



**Mbulia Community v Bilauri Limited & another (Environment & Land Case E003 of 2024)  
[2025] KEELC 1147 (KLR) (Environment and Land) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1147 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VOI  
ENVIRONMENT AND LAND  
ENVIRONMENT & LAND CASE E003 OF 2024  
EK WABWOTO, J  
MARCH 13, 2025**

**BETWEEN**

**MBULIA COMMUNITY ..... PLAINTIFF**

**AND**

**BILAURI LIMITED ..... DEFENDANT**

**AND**

**BRENNAN CORCORAN LIMITED ..... PROPOSED DEFENDANT**

**RULING**

1. The Defendant herein, Bilauri Limited moved this court vide an application dated 8<sup>th</sup> February 2025 seeking the following reliefs:-
  - i. That this Honourable Court be pleased to add Brennan Corcoran Limited as the 2<sup>nd</sup> Defendant in this suit and 2<sup>nd</sup> Plaintiff in the Counter-claim herein.
  - ii. That the Honourable Court be pleased to grant leave to the 1<sup>st</sup> Defendant herein to amend its Statement of Defence and Counter-claim dated 8<sup>th</sup> July 2024 and filed in Court on even date in terms of the Amended Statement of Defence and Counter-claim dated 7<sup>th</sup> February 2025 be deemed properly filed upon payment of requisite court fees thereto.
  - iii. That the Honourable Court be pleased to make such further or other orders as it may deem fit.
  - iv. That the costs of this application be provided for.
2. The said application was supported by the affidavit sworn by Richard Corcoran on the 8<sup>th</sup> February 2025.



3. The Defendant/Applicant contended that the Plaintiff filed this suit against the Defendant Bilauri Limited for alleged trespass and occupation of the suit property namely Title No. Taita Taveta/Mbulia Group Ranch situate in Voi.
4. It was contended that a company known as Brennan and Corcoran Ltd first came into the suit property in 2011, established a conservancy and continued operations of a tourist lodge and conservancy on the suit property until 2021 when the Plaintiff was incorporated and visited the suit property only to discover that it is the Defendant on the property. .
5. It was averred that the Defendant is an Assignee of a License dated 1-12-2011 between the said Brennan and Corcoran Ltd and demised Mbulia Group Ranch, whom the Plaintiff Community Land Management Committee succeeded in 2021, for the said Brennan and Corcoran Ltd to establish and operate a Tourist Lodge and Wildlife conservancy on 11,412 acres of the suit property for 30 years from 1-01-2012 until 2042.
6. In 2018, the said Brennan and Corcoran Ltd assigned the License to the Defendant with the approval of the duly and lawfully elected committee of the demised Mbulia Group Ranch Committee who the Plaintiffs Community Land Management Committee succeeded in 2021.
7. According to the Defendant/Applicant the said Brennan and Corcoran Ltd is therefore a necessary party as a 2<sup>nd</sup> Defendant in this suit for purposes of fair and just determination of among others, the bonafides or lawfulness of the License dated 1-12-2011 between the demised Mbulia Group Ranch and the said proposed party and or whether there was License to be assigned to the Defendant and whether the Defendant can claim interest based on the assignment.
8. It was averred that Brennan and Corcoran Ltd also wishes to counter-claim against the Plaintiff based on same cause of action, subject matter and contracts and relies on the same set of facts and contracts with the Defendant herein and hence it is necessary to amend the Defendant's Statement of Defence and Counter-claim dated 8<sup>th</sup> July 2024 in order for the Defendant to plead all defences against the claim and counter-claim with the proposed Brennan and Corcoran Ltd for indemnity against the Plaintiff's management and correct the erroneous description of the suit property in the Counter-claim to enable the Honourable Court to determine the real question in controversy between all the necessary parties herein.
9. It was further averred that It has become necessary to amend the Defendant's Statement of Defence and Counter-claim to plead all the issues with preciseness and claim the requisite prayers to enable the Honourable Court to determine all the common issues between the Plaintiff, the Defendant and the 2nd Defendant; Brennan And Corcoran Ltd.
10. According to the Defendant/Applicant, the proposed amendments and joinder are necessary in order to effectual and conclusive adjudication of the dispute between parties and settlement all questions involved in the suit.
11. It was stated that no prejudice will be suffered by the Plaintiff if the application is allowed as no new cause of action has been added except the new party who the Plaintiff has mentioned and pleaded in the Plaint thus acknowledging the common cause of action.
12. On 13<sup>th</sup> February 2025, this court in considering the said application directed that the same be canvassed by way of written submissions. All parties were granted ample time to comply, however upon perusal of the record as per the Case Tracking System none of the parties had filed any written submissions as at the time this court retired to write its Ruling. That notwithstanding, the court is obligated to consider the application and any responses filed in respect to the said application.



