



**Ngugi v Nayer & another (Environmental and Land Originating Summons  
E026 of 2023) [2025] KEELC 4802 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 4802 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E026 OF 2023**

**CG MBOGO, J**

**APRIL 24, 2025**

**BETWEEN**

**JOHN NGUNJIRI NGUGI ..... PLAINTIFF**

**AND**

**TRILOCK SINGH NAYER ..... 1<sup>ST</sup> DEFENDANT**

**NARINDER KAUR NAYER ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Before this court for determination is the notice of motion dated 31<sup>st</sup> January, 2025, filed by the defendants/applicants (sic) and it is expressed to be brought under Sections 1A, 1B, 3A and 18(b) of the *Civil Procedure Act* and Order 1 Rule 10 (2), and Order 51 Rule 1 of the Civil Procedure Rules, and Section 3 of the *Environment and Land Court Act* and Article 159 (2) of *the Constitution* of Kenya, seeking the following orders;
  1. Kuldeep Singh Nayer, the executor of the estate of the late Trilock Singh Nayer, be joined as a party to this suit in place of the deceased defendants.
  2. The 1<sup>st</sup> defendant Trilock Singh Nayer and the 2<sup>nd</sup> defendant Narinder Kaur Nayer who died on 8<sup>th</sup> May 2014 and 30<sup>th</sup> November, 2008, respectively be struck out from the suit.
  3. Sann Limited be joined as a defendant in this suit.
  4. Leave be granted to the plaintiff to amend his pleadings to accommodate the joinder of the applicant and Sann Limited as the defendants and corresponding leave be granted to the defendants to file their responses to the amended pleadings.
  5. Any other relied the court deems fit and just to grant.



2. The application is premised on the grounds inter alia that the 1<sup>st</sup> and 2<sup>nd</sup> defendants died on 8<sup>th</sup> May, 2014 and 30<sup>th</sup> November 2008 respectively, and that the suit was filed long after their deaths making it defective.
3. The application is supported by the affidavit of Kuldeep Singh Nayer sworn on even date. Kuldeep deposed that he is the executor of the estate of the 1<sup>st</sup> defendant who died on 8<sup>th</sup> May, 2014, and that despite their demise, the plaintiff/respondent went ahead and filed the suit against deceased persons. He deposed that a suit cannot be instituted against a deceased person, but against its legal representatives. Kuldeep deposed that the plaintiff/respondent has failed to take any steps to substitute the deceased with their legal representatives, and as framed, the suit is incompetent, and an abuse of the court process.
4. Kuldeep further deposed that as the executor of the estate of the deceased 1<sup>st</sup> defendant, he has a legal duty to protect the interests of the estates, and he is a necessary party in this suit. Further, that the plaintiff/respondent has instituted this suit in disregard of Sann Limited, who is the lawful landlord of the plaintiff/respondent, and a necessary party to these proceedings and its exclusion from the suit property is a serious misrepresentation of facts.
5. The application was opposed vide the replying affidavit of the plaintiff/respondent sworn on 5<sup>th</sup> February, 2025. The plaintiff/respondent deposed that there is no mistake in dealing with the estate whereas a legal representative failed to deal with the said estate legally and procedurally as required in law. Further, he deposed that due process was followed through substituted service in which the legal administrators failed in undertaking action appropriately. Further, that at the time of filing the suit, he was not aware of any legal representatives at all.
6. The plaintiff/respondent deposed that there is nothing to demonstrate that the 2<sup>nd</sup> defendant has any legal representatives to his estate, and as such, his prayers against the 2<sup>nd</sup> defendant is not opposed. Further, he deposed that the alleged Sann Limited is not an essential party to the suit at hand, as it is not the registered owners of the subject property. It was deposed that enjoining a party who is not registered as the owner of the suit property would be improper, baseless and unjust.
7. The application was canvassed by way of written submissions. The applicant filed his written submissions dated 13<sup>th</sup> March, 2025, where he raised two issues for determination as listed below:
  - a. Whether the suit against the deceased defendants is sustainable in law and if substitution and joinder of the applicant is merited.
  - b. Whether Sann Limited should be joined as a defendant in accordance with Order 1 Rule 10 (2) of the Civil Procedure Rules.
8. On the first issue, the applicant submitted that it is undisputed that the defendants are deceased, and that the proceedings against them in their legal capacity is untenable and a nullity. Further, that the deceased defendants jointly owned the property that is the subject of the dispute, and that upon the death of the 2<sup>nd</sup> defendant, the 1<sup>st</sup> defendant became the sole owner of the property by virtue of the law governing joint ownership. It was further submitted that if the substitution is not granted, the suit against the defendants will be procedurally defective and unenforceable. The applicant relied on the cases of Fidelity Commercial Bank Limited v Greenwoods Limited & 3 others [2015] eKLR, and Joseph Ng'ang'a Njoroge v Kabiri Mbiti [1986] eKLR.
9. On the second issue, the applicant submitted that Sann Limited satisfies the principle for joinder for the reason that the plaintiff/respondent acknowledges the tenancy agreement dated 9<sup>th</sup> October, 2012, and the fact that Sann Limited purchased the property from the deceased defendants. Further, it was



submitted that the joinder of Sann Limited is necessary to ensure that all parties with an interest in the property are all before the court to avoid multiplicity of suits. To buttress on this submission, the applicant relied on the cases of Kingori v Chege & 3 Others [2022] eKLR and Peter Mbiri Michuki v Samuel Mugo Michuki [2014] eKLR.

