owned it. He was later taken aback when he discovered that the suit property had long been subdivided due to the orders emanating from the current petition and that he had never been served to defend his rights over the suit property.
3. In the second application, Dr. Bernard Michael Oduol Andiego stated that together with his late wife, they are the original registered proprietors of the freehold interest in Kilifi/Jimba/323 pursuant to a joint venture from 9th February 1980 and as per the land adjudication and settlement records. While their title still existed, a separate green card over the suit property was illegally opened in 1986. A title was issued to one Linda Kanyari, who transferred it to one Ali Mohamed Ali and subsequently to Green Lily Limited on 26th May 2008 and later to Watamu Coral LLP on 16th March 2022 pursuant to this Court's decree. In addition, the Kilifi District Land Registrar approved the subdivision of the suit property into ten portions.
4. That despite the existence of a report by the National Land Commission, following a ground verification exercise, which noted that the said Linda Kanyari Mwongera, Ali Mohamed, and Green Lily Limited were not lawful title holders, the said Linda instituted Court proceedings to his exclusion and obtained orders upholding her title. He added that in doing so, Linda relied on a 2010 report by the Ministerial Task Force on Land Issues in Coast Province, nullified by the Court on 13th May 2015.
5. The Applicants further contend that they were never issued with any summons to attend Court and only became aware of the existence of this petition and resultant decree in 2023 when he presented the findings of the NLC, which confirmed the Applicant and his late wife as the owners of the suit



property. He added that the 3rd Petitioner, vide JR No. 1 of 2019, obtained ex-parte orders quashing the report by the NLC.

6. Parties were directed to file written submissions. The Applicants filed their submissions. The 2nd Petitioner relied on the expansive affidavits by Sophia Abdillahi Chacha, one of its directors, deposed on 17th August 2023 and 27th November 2023.
7. I frame the issues for this Court's decision as whether to join the intended interested parties, reopen the current petition, whether the orders sought in the motions are available, and who should bear the costs of the applications.
8. The Applicants submitted that a Party cannot have the locus standi to address the Court unless and until they are properly on record or a party to the suit. The Applicants have demonstrated sufficient interest in the suit properties and reasonable apprehension of being affected by the execution of the petition; the applications ought to be allowed - see Order 1 Rule 10 (2) and the decisions in Pravin Bowry v John Ward & another [2015] eKLR; Civicon Limited v Kivuwatt Limited & 2 others [2015] eKLR, where the Court discussed the issue of joinder of parties. It is argued that Petitioners cannot enforce the ultimate order or final decree without the interested party's participation in the proceedings. Quoting the cases of Mohan Galot v Walter Omosa Nyakundi & 21 others; Pravin Galot & 2 others (Proposed Interested Party) [2020] eKLR; and Marigat Group Ranch & 3 others v Wesley Chepkoimen & 19 others [2014] eKLR, where the role of the interested party was defined in the proceedings. That the Applicants are necessary parties to the proceedings herein see the definition of a necessary party provided in the Black's Law Dictionary, 9th Edition, which 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. That the provisions of Order 1 Rule 10(2) state that a joinder of a party can be made "at any stage of the proceedings." "Proceedings" are defined in Black's Law Dictionary Ninth Edition on 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, 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 of joinder is to enable the Court to effectually and completely adjudicate upon and settle all questions involved in a suit. Counsel, therefore, implored the Court to join the interested parties in these proceedings as it is yet to make its findings on the issues arising and subsequently issue orders sought in the interim.
10. It is further submitted that while this Court delivered judgment on 13th May 2015, failure to summon the Applicants meant that the Applicants had satisfied the threshold to review and set aside the said judgment, pursuant to Order 45 of the Civil Procedure Rules – see also Esther Wamaitha Njihia & 2 others v Safaricom Ltd; James Kanyiita Nderitu & another v Marius Phillotas Chikas & another (2016) eKLR; and Shah v Mbogo [1967] EA 166 to support this argument.
11. The other Petitioners and parties never filed responses. The 2nd respondent filed detailed replying affidavits significantly on the 1st application deposed by Sophia Chacha, one of its directors, deposed on 17th August 2023 and 27th November 2023.
12. Significantly, it is deposed that the current petition was heard and determined in 2015. Execution has long been effected. The parcels of land in issue are subdivided and in the hands of third parties. This Court cannot join interested parties on a matter concluded under the doctrine of functus officio.
13. The 2nd Petitioner purchased the suit property Kilifi/Jimba /346 from one Paul Kiiru Mwangi at a consideration and title issued on 23rd May 2008. In July 2008, the 2nd Petitioner purchased Kilifi/Jimba/



