



**Njoka & 35 others v Harrison (Sued in his capacity as the Personal Representative of the Estate of Munyi Mbiti - Deceased) & 3 others (Environment & Land Case 15 of 2020) [2025] KEELC 3718 (KLR) (28 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3718 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT & LAND CASE 15 OF 2020**

**AK BOR, J**

**APRIL 28, 2025**

**BETWEEN**

**MARCLUS NTHIGA NJOKA & 35 OTHERS & 35 OTHERS & 35 OTHERS & 35 OTHERS & 35 OTHERS & 35 OTHERS & 35 OTHERS ..... PLAINTIFF**

**AND**

**JONATHAN NJERU HARRISON (SUED IN HIS CAPACITY AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF MUNYI MBITI - DECEASED) & 3 OTHERS & 3 OTHERS & 3 OTHERS & 3 OTHERS & 3 OTHERS & 3 OTHERS & 3 OTHERS ..... DEFENDANT**

**RULING**

1. The Plaintiffs filed the application dated 1/3/2023 seeking leave to join Lucy Ngithi Ileri, Patrick Muriithi John, James Mugo John and Paul Kariuki John as the 37<sup>th</sup> to the 41<sup>st</sup> Plaintiffs in the suit respectively. The application was made on the grounds that the intended plaintiffs were settled on parcel numbers Mbeere/Kirima/5881 to 5188 whose mother title was Mbeere/Kirima/4090 and that they had buried their kin on the suit land. It was urged that during the filing of the suit these parties were inadvertently left out and that their presence was important in assisting this court make a determination in this suit and to enable them prosecute their claim to the suit land since their interest was similar to that of all the other Plaintiffs in the suit. It was also urged that there was need to amend the plaint further to enable the intended plaintiffs to present their case.
2. Marclus Nthiga Njoka, the 1<sup>st</sup> Plaintiff in this suit swore the supporting affidavit and averred that the Plaintiffs, the Defendants and the intended plaintiffs were all members of the Ngithi Clan and that the 1<sup>st</sup> Defendant was the administrator of the Estate of the former Chairman of Ngithi clan. He averred that the former Chairman of Ngithi Clan represented the Plaintiffs and the intended plaintiffs in Minister's Appeal No. 149 of 1996 between the Ngithi Clan and the 16<sup>th</sup> Mbeere Clan and that he was