10. The plaintiff/respondent filed his written submissions dated 24<sup>th</sup> February, 2025, where he raised three issues for determination as follows:
  - i. Whether or not Sann Limited ought to be enjoined as a party to the suit.
  - ii. Whether or not the executor should be enjoined as a party to the suit.
  - iii. Whether or not the originating summons (OS) should be amended and with which party allowed to file its response.
11. On all the issues above, the plaintiff/respondent submitted that the subject matter relates to a claim being made over ownership of L.R 209/359 on adverse possession, which is registered in the names of the deceased defendants. He submitted that there is no correlation over the suit property with Sann Limited so as to warrant to be enjoined in this suit as a defendant. Further, it was submitted that the 1<sup>st</sup> defendant lacks the legal capacity to represent the 2<sup>nd</sup> defendant's interest since the grant of the letters of administration are only limited to the 1<sup>st</sup> defendant as executor and not over the interests of the 2<sup>nd</sup> defendant. The plaintiff/ respondent relied on the cases of Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others [2015] eKLR, Departed Asians Property Custodian Board v Jaffer Brothers Ltd [1999] 1 EA 55, and Joseph Njau Kingori v Robert Maina Chege & 3 Others [2002] eKLR.
12. I have considered the application, replies thereof and the written submissions as well as the authorities cited by both parties and in my view, the issue for determination is whether the application has merit.
13. Order 1 Rule 10(2) of the Civil Procedure Rules provides that:

“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.”
14. The relevant tests for determination whether or not to join a party in proceedings were restated by Nambuye, J (as she then was) in the case of Kingori versus Chege & 3 Others [2002] 2 KLR 243 where the learned Judge stated that the guiding principles when an intending party is to be joined are as follows:-
  1. He must be a necessary party.
  2. He must be a proper party.
  3. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.
  4. The ultimate order or decree cannot be enforced without his presence in the matter.
  5. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.



15. In, *Civicon Limited versus 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, 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.”

16. Let me also add that, joinder of parties is permitted by law and it can be done at any stage of the proceedings. But, joinder of a party may be refused where such joinder: will 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 delay or costs on the parties in the suit. In other words, joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible to or totally different from existing cause of action or the relief. The determining factor in joinder of parties is that a common question of fact or law would arise between the existing and the intended parties.
17. In this case, it is clear that the defendants are deceased as evidenced by a copy of the death certificate and the certificate of confirmation of grant supplied by the applicant herein. For all intent and purposes, the substitution of the deceased 1<sup>st</sup> defendant by the applicant is necessary for the just determination of this suit. However, and as I would agree with the plaintiff/respondent, in the absence of any letters of administration, it would be a great miscarriage of justice for the applicant to claim to be representing the deceased 2<sup>nd</sup> defendant as well. Such a claim has no basis in law, and in fact it only amounts to intermeddling with the property of the deceased.
18. The plaintiff/respondent has also strongly contended against the joinder of Sann Limited as a defendant in this suit. The decision whether or not to join a party is well illustrated in the case of *Kingori* (supra). The question that needs to be answered is whether Sann Limited is a necessary and proper party whose presence in the case would enable the court to effectively determine all the issues once and for all. Upon careful perusal of the plaintiff/respondent’s replying affidavit, I do note that the plaintiff/respondent does not deny the existence of the tenancy agreement but only maintains his argument to be anchored on the title of the document which bears the names of the deceased defendants. In my view, the plaintiff/respondent may have other reasons besides the fact that Sann Limited has not produced any documents to show ownership of the suit property. These are issues which can be ventilated in the pleadings and in a full hearing and not just through supply of evidence that has not been tested. In any case, and in the event this court finds that the presence of Sann Limited serves no purpose, the court has the power to strike it out of the pleadings. Really, there is no prejudice if such joinder is to be allowed.



19. Upon careful consideration, and in the interest of justice and to ensure that the dispute before this court is effectively determined, I hold that Sann Limited is a necessary party to these proceedings. As such, I find merit in the notice of motion dated 31<sup>st</sup> January, 2025, and I grant the following prayers:-
- i. Kuldeep Singh Nayer, is hereby joined in these proceedings as the 1<sup>st</sup> defendant on behalf of the estate of the late Trilock Singh Nayer.
  - ii. Sann Limited is hereby joined as the 3<sup>rd</sup> defendant in this suit.
  - iii. Leave is hereby granted to the plaintiff/ respondent to amend his pleadings accordingly, and to file and serve them within 14 days from the date hereof.
  - iv. Corresponding leave is hereby granted to the defendants to file and serve their responses to the amended pleadings within 14 days from the date of service.
  - v. Further mention on 25<sup>th</sup> June, 2025 for further directions.
  - vi. Costs in the cause.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 24<sup>th</sup> DAY OF APRIL, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

**24/04/2025.**

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Mr. Mwaura for the Plaintiff/Respondent - present

Mr. Vincent Tama holding brief for Mr. Ochieng for the Defendants/Applicants – present