13. Having considered the said application, the issue for determination is whether the application is merited and warrants the grant of the prayers sought.
14. The Applicant seeks to add Brennan Corcoran Limited as the 2<sup>nd</sup> Defendant in this suit and the 2<sup>nd</sup> Plaintiff in the Counterclaim. The Applicant has justified this on the basis of the grounds made in support of the application. The Applicant also seeks leave to have the defence and Counterclaim dated 8<sup>th</sup> July 2024 amended in terms of the Statement of Defence and Counterclaim dated 7<sup>th</sup> February 2025 annexed to the supporting affidavit dated 10<sup>th</sup> February 2025.
15. The concept and substratum of joinder of parties is solely governed by the provisions of order 1 rules 1 to 25 of Civil Procedure Rules, 2010. It is trite law that on the decision for joinder, court has discretionally power to do so. Which means it should be applied capriciously and judicially without any biases or abuse of the power. What to be considered for joinder are the following facts. Firstly, it is based on the principles of natural Justice – not to be condemned unheard and accorded an opportunity to be heard (principle of audi alteram partem). Secondly, joinder should be permitted of all parties in whom any right to relief in respect of or arising out of the same act or transactions alleged to exist – whether jointly or severally or in the alternative or in the alternative where of such persons brought separate suits any common question of law of fact would arise – order 7 rule 9 of Civil Procedure Rules, 2010. Suffice to say, a court even on its own motion (suo moto) can add a party to the suit of such a party is necessary for the determination of the real matter in dispute (add value) or whose presence is necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit.
16. It therefore follows that joinder of parties is permitted by law and it can be done at any stage of the proceedings.  
It is equally worth noting that joinder of parties may be refused where such joinder would lead into practical problems of handling the existing cause of action together with the one of the party being joined, is unnecessary or will just occasion unnecessary costs on the parties in the suits – or just being a nuisance on rocking the boat from the bottom. In other words, joinder of parties would be declined where the cause of action being proposed or the relief sought is incompatible to or totally different from the existing cause of action or the relief. The determining factor in joinder of parties would be a common question of fact or law would arise between the existing and the intended parties.
17. In the case of J.M.K =Versus= M.W.M & Another (2015) eKLR the court stressed that:-  
“..an application for joinder of parties can be filed only in pending proceedings that the power of the court to add a party to proceed can be exercised at any stage of the proceedings either before or during the trial and that it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable.”  
See also Lucy Nangari Ngigi & 128 others v National Bank of Kenya Limited & another (2015) eKLR.
18. In respect to amendment of pleadings, the legal principles on amendment of pleadings are provided for under order 8 rules 1,2 and 3 of the Civil Procedure Rules, 2010. Before the close of pleadings, the leave of court is not required as opposed to when there has been closure of pleadings. The principles upon which a court acts in an application to amend pleadings before/during trial are well settled and succinctly stated in several cases. These includes the case of “Eastern Bakery v Castelino (1958) EA 461



(U) at page 462 and civil case No 7 of 2017, St Patrick's Hills School Limited v Bank of Africa Kenya Limited" eKLR (2018) where courts held, inter alia:

"It will be sufficient, for purposes of the present case, to say that amendments to pleadings sought before the hearings should be freely allowed, if they can be made without injustice to the other side, and that there is no injustice to be if the other side can be compensated by costs...."

19. The same was later on buttressed by Bramwell, LJ in "Tildesley v Harper" (1878), 10 Ch D at page 296 stated as under:

"My practice has always been to give leave to amend unless I have been satisfied that the party applying was acting mala fide, or that, by his blunder he has done some injury to his opponent which could not be compensated by costs or otherwise..."

20. The court having considered the said application, it is evident that the suit and the reliefs sought against the Defendant expressly pleaded in the plaint would directly and adversely affect the Proposed Defendant.

21. The court notes that the instant suit is still pending and the same is yet to be heard and hence the application made is bonafide, timeously brought and meritorious as the amendment will not be introducing a new cause of action which is substantially different from the already existing one not offending Order 8 Rule 3(5) of the Court Procedure Rules, 2010. Besides the court will also allow the Proposed Defendant an opportunity and to file its defence and response to the suit.

22. In view of the foregoing, it is the finding of this court that the application dated 8<sup>th</sup> February 2025 is merited and the same is hereby allowed in the following terms:-

- i. Brennan Corcoran Limited is hereby joined to this suit as the 2<sup>nd</sup> Defendant and the 2<sup>nd</sup> Plaintiff in the Counterclaim.
- ii. The 1<sup>st</sup> Defendant is hereby granted leave to amend its Statement of Defence and Counterclaim dated 8<sup>th</sup> July 2024 and file and serve the same within 2 days from today.
- iii. The 2<sup>nd</sup> Defendant Brennan Corcoran Limited shall have 14 days upon service to file and serve its Statement of Defence, list and bundle of documents and the list and witness statements that it intends to rely on during trial.
- iv. Each party to bear own costs of the application.
- v. The matter shall be listed for pre - trial directions on a date to be fixed after delivery of this Ruling.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON 13<sup>TH</sup> DAY OF MARCH 2025 AT VOI.**

**E. K. WABWOTO**

**JUDGE**

In the presence of:-

N/A for the Plaintiff.



Mr. Litoro for the Defendant.

Court Assistant: Mary Ngoira.

