



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

*(Coram: Koome; CJ & P, Mwilu; DCJ & VP, Wanjala, Njoki, Lenaola & Ouko,
SCJJ)*

PETITION (APPLICATION) NO. E039 OF 2025

— BETWEEN —

**INTERCOUNTRIES IMPORTERS
AND EXPORTERS LTD..... APPELLANT**

— AND —

**TELPOSTA PENSION SCHEME
REGISTERED TRUSTEES 1ST RESPONDENT**
NATIONAL LAND COMMISSION..... 2ND RESPONDENT
HON. ATTORNEY GENERAL.....3RD RESPONDENT
JUBILEE INSURANCE COMPANY LTD..... 4TH RESPONDENT
PARK AVENUE INVESTMENTS LTD.....5TH RESPONDENT
TRUST BANK LIMITED (IN LIQUIDATION)6TH RESPONDENT

— AND—

**LAW SOCIETY OF
KENYA..... INTENDED INTERESTED PARTY/APPLICANT**

*(Being an application by Law Society of Kenya to be enjoined in these
proceedings as an Interested Party)*

Representation:

Mr. Musota and Mr. Melly for the appellant
(*MMA Advocates LL. P*)

Mr. Bundotich for the 1st respondent
(*Kale Maina & Bundotich Advocates LL. P*)

Mr. Ochieng for the 2nd respondent
(*National Land Commission*)

Mr. Kamau for the 3rd respondent
(*The Hon. Attorney General Chambers*)

Mr. Thuita for the 5th respondent
(*Guandaru Thuita & Co. Advocates*)

Mr. Muthee for the 6th respondent
(*TripleOK Law LL. P Advocates*)

Mr. Ochiel Dudley for the intended interested party
(*Bond Advocates LL. P*)

RULING OF THE COURT

[1] UPON PERUSING the Notice of Motion dated 30th September 2025 and filed on 8th October 2025, seeking leave *to be enjoined as an interested party; and no costs associated with this application;* and

[2] UPON EXAMINING the grounds on the face of the application and the supporting affidavit sworn by *Florence Muturi* on 30th September 2025, wherein it is contended that the applicant has a statutory mandate under Section 4 of the Law Society of Kenya Act to, *inter alia*, assist the courts in matters relating to legislation, administration of justice and the practice of law in Kenya. Particularly,

the applicant argues that the appeal raises issues of general public importance which transcend the interest of the parties and which, when determined may result into the review, refinement or development of professional guidelines including the Law Society of Kenya Conditions of Sale; it will aid the Court in formulating narrow exceptions to the ***Dina Management*** rule that preserve the root-of-title doctrine while safeguarding the interest of innocent purchasers at auctions in exercise of the statutory power of sale; and

[3] UPON CONSIDERING the applicant's submissions dated 29th September 2025, asserting that it has satisfied the criteria for joinder as an interested party, in support thereof relying on, ***Fanikiwa Limited Vs Sirikwa Squatters Group & 20 others; Mibei & 10 others (Applicant)*** [2023] KESC 39 (KLR), ***Trusted Society of Human Rights Alliance Vs Matemo & 3 others*** [2015] KESC 26 (KLR) and ***Muruatetu & another Vs Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae)*** [2016] KESC 12 (KLR); and

[4] NOTING the 1st respondent's submissions dated 31st October 2025, contending that: the applicant has not demonstrated any identifiable stake in the appeal or any prejudice it would suffer if the application is declined, nor shown how its participation would add value, in support thereof relying on ***Trusted Society of Human Rights Alliance [supra]***; the intended interested party seeks to be enjoined in a record, long after the matter has been litigated in the superior courts below, in support thereof relying on ***Odinga & another Vs Independent Electoral and Boundaries Commission & 2 others; Aluochier (Interested Party)*** [2017] KESC 43 (KLR), and that the applicant has failed to establish any unique or specialized contribution that cannot be provided by the parties herein; and

[5] BEARING IN MIND that Rule 24 of the ***Supreme Court Rules*** provides for the joinder of an interested party in the following terms:

“(1) A person may, within seven days of filing a response in any proceedings, apply for leave to be joined as an interested party.

(2) An application under sub-rule (1) shall include—

- a. a description of the interested party;***
- b. a depiction of such prejudice as the interested party would suffer if the intervention was denied; and***
- c. the grounds or submissions to be advanced by the interested party, their relevance to the proceedings, and their departures from the standpoint of the parties.”***

[6] GUIDED by the decision of this Court in ***Trusted Society of Human Rights Alliance Vs Matemo & 5 others*** (Petition 12 of 2013) [2014] KESC 32 (KLR), where the Court stated:

“[17] Suffice it to say that while an interested party has a ‘stake/interest’ directly in the case, an amicus’s interest is its ‘fidelity’ to the law: that an informed decision is reached by the Court having taken into account all relevant laws, and entertained legal arguments and principles brought to light in the Courtroom.

[18] Consequently, 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. On the other

hand, an amicus is only interested in the Court making a decision of professional integrity. An amicus has no interest in the decision being made either way, but seeks that it be legal, well informed, and in the interest of justice and the public expectation. As a ‘friend’ of the Court, his cause is to ensure that a legal and legitimate decision is achieved.”

[7] **RESTATING** the Court’s pronouncement in ***Muruatetu & another Vs Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae)*** (Petition 15 & 16 of 2015 (Consolidated)) [2016] KESC 12 (KLR) on the governing principles applicable to an application for joinder as an interested party, as follows:

“... One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

- (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.”

[8] HAVING CONSIDERED the totality of the pleadings, affidavits, and rival arguments by the parties on both sides, **WE OPINE** as follows:

- i. The applicant has not satisfied the criteria for joinder of an interested party as set out in the Rules of this Court, and the principles previously enunciated by this Court regarding the admission of interested parties.
- ii. The applicant’s contention that the determination of the appeal may occasion the review, refinement, or development of professional guidelines, including the Law Society of Kenya Conditions of Sale, is, in our view, purely speculative.
- iii. In any event, the applicant did not seek to be enjoined as an interested party in the proceedings before the High Court or the Court of Appeal, hence its application before this Court is not only an afterthought, but meddlesome.

[9] ACCORDINGLY, we make the following orders:

- (i) *The application by the intended interested party, the Law Society of Kenya, is hereby dismissed.***
- (ii) *There shall be no orders as to costs.***

It is so ordered.

DATED and DELIVERED at NAIROBI this 30th Day of January, 2026.

.....
M. K. KOOME
CHIEF JUSTICE & PRESIDENT OF
THE SUPREME COURT

.....
P. M. MWILU
DEPUTY CHIEF JUSTICE &
VICE PRESIDENT
OF THE SUPREME COURT

.....
S. C. WANJALA
JUSTICE OF THE SUPREME COURT

.....
NJOKI NDUNGU
JUSTICE OF THE SUPREME COURT

.....
I. LENAOLA
JUSTICE OF THE SUPREME COURT

.....
W. OUKO
JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR,
SUPREME COURT OF KENYA