



REPUBLIC OF KENYA



**China Wu Yi (Kenya) Precast Company Ltd v Muenje & another; Petwa Construction Co Ltd (Proposed Defendant) (Environment & Land Case E051 of 2024) [2025] KEELC 583 (KLR) (10 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 583 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE E051 OF 2024  
CA OCHIENG, J  
FEBRUARY 10, 2025**

**BETWEEN**

**CHINA WU YI (KENYA) PRECAST COMPANY LTD ..... PLAINTIFF**

**AND**

**CATHERINE NYAMBURA MUENJE ..... 1<sup>ST</sup> DEFENDANT**

**DIRECTOR OF SURVEYS KENYA ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**PETWA CONSTRUCTION CO LTD ..... PROPOSED DEFENDANT**

**RULING**

1. What is before Court for determination is the proposed 3<sup>rd</sup> Defendant's Chamber Summons application dated the 23<sup>rd</sup> September, 2024, where it seeks the following Orders:
  - a. That Petwa Construction Company Limited be joined in the instant suit as a 3<sup>rd</sup> Defendant.
  - b. That the costs of the application be provided for.
2. The application is premised on the grounds on the face of it and the supporting affidavit of Jeremiah Kahuthia, its General Manager, where he deposes that the proposed 3<sup>rd</sup> Defendant is the legal owner of LR No. Mavoko Town Block 2/770 measuring 12.60 hectares. He contends that the proposed 3<sup>rd</sup> Defendant has a stake in the proceedings herein and is hence a necessary party.
3. The Plaintiff opposed the instant application by filing a replying affidavit sworn by Shi Zuliang, its Deputy General Manager, where he deposes that the Plaintiff is the legal owner of LR No. Mavoko Town Block 2/119. He insists that through searches conducted on the title to the land, it revealed that the 1<sup>st</sup> Defendant is the legal owner of LR No. Mavoko Town Block 2/ 770. He argues that the



Certificate of Title is hence the prima facie proof of ownership. He demands that the proposed 3<sup>rd</sup> Defendant should furnish court with a certified copy of its Certificate of Title from the Land Registrar.

4. The application was canvassed by way of written submissions.

### **Analysis and Determination**

5. Upon consideration of the instant Chamber Summons application including the respective affidavits, annexures and rivalling submissions, the only issue for determination is whether the proposed 3<sup>rd</sup> Defendant should be joined in this suit as one of the Defendants.

6. On joinder of a Defendant to a suit, Order 1 Rule 10 (2) of the Civil Procedure Rules provides that:

‘(2) 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.’

7. In the current scenario, I note the Plaintiff filed this suit claiming that the 1<sup>st</sup> Defendant who is the proprietor of LR No. Mavoko Town Block 2/ 770, encroached on a portion of its land being LR No. Mavoko Town Block 2/119 measuring 0.6818 Hectares. Further, that she has been blasting rocks, excavating stones and ballast, from the encroached area, for sale. He explains that, according to a report dated the 7<sup>th</sup> June, 2024, the monetary value of the stones/ballast that the 1<sup>st</sup> Defendant has excavated from its property is about Kshs. 215, 498, 000/= . It sought among other orders that the 1<sup>st</sup> Defendant be ordered to pay it Kshs. 215, 500,000/= as special damages, Kshs 2,000,000/= in general damages, a permanent injunction to issue restraining the 1<sup>st</sup> Defendant from encroaching on a portion of the Plaintiff’s land and costs.

8. The Plaintiff has opposed the joinder of the proposed 3<sup>rd</sup> Defendant insisting that LR No. Mavoko Town Block 2/770 is owned by the 1<sup>st</sup> Defendant and not the proposed 3<sup>rd</sup> Defendant. I note the proposed 3<sup>rd</sup> Defendant in its supporting affidavit annexed a copy of the title for LR No. Mavoko Town Block 2/770 issued on 18<sup>th</sup> October, 2012 in its name.

9. In the case of *Departed Asians Property Custodian Board vs. Jaffer Brothers Ltd* [1999] 1 EA 55 it was held that:

“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 involve 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 involve 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 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.”

10. While in the case of *Zephir Holdings Ltd vs. Mimosa Plantations Ltd, Jeremiah Matagaro & Ezekiel Misango Mutisya* (2014) eKLR, it was held that:

“A proper party is one who is impleaded in the suit and qualifies the thresholds of a plaintiff or defendant under Order 1 rule 1 and 2 respectively, or as a third party or as an interested party and whose presence is necessary or relevant for the determination of the real matter in dispute or to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. And the court has a wide discretion to even order suo moto for a party to be impleaded whose presence may be necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. Accordingly, a suit cannot be defeated for mis-joinder or non-joinder of parties.”

11. Based on the facts as presented and relying on the legal provisions I have quoted while associating myself with the cited decisions, it is my considered view that since the main issue in dispute revolves around encroachment of a portion of the Plaintiff’s land by owner of LR No. Mavoko Town Block 2/770, then any party holding a title to the said land should be a party to these proceedings. I opine that since the proposed 3<sup>rd</sup> Defendant has also produced a copy of the Certificate of Title to LR No. Mavoko Town Block 2/770, noting that the 1<sup>st</sup> Defendant has not filed any pleadings disputing the said title, its involvement in these proceedings is necessary to enable the court effectually and completely adjudicate upon as well as settle all questions involved herein. In my view, the Plaintiff has not demonstrated what prejudice it stands to suffer if the proposed 3<sup>rd</sup> Defendant was joined in these proceedings as one of the Defendants.
12. It is against the foregoing that, I find the Chamber Summons application dated the 23<sup>rd</sup> September, 2024 merited and will allow it but make no Order as to Costs.
13. I direct the Plaintiff to file and serve an amended Plaint in seven (7) days, after which the 3<sup>rd</sup> Defendant should file and serve its Defence within twenty-one (21) days from the date hereof.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 10<sup>th</sup> DAY OF FEBRUARY 2025**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Farah for Plaintiff

Odhiambo for Proposed 3<sup>rd</sup> Defendant

Court assistant: Joan