312 from one Ali Mohammed Ali, also at a consideration and title issued on the 7th day of July 2008. In July 2008, the 2nd Petitioner purchased land parcel Kilifi/Jimba/ 319 at a consideration from one Ali Mohammed Ali title issued on 7th July 2008 – which has long been subdivided into subdivisions No. 1880, 1881, and 1882. Title No. 1880 has long been transferred to one Jane Wanjiru Muthoni and Delens Umberto at a consideration. In May 2008, at a consideration, the 2nd Petitioner purchased land parcel Kilifi/Jimba/316 from Glitter Venture Company Limited. The title deed was issued on the 23rd day of May 2008.

14. After a full hearing, This Court (Angote J.) pronounced itself on the instant petition after advertising for the joinder of any interested parties. Significantly, the same issues were raised in JR No. 1 of 2019.
15. The 2nd Petitioner believes it is up to a party to choose who to sue, and the persons sued in the current petition were the necessary parties. The 2nd Petitioner argues that the Supreme Court in *Methodist church in Kenya v Mohammed Fugicha & 3 others* [2019], eKLR, opined that the most crucial interest or stake in any suit is that of the primary/principal parties before the Court. An interested party cannot be allowed to frame issues for determination, more so after judgment. See also the Supreme Court in *Raila Odinga & 2 others v IEBC & 3 others* [2013] eKLR.
16. The final orders of this Court in the current petition were as follows:
 - a. A declaration be and is hereby issued that the issuance of Certificates of Leases based on the Report of the Task Force on Kilifi Jimba and Chembe Kibabamshe dated June 2010 and the letter by the Hon. Gideon Mung'aro dated the 20th day of August 2010 was in violation of Articles 3, 10, 27, 40 and 47 of *the Constitution* and Sections 10, 33 and 143 of the Registered *Land Act*, Cap 300 of the Laws of Kenya (Repealed) hence unconstitutional, null and void ab initio;
 - b. A declaration be and is hereby issued that the 1st Petitioner is the legal proprietor of Parcels of Land known as Kilifi/Jimba/342, 335, 340, 341, 427, 338, 353, 333, 334, 311, 331, 337, 317, 336, 345, 328, 343 and 344,
 - c. A declaration be and is hereby issued that the 2nd Petitioner is the legal proprietor of land known as Kilifi/Jimba/315,319,316,314,346, and 312.
 - d. A declaration be and is hereby issued that the 3rd Petitioner is the legal proprietor of land known as Kilifi/Jimba/323
 - e. A declaration be and is hereby issued that the 4th Petitioner is the legal proprietor of land known as Chembe/Kibabamshe 396,637,638,401,423,425,428,394 and 379.
 - f. An order of certiorari be and is hereby issued to bring to this Honourable Court for purposes of being quashed Leases, Certificates of Lease that were issued in respect of the above suit properties;
 - g. An order of Permanent Injunction be and is hereby issued to prohibit the Respondents by themselves, servants, agents, or whosoever authorized on their behalf from giving effect or implementing or in any manner whatsoever the report of the Task Force on Kilifi Jimba and Chembe Kibabamshe dated June 2010 or in any other manner interfering with the Petitioners possession and ownership of their respective suit properties; and
 - h. An order of mandamus be and is hereby issued compelling the 4th Respondent to restore the register in respect of the parcels mentioned above of land and issue to the Petitioners with Certificates of Search on payment of the requisite fees.”



17. The Applicant, in the application dated 19th September 2022, is seeking inter-alia to re-open this petition, set aside or vacate this Court’s judgment delivered on 8th May 2015 and decree issued on 13th May 2015 to the extent that he purchased the suit property from one Jumwa Saidi Mupuni, who had the original letter of offer of title Kilifi/Jimba/319 and that since he was not a party to the petition, he needs to be heard on merit
18. The Applicant, in the application dated 6th March 2024, seeks to be joined in this petition with respect to title Kilifi/Jimba/323. The applicant is concerned only with the resultant subdivisions Nos. 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, and 2492. The applicant argues that the subsequent titles were issued, oblivious to his rights as the initial allottee.
19. *The Constitution* of Kenya, 2010, guarantees every citizen’s absolute right to be heard. This Court’s task in the instant application is to establish whether the applicants were heard if they were ever accorded such an opportunity to be heard, whether joinder is germane at this point of the proceedings and whether they have reasonably established that they have some form of interest or stake in the suit properties. And whether they have demonstrated that the orders made in this petition are bound to affect their interest in the said land if they have not already done so.
20. The Black Law Dictionary, 9th Edition, page 1232, defines an interested party as; “A party who has a recognizable stake (and therefore standing) in the matter.” *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, *Legal Notice No. 117 of 2013*, also 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.”
21. The Supreme Court of Kenya in *Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 others* [2014] eKLR observed as follows about this subject:
 - “(22) 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 question involved in the proceedings;
 - (ii) Joinder to protect 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. It is also trite that the power of the Court to order any person to be joined under Order 1 Rule 10(2) of the Civil Procedure Rules may be exercised “at any stage of the proceedings.” Commenting on similar provisions of the Indian Code of Civil Procedure, the editors of Mulla, Code of Civil Procedure, 14th edition, vol. II state on page 863 that:

“it is only when a suit or proceeding has been finally disposed of so that there is nothing more to be done that this rule becomes inapplicable.”

23. In this case, the Applicants are not only seeking to be made parties to the petition, but they also seek a review and setting aside of the Court's judgment to allow them to be heard. In other words, once admitted, they will seek to reframe the issues and have the entire petition for rehearing. In *Alton Homes Limited & another v Davis Nathan Chelogoi & 5 others* (2019) eKLR, the Court permitted the joinder of an interested party after judgment had been entered between two principals without involving him. Yet, he occupied the property from which he was being evicted. The Court recognized that the intended interest party had a constitutional right to be heard. The Court observed as follows, and the Court of Appeal agreed with it, that: -

“*The constitution* of Kenya is very clear on the right to protection of one's property, and the said property cannot be arbitrary(sic) be taken away from such an owner without being heard or accorded an opportunity to ventilate his case.”

24. In the application dated 19th September 2022, the Applicant states that he purchased the suit property from one Jumwa Saidi Mupuani, who had the original letter of offer of title Kilifi/Jimba/319. When NLC was doing historical injustice investigations, it found that the parcel belonged to him and one Nichodeus Teddy. The findings were gazetted on 5th February 2019. When he presented the findings of the NLC to the Land Registrar Kilifi, he was informed the land had changed hands by dint of the current petition, hence the need for a joinder. As stated above, on July 2008, the 2nd Petitioner purchased land parcel Kilifi/Jimba/ 319 at a consideration from one Ali Mohammed Ali title issued on 7th July 2008 – which has long been subdivided into subdivisions No. 1880, 1881, and 1882. Title No. 1880 has long been transferred to Jane Wanjiru Muthoni and Delens Umberto at a consideration.

25. In the application dated 6th March 2024, the Applicant claims that he is the original allottee of the parcel Kilifi/Jimba/323, now subdivided. The basis of his claim was a certificate of title in his name and that of his late wife issued on 9th February 1980, a letter dated 14th November 2022 signed by the sub-county Land Adjudication and Settlement Officer, and gazette notice dated 15th February 2019 wherein the NLC recommended that the register be regularized in his favor. Meanwhile, from the proceedings and the judgment of this Court, Kilifi/ Jimba 323 was purchased by the 3rd Petitioner at a consideration from one Ali Mohammed Ali in 2008.

26. It is trite that the joinder of an interested party is meant to safeguard a party that may otherwise be sidelined by a malicious party with the sole purpose of alienating a party's right to be heard before being condemned. I agree with the applicants' submissions and the authorities cited on the parameters to consider before joinder.

27. Looking at the applications for and the orders sought, the judgment in this petition was delivered on the 8th of May 2015. Since then, the parcels of land the Applicants seek to be accorded an opportunity to ventilate and have their rights protected have long changed hands. The substratum of the suit, so to



say, has long changed. Parties who were never in the petition have since taken over the suit properties. Due to time-lapse, the petition does not stand as it was in 2015 when this Court delivered its judgment.

