



**Mohamed & 5 others v Masinde Muliro University of Science and Technology  
& 5 others; Mount Kenya University (Interested Party) (Environment &  
Land Case 48 of 2019) [2025] KEELC 1478 (KLR) (24 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1478 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE 48 OF 2019  
CK NZILI, J  
MARCH 24, 2025**

**BETWEEN**

**MUDE HUSEIN MOHAMED ..... 1<sup>ST</sup> PLAINTIFF  
RODGERS SAMANYA ..... 2<sup>ND</sup> PLAINTIFF  
HASSAN ABDULAHI ALI ..... 3<sup>RD</sup> PLAINTIFF  
JAMES NJENGA NYAGA ..... 4<sup>TH</sup> PLAINTIFF  
ABDULRAHMAN WAMALA ..... 5<sup>TH</sup> PLAINTIFF  
THE PUBLICAN (AFRICA) LIMITED ..... 6<sup>TH</sup> PLAINTIFF**

**AND**

**MASINDE MULIRO UNIVERSITY OF SCIENCE AND  
TECHNOLOGY ..... 1<sup>ST</sup> DEFENDANT  
TURKANA UNIVERSITY COLLEGE (BEING SUED AS A CONSTITUENT  
COLLEGE OF THE 1ST DEFENDANT) ..... 2<sup>ND</sup> DEFENDANT  
THE COUNTY GOVERNMENT OF TURKANA ..... 3<sup>RD</sup> DEFENDANT  
THE COMMISSIONER OF LAND ..... 4<sup>TH</sup> DEFENDANT  
THE COUNTY SURVEYOR TURKANA COUNTY ..... 5<sup>TH</sup> DEFENDANT  
THE HON. ATTORNEY GENERAL ..... 6<sup>TH</sup> DEFENDANT**

**AND**

**MOUNT KENYA UNIVERSITY ..... INTERESTED PARTY**



## RULING

1. Amendment of pleadings and joinder of parties are governed by the power given to the court to be exercised judiciously and on sound principles. In *Civicon Ltd -vs- Kivuwatts Ltd & Others* [2015] eKLR, the court observed that the objective of the Rules is to bring on record all parties to the dispute relating to the subject matter, in that the dispute may be determined in their presence at the time without any protraction. The court held that any party reasonably affected by the pending litigation is a necessary and proper party and ought to be enjoined.
2. Therefore, in exercising powers under Order 1 Rule 10(2) of the *Civil Procedure Rules*; the court has to bear in mind the unique circumstances of the case; the necessity of the party in the determination of the subject matter; any direct prejudice likely to be suffered by the party; the practicability of the execution of the order sought in the suit in the event the plaintiff succeeds. A party must then demonstrate sufficient interest in the suit.
3. In *Zephir Holding Ltd -vs- Mimosa Plantations Ltd* [2014] eKLR, a proper party was defined as one impleaded in the suit and qualifies the threshold of a plaintiff or defendant, under Order 1 Rules 1 and 2 of the Civil Procedure Rules, and who is necessary to the adjudication of the suit completely and effectually, by settling all questions involved in the suit.
4. Further, in *Gurbachan Singh Kalsi -vs- Yowani Ekori C. A No. 62 of 1958*, the court observed that a party must bring forward their whole case and should not litigate in instalment as to discovery of new issues. In *Churanji Lal & Co -vs- Bhaijee* (1932) 14 KLR 28, the court observed that discovery of fresh evidence is different from development of fresh circumstance and that whether the respondent was badly advised and has since discovered a fact that entirely changes the aspect of the case and which could not have been discovered with reasonable diligence.
5. The plaintiffs are before the court, saying that they need to amend the plaint to introduce new parties. The defendants oppose the application for being made late; lacking merits; unnecessary since the parties sought to be introduced have no relevance to the subject matter; there is no cause of action pleaded against them by the plaintiffs and they have no relevance in titled land so as to qualify as necessary parties.
6. The court has looked at the draft plaint. The suit land is already titled as pleaded by the plaintiffs in 2019. The defendants and the interested parties have also contended this position in their defence and a counterclaim. The plaintiffs knew all along the cause of action that they pleaded. The role of the proposed 7<sup>th</sup> and 8<sup>th</sup> defendants has not been pleaded. How they will be affected and shall contribute to the complete and affectual determination of the suit is not clear.
7. In *Kingori -vs- Chege & Others* [2002] 2 KLR 243, the court held that the intended party must be: (1), a necessary party; (2), a proper party; (3), if a defendant, there could be a relief flowing from the defendant to the plaintiff; (4), the alternative order or decree cannot be effected without his presence in the matter; and (5), his presence is necessary to enable the court to effectively and completely adjudicate upon and settle all question involved in the matter. See also *Departed Asians Property Custodian Board -vs- Jaffer Brothers Ltd* [1999] 1 EA 55.
8. In my considered view, I agree with the defendants that the proposed 7<sup>th</sup> and 8<sup>th</sup> defendants are not necessary. The said parties are duly represented by the defendants already on record, as they are officers of the National Government, seconded to the counties to offer devolved and national government services. They can as well be served to attend court as witnesses. I disallow the proposed amendments



to the extent only of introducing the proposed 7<sup>th</sup> and 8<sup>th</sup> defendants; otherwise, the amended plaint shall be filed and served within 14 days from the date hereof, with the necessary qualification as alluded to in the ruling.

9. The consequence is that today's hearing is adjourned with costs to the defendants and interested parties who have already travelled. The costs to be met by the plaintiffs before the next hearing date.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT LODWAR ON THIS 24<sup>TH</sup> DAY OF MARCH 2025.**

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

In the presence of:

Court Assistant - A. Ebenyo

Plaintiffs present

Kitiwa for the 1<sup>st</sup> and 2<sup>nd</sup> defendants present

Mr. Lele for 3<sup>rd</sup> defendant present

Cheruiyot for 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants present

Mr. Omondi for the interested party present