- awarded Mbeere/Kirima/4090 which was to be excised from Mbeere/Kirima/2244 and shared among the Ngithi clan members including the Plaintiffs and the intended plaintiffs. That upon demarcation of the land, the Chairman was registered as proprietor of Mbeere/Kirima/4090 on the understanding that he was to hold it in trust for the Ngithi clan members. That unfortunately he died before he could share out the land among the clan members.
3. Marclus Nthiga Njoka added that the intended plaintiffs had settled on parcel numbers Mbeere/Kirima/5881 to 5188 whose mother title was Mbeere/Kirima/4090, and which are the subject of litigation in this suit. The 1<sup>st</sup> Plaintiff exhibited photographs showing the houses which he claimed the intended plaintiffs had built on the suit land and graves of their relatives buried on the land. Mr. Njoka urged that the intended plaintiffs were inadvertently left out when this suit was filed and that their presence was important in assisting this court make a just determination of this dispute. Further, that would enable them prosecute their claim to the suit land since their interest in the suit land was similar to that of all the other Plaintiffs. He added that the court had the inherent jurisdiction to join additional parties to the suit to enable the effectual and conclusive determination of the issues in this suit.
  4. The 1<sup>st</sup> Defendant, Jonathan Njeru Harrison swore the Replying Affidavit opposing the application. He averred that he allowed the intended 37<sup>th</sup> plaintiff, Lucy Ileri, to bury her husband on his land on condition that she would not lay claim to the land and that they went to an advocate and she signed an agreement to that effect. He exhibited a copy of the agreement dated 19/7/2017. He added that he gave notice to the intended plaintiffs to vacate the suit land in May 2018 and produced copies of the notices. He concluded that the intended plaintiffs had not given good reasons as to why they should be joined as parties to this suit.
  5. Lucy Ngithi Ileri swore the Further Supporting Affidavit and denied entering into a valid agreement with the 1<sup>st</sup> Defendant or receiving any notice to vacate the suit land. She maintained that she was in occupation of the suit land and that she was settled on the suit land by her late husband who was a member of the Ngithi Clan. She urged that their joinder to the suit would save the court time and resources in hearing two separate suits over the same subject matter.
  6. Parties filed written submissions which the court has considered. The Plaintiffs submitted that the intended plaintiffs had demonstrated that their claim was similar to that of the Plaintiffs in the suit and that the Plaintiffs' claim to the suit land was based on customary trust as members of the Ngithi Clan. That if the court does not allow the application, the court may make orders that are adverse to the intended plaintiffs without hearing them. They relied on [\*Kenya Union of Water and Sewerage Employees v Tana and Atbi rivers Development Authority \(Intended Interested Party\)\*](#) (Cause E288 of 2021) [2022] KEELRC 1379 (KLR) (5 July 2022) (Ruling) on the principles for joining a party which include the personal interest or stake of the party, the prejudice to be suffered by the intended party if they are not joined to the suit and their case which should not be a replication of what the other parties have already presented.
  7. The Defendants submitted that the 37<sup>th</sup> intended plaintiff had already vacated the suit land and that the notice to vacate proved that the intended plaintiffs were licensees on the suit land and that licenses do not confer ownership or exclusive possession. They cited a decision on the point that a license is revocable at the will of the licensor and that a licensee did not have any legal claim or interest in the land. It was urged that upon being issued with notices to vacate the suit land by the 1<sup>st</sup> Defendant, the consent to use or occupy the land expired and the continued use or occupation of the land amounted to trespass. They also submitted that the intended plaintiffs had not brought any documents to support ownership of the suit land. Further, that they had not given any reason as to why they were left out when the suit was filed.



8. The issue for determination is whether the court should allow the joinder of the intended parties as the 37<sup>th</sup> to 41<sup>st</sup> plaintiffs to this suit. The court notes from the Amended Plaint that the claim by the Plaintiffs is for a declaration that the Minister's Award in Appeal no. 149 of 1996 awarding the late Harrison Munyi the land known as Mbeere/Kirima/4090 contained an error for omitting to indicate that he was to hold the land in trust for members of the Ngithi Clan who are the Plaintiffs in this case. The other prayer is for the 1<sup>st</sup> Defendant's name to be struck out from the register as the proprietor of Mbeere/Kirima/4090 and for the 1<sup>st</sup> Plaintiff to be registered as proprietor of the land to hold it in trust for members of the Ngithi Clan and to share among Ngithi Clan members.
9. The intended plaintiffs have not shown the prejudice they would suffer if they are not joined to the suit. In this court's view, their claim is a replica of what the existing Plaintiffs have already presented.
10. Based on the averments in the suit, the reliefs sought with respect to the suit land are for the benefit of members of the Ngithi Clan, which would include the intended plaintiffs and other persons who are not parties to this suit. If the Plaintiffs' claim succeeds, the plaintiffs would have to undertake the exercise of ascertaining who the members of the Ngithi Clan are for purposes of sharing out the suit land to them. That is the point at which the intended Plaintiffs and other clan members will need to be brought on board for purposes of sharing out the land. It is neither feasible nor practicable to have all the members of the Ngithi Clan joined to the suit as this would delay the expeditious determination of this dispute.
11. The court declines to grant the orders sought in the application dated 1/3/2023. Each party will bear its own costs.

**DELIVERED VIRTUALLY AT EMBU THIS 28<sup>TH</sup> DAY OF APRIL 2025.**

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Kalamu Ndolo for the Plaintiffs

Ms. Cynthia Wanjiku for the Defendants

Court Assistant- Diana Kemboi