28. The 2nd and 3rd Petitioners contend that they purchased land parcels Kilifi /Jimba/319 and Kilifi/ Jimba/323 as bona fide purchasers for value without notice. They acquired good titles. In the petition, they chose parties to sue. The persons they felt were culpable and averse to their interests in the suit properties. They could not join the Applicants since the records from the Land Registry indicated the suit properties had been transferred from the Applicants' names to persons they purchased from. At least, that is what the green cards showed from the Land Registry. They could not go beyond what the green cards showed.
29. The Torrens System is such that what is on the Registrar should mirror the title. But, based on the happenings in the Chembe /Kibabamshe and Kilifi/ Jimba Adjudication Sections – if what we have and the litigations emerging from those sections is anything to go by, something wrong must have happened during adjudication – correcting the errors of omission and commission by the officials endowed with the duty to undertake the exercise during this process has been a gargantuan task for the ELC Malindi. This Court reckoned the challenges faced by my predecessors (Angote J, Olola J, and Odeny (Dr.) J.) and now Njoroge J. and myself that is why in *Republic v Chief Land Registrar; Kamau (Exparte Applicant); Guyo & 4 others (Interested Parties) (Judicial Review 2 of 2022)* [2023] KEELC 21242 (KLR) (2 November 2023) (Judgment) Neutral citation: [2023] KEELC 21242 (KLR) I made the following observations:

“The dealings in the Chembe /Kibabamshe Adjudication Section (also read Kilifi/Jimba Adjudication Section) leave a bitter taste in the mouths of the landowners and are so convoluted that the titles issued do not reflect the true spirit and principles of the Torrens System:

- a. Mirror principle – the register reflects (mirrors) accurately and completely the current facts about the title of each registered lot. This means that each dealing affecting a lot (such as a transfer of title, a mortgage or discharge of same, a lease, an easement, or a covenant) must be entered on the register and so be viewable by anyone.
- b. Curtain principle—one does not need to go behind the certificate of Title as it contains all the information about the title. This means that ownership need not be proved by long, complicated documents kept by the owner, as in the private conveyancing system. All of the necessary information regarding ownership is on the Certificate of Title.
- c. Indemnity principle – provides for compensation of loss caused by private fraud or by errors made by the Registrar of Titles.

The titles issued are no longer indefeasible; the Land registers do not mirror the proper disposition and ownership, and the officials at the adjudication and allocation (registration sections) missed it. Perhaps they will need to account for (indemnify) in the future. There is this current slang going around in social media that for you to buy land in Kenya, you will need a good lawyer, a surveyor (a good land agent or broker), and a drunkard from that local area to tell you whether you will be purchasing “air.” The latter person will likely mirror the title better than the Land Registries! The titles from the Chembe/Kibabamshe Adjudication Section (also read Kilifi/Jimba Adjudication Section) are worse! This will be a discussion in another forum”- [emphasis supplied].



30. The Supreme Court in *Methodist church in Kenya v Mohammed Fugicha & 3 others* [2019], eKLR, had this to say concerning the joinder of the interested parties:

“Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the court will always remain the issues presented by the principal parties or as framed by the court from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues or introduce new issues for determination by the court. One of the principles for admission of an interested party is that such a party must demonstrate that he/she has a stake in the matter before the court. That stake cannot take the form of an altogether a new issue to be introduced before the court” [emphasis supplied].

54. In like terms, we thus observed in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others, Civil Appeal No 290 of 2012* (paragraph 24):

“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.”

55. Against such a background, the trial court ought not to have entertained issues arising from the cross-petition by the interested party, especially in view of article 163(7) of *the Constitution*, which provides that ‘All courts, other than the Supreme Court, are bound by the decisions of the Supreme Court.’ Moreover, this cross-petition did not comply with rule 15(3) of the Mutunga Rules, which speaks to a respondent filing a cross-petition, and it was also not in conformity with rule 10(2) of these rules. Rule 10(3) cannot also be invoked as the replying affidavit of the interested party does not fit any of the descriptions contained therein.”

31. Based on the green cards supplied and kept by the Land Registry, the Petitioners in this petition purchased land from the parties reflected in the register. They could not tell the interests the Applicants were claiming. After the purchases, the parcels have long changed hands—we cannot go back to accommodate the interested parties; their plea is inordinately late. The substratum of the suit has long changed.

32. Joining the interested parties at this stage and granting the orders in the two motions will create another layer of confusion. The applications are hereby dismissed with costs. For the lawyers of the interested parties, it’s back to the drawing board—perhaps they should consider suing the land office for indemnity for keeping registers that do not mirror the title! The petitioners have long sold the parcels to other third parties! Even if I join the interested parties and reopen the petition, nothing much will change since the interested parties cannot join and reengineer a petition long decided in 2015! Their interests cannot be catered for here.

33. The upshot is that applications dated 19th September 2022 and 6th March 2024, dismissed with costs.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 31ST DAY OF OCTOBER 2024.



E. K. MAKORI

JUDGE

In the presence of:

Mr. Otara and Ms. Metto, for the Intended Interested Parties

Mr. Binyenya for the Petitioners

Court Clerk: Happy

