



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kithuka v Kabui & 2 others (Environment & Land Case  
74 of 2020) [2025] KEELC 172 (KLR) (29 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 172 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 74 OF 2020**

**A NYUKURI, J  
JANUARY 29, 2025**

**BETWEEN**

**RICHARD KITHUKA ..... PLAINTIFF**

**AND**

**WILLIAM KALOKI KABUI ..... 1<sup>ST</sup> DEFENDANT**

**MBITHE PHILIP ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**MARY KAMUYU GACHIHI ..... PROPOSED DEFENDANT**

**RULING**

**Introduction**

1. Before court is an application filed by the Proposed 3<sup>rd</sup> defendant one Mary Kamuyu Gachihi dated 20<sup>th</sup> June 2024, seeking orders that she be joined to these proceedings as a third defendant and that the court be pleased to order the plaintiff to amend his pleadings accordingly and serve the same upon her in 14 days from the date of the order of the court. She also sought that the court do grant her leave of 14 days to file defence, upon service of the amended pleadings by the plaintiff.
2. The application is supported by the affidavit sworn by the applicant on 20<sup>th</sup> June 2024. It is the applicant's case that on 28<sup>th</sup> August 2013, she entered into a sale of land agreement with the 1<sup>st</sup> and 2<sup>nd</sup> defendants for purchase of a portion of land measuring 1.03 hectares to be excised from the parcel of land known as Donyo Sabuk/ Komarock Block 1/4584 (suit property). Further that she paid the purchase price in full together with stamp duty. She also stated that she did due diligence before purchase of the property by conducting an official search and also a physical search on the ground and found no impediments regarding her purchase of the property. She also stated that she was surprised to find that the plaintiff had trespassed on the suit property by fencing a portion thereof and claiming that



it was his, which prompted the applicant herein to file Kangundo Magistrates Court Case Number 32 of 2022, which is pending.

3. The applicant claimed that her property is Donyo Sabuk/ Komarock Block 1/ 47388 which is one of the seven subdivisions of the suit property and therefore, a determination of this suit regarding ownership of the plaintiff's portion of the suit property will affect the applicant's interest. She further stated that the plaintiff had placed cautions on the suit property and was aware that the applicant herein had interest in the same and would be affected by the decision of this Court. She argued that she stands to suffer loss if the application is not allowed as she is a necessary party to these proceedings and that justice demands that she be joined hereto. She attached a copy of the sale agreement; the title deed; green card and mutation form.
4. The application was opposed by the plaintiff Richard Kithuka, who filed his replying affidavit dated 22<sup>nd</sup> August 2024. The plaintiff's case was that on diverse dates between 11<sup>th</sup> July 1993 and 18<sup>th</sup> January 1997, vide four different transactions, he purchased a total of 11.2 acres of land from William Kaloki Kabui the 1<sup>st</sup> defendant to be excised from then plot No. 6A, which was later registered as Donyo Sabuk/ Komarock Block 1/4584 in the names of the 1<sup>st</sup> and 2<sup>nd</sup> defendants herein. Further that on 12<sup>th</sup> September 2013, he learnt that the 1<sup>st</sup> and 2<sup>nd</sup> defendants attended the land control board for purposes of transferring the plaintiff's land to 3<sup>rd</sup> parties. He conceded to the applicant's position that the parcel of land known as Donyo Sabuk/ Komarock Block 1/ 47388 is a subdivision of parcel number Donyo Sabuk/ Komarock Block 1/4584 as per the seven searches he obtained in respect thereof, but contended that the said property was unlawfully and fraudulently registered in the applicant's name. According to the plaintiff, the applicant cannot choose in which capacity she should be joined to this suit, but that she should be joined as interested and or third party as the plaintiff did not purchase the suit property from her.
5. The application was disposed by way of written submissions, and on record are submissions filed by the applicant. Counsel for the applicant submitted that Order 1 Rule 10 (2) of the Civil Procedure Rules empowers this court to join a necessary party to these proceedings. Counsel referred the court to the decisions in the cases of Brek Sulum Hemed v Constituency Development Fund Board & Kenya Rural Roads Authority and Civicon Ltd v Kivuwatt Ltd & 2 Others [2015] e KLR and submitted that as the applicant was the registered proprietor of a portion of the suit property, he had a clear and identifiable interest in these proceedings and deserves to be joined thereto as a defendant.

#### **Analysis and determination.**

6. The court has carefully considered the application response and written submissions. The only issue that arises for the court's determination is whether the applicant has demonstrated that she deserves to be joined to these proceedings as a defendant.
7. Order 1 Rule 10 (2) of the Civil Procedure Rules allows joinder of a necessary party to any proceedings and provides as follows;  

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.
8. Therefore, the court has power either on its own motion or on the application by either party, to join any person to the proceedings before it, either as plaintiff or defendant, where it is clear that such person



is a necessary party to the suit and their joinder is necessary for the complete and effectual determination of all the issues in the dispute.

9. In the case of Gladys Nduku Nthuki v Letshego Kenya Limited; Mueni Charles Maingi (Intended plaintiff) [2022] e KLR the court cited with approval the decision in the Ugandan case of Deported Asians Custodian Board vs. Jaffer Brothers Ltd [1999] 1 E.A. 55 (SCU), a position restated in Civicon Limited vs. Kivuwatt Limited and 2 Others [2015] eKLR in which 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, 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.

10. In the instant case, the applicant has shown that she is the registered proprietor of the parcel of land known as Donyo Sabuk/ Komarock Block 1/ 47388 which is a subdivision of Donyo Sabuk/ Komarock Block 1/4584, a fact conceded to and confirmed by the plaintiff who accuses the applicant of an illegal and fraudulent transfer. The plaintiff's argument that the applicant should not be made a defendant, but an interested party because he did not purchase the suit property from her and also that the applicant got registered as proprietor of a portion of the suit property by fraud, amounts to approbating and reprobating, which in my view is an argument without merit because, as the applicant's interest in the suit is not just that she will be affected by the decision herein, but that she also claims ownership of part of the suit property. Her interest is therefore beyond that of an interested party. It is therefore clear that she has a clear interest in the suit property and should be made a primary party in the suit to avoid multiplicity of suits and to allow the court to effectively and completely determine the issues in dispute.
11. I am therefore satisfied that the applicant has met the threshold for joinder to this suit as defendant. In the premises I find and hold that the application dated 20<sup>th</sup> June 2024 is merited and the same is allowed as follows;
- a. The applicant herein Mary Kamuyu Gachuhi is hereby joined to these proceedings as the 3<sup>rd</sup> defendant.
  - b. The plaintiff is at liberty to amend his pleadings accordingly to include the 3<sup>rd</sup> defendant herein within 14 days.
  - c. Upon service, and or upon lapse of 21 days of this ruling, the 3<sup>rd</sup> defendant shall file and serve her statement of defence, witness statements and documents.
  - d. There is no order as to costs.
12. It is so ordered.



**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 29<sup>TH</sup> DAY OF JANUARY, 2025 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM.**

**A. NYUKURI**

**JUDGE**

**In the presence of;**

Mr. Ngure for the Plaintiff

Mr. Githaiga for the proposed 3<sup>rd</sup> defendant/Applicant

No appearance for the defendant

Court Assistant: M. Nguyayi

