



**Haji & another v Kazungu & 49 others; Koi & 172 others (Interested Parties) (Environment & Land Case 23 of 2017) [2023] KEELC 18883 (KLR) (13 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18883 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 23 OF 2017**

**EK MAKORI, J  
JULY 13, 2023**

**BETWEEN**

**OMAR HASSAN HAJI ..... 1<sup>ST</sup> PLAINTIFF**

**HASSAN ABDALLA HASSAN ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**SAFARI KAZUNGU & 49 OTHERS ..... DEFENDANT**

**AND**

**CHARO TETE KOI & 172 OTHERS ..... INTERESTED PARTY**

**RULING**

1. That the Interested Parties seek to be joined in this matter. They will seek to plead adverse possession over the suit property. Looking at the record there is already a Judgment by Olola J. delivered and dated 12<sup>th</sup> January 2021 between the Plaintiff and the Defendants. The record shows the judgment was after a full hearing of all the parties on merit.
2. The issue for determination is whether the joinder of the interested parties will be germane at this stage. In *Departed Asians Property Custodian Board v Jaffer Brothers Ltd* [1999] 1 EA 55 it was held as follows:

“A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter...For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete



settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for the avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the Court in that suit. Alternatively, a person qualifies, (on an application of a Defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.”

3. In *Civicon Limited v Kivuwatt Limited and 2 Others* [2015] eKLR the court observed as follows:

“Again the power given under the Rules is discretionary which discretion must 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, or 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.”

4. Whereas a joinder can be done at any stage. Looking at the suit I have, there is already a judgment in place between the Plaintiff and the Defendants. The Intended Interested wants to be joined and plead adverse possession of the suit property. It will be convoluting the matter further if the current Interested Parties were to be joined. Since they were not parties initially and this claim does not affect them, they are at liberty to bring afresh suit of their pleading adverse possession. The circumstances we have in my view negative joinder.

5. Application dated 24<sup>th</sup> May 2023 is hereby dismissed. Since the other parties did not participate in this application, there will be no order as to costs.

**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS 13TH DAY OF JULY 2023**

**E.K. MAKORI**

**JUDGE**

**In the presence of :**

**Mr. Erastus Ngala representing 171**

**Interested Parties**

**Court Clerk: Happy**

