



**Omware v Ndeti (Sued as the Administrator of the Estate of Albert Athanas Makau Kyambo (Deceased)); Nzau (Intended Interested Party) (Environment & Land Case E001 of 2024) [2025] KEELC 2876 (KLR) (25 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2876 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE E001 OF 2024  
NA MATHEKA, J  
MARCH 25, 2025**

**BETWEEN**

**GRACE AKINYI OMWARE ..... PLAINTIFF**

**AND**

**THERESIA MUENI NDETI ..... DEFENDANT**

**SUED AS THE ADMINISTRATOR OF THE ESTATE OF ALBERT ATHANAS  
MAKAU KYAMBO (DECEASED)**

**AND**

**JONATHAN MUSYOKA NZAU ..... INTENDED INTERESTED PARTY**

**RULING**

1. The application is dated 21<sup>st</sup> February 2025 and is brought under Order 51, Order 40 Rules 2, 3 and 8 of the Civil Procedure Rules 2010, Section 3A and 63(c) and (e) of the [Civil Procedure Act](#), Chapter 21 of the Laws of Kenya seeking the following orders;
  1. That the matter herein be certified urgent and served of the same on the all parties be dispensed with in the first instance.
  2. That pending the inter partes hearing of this Application, this Honourable Court be pleased to enjoin the Intended Interested Party as a Defendant to this suit.
  3. That pending the inter partes hearing, the Chief Land Registrar be enjoined in this matter as it involved the determination of the authenticity of the titles and therefore ownership.
  4. That after hearing of this Application, this Honourable Court be pleased to enjoin the Intended Interested Party as a Defendant to this suit.



5. That after hearing of this Application, the court does order the Directorate of Criminal Investigation and specifically the Land Fraud Unit to investigate the Plaintiff/Respondent's title document to ascertain the authenticity of the documents presented to court.
  6. That the Defendant be struck out/removed from the current proceedings as, they have no proprietary right over the suit property.
  7. That after hearing of this Application, the court be pleased to vacate the orders of status quo issued on the 11<sup>th</sup> day of January, 2024.
  8. That the costs be in the cause.
2. It is based on the annexed Affidavit of Jonathan Musyoka Nzau and on other grounds that at all material times the suit property is still registered in the name of Jonathan Musyoka Nzau and who has the original title to the suit property the same has not been transferred onto the Plaintiff/Respondent. The Applicant herein is the registered owner of all the properties known as LR. No. 12715/374. That the Applicant herein bought parcel No. LR. No. 12715/374 from one Albert Makau Kyambo on 11<sup>th</sup> April, 2022. That the Plaintiff/Respondent has never owned the said parcel of land as the original title in his possession does not bear any entry in her names. That the Plaintiff/Applicant filed an Application dated 14<sup>th</sup> day of January, 2024, and obtained orders of status quo by misleading the court that she was in occupation of the suit property, whilst knowing very well that she has never been in occupation of the property. That the Plaintiff/Applicant deliberately sued the wrong party and caused the court to issue orders that are anchored on fraud and illegalities. That the ownership of the suit property is a matter that has been contested and settled in court in favour of one Albert Athanas Makau Kyambo in ELC Case No. 46 of 2019 (OS) Hanningtone Oloo Ogumbo -vs- Albert Makau Kyambo & The Chief Land Registrar and which the said Grace Akinyi Omware was not a party to as an owner and or as having any proprietary right over the property. That as the current owner of the suit property, it is trite that he be enjoined in the present suit to protect his proprietary interest. That the Defendant have been wrongly enjoined in this suit as ownership had changed from the late Albert Athanas Makau Kyambo to himself. The court should therefore strike out the Defendant from the present suit.
3. The Plaintiff/Respondent opposed the application stating that the Applicant had failed to exhibit crucial documents that confer transfer of proprietary rights and interest on the suit land. That the documents relied on were forgeries.
4. This court has considered the application and submissions therein. The Applicant desires to be joined as a Defendant/to these proceedings as the subject matter of this suit is a dispute over a parcel of land No. LR. No. 12715/374 was bought by him from one Albert Makau Kyambo on 11<sup>th</sup> April, 2022. He annexed a copy sale agreement and a copy of the original title deed. The Plaintiff/Respondent opposed the application and stated that Applicant has not demonstrated any link between himself and the parties or the subject matter herein as crucial documents were not produced and the ones produced were forgeries.
5. As to whether they ought to be enjoined in the suit as a Defendant or an Interested Party, the Court is guided by Order 1 Rule 10(2) of the Civil Procedure Rules which states;

“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”.

6. The Supreme Court decision in *Communications Commission of Kenya And 4 Others vs Royal Media Services Limited & 7 Others* Petition No. 15 OF (2014) eKLR where the Court pronounced itself on who an Interested Party is and held as follows:

“In determining whether the applicant should be admitted into these proceedings as an interested party, we are guided by this Court’s decision 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 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.

7. 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.?”

8. It is therefore clear that the parties who should be made parties to a suit are persons who are necessary for a complete and effectual adjudication of disputes before the court. The Applicant claims that he bought the suit land. I find that the Applicant has interest over the suit property and ought to be enjoined. I find that no prejudice shall be suffered by the parties herein as the addition of the Applicant as a Defendant to this suit is necessary and shall enable the Court to completely and effectually determine all questions involved in the suit herein in finality. The Applicant also prayed that the Chief Land Registrar be enjoined in this matter as it involved the determination of the authenticity of the titles and therefore ownership. I find that the Land Registrar could always be called to produce the parcel file and/or give evidence as to the authenticity of the said titles if need be and there is no need for them to be enjoined.

9. The Applicant stated that the Defendant has been wrongly enjoined in this suit as ownership had changed from the late Albert Athanas Makau Kyambo to himself and his name should be struck out. I find that this would be premature as the court will have to take into consideration the entire evidence before reaching any conclusion. Same would apply to prayers 5 and 7 of the application. I find this application succeeds in part and grant the following orders;

1. That Applicant to be enjoined as a Defendant in the proceedings.
2. Costs of this application to be in the cause.



It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 25<sup>TH</sup> DAY OF MARCH 2025.**

**N.A. MATHEKA**

**JUDGE**

