



Cherunya (Suing as the Legal Representative of the Estate of Kiptalam arap Cherunya) v Cherunya; Kithinji (Intended Interested Party) (Environment & Land Case 15 of 2023) [2025] KEELC 1070 (KLR) (5 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1070 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 15 OF 2023
CK NZILI, J
MARCH 5, 2025**

BETWEEN

**SAMMY KIPKORIR CHERUNYA PLAINTIFF
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF KIPTALAM
ARAP CHERUNYA**

AND

MICHAEL KIPSANG CHERUNYA DEFENDANT

AND

HELENA KITHINJI INTENDED INTERESTED PARTY

RULING

1. The court, by an application dated 24/5/2024, is asked to allow Helena Kithinji to join as an interested party in this suit since she is the legal representative of the original owner of the suit property. The application is supported by reasons on its face and in a supporting affidavit of Sammy Kipkorir Cherunya sworn on 24/5/2024.
2. Briefly, the plaintiff/applicant deposes that he bought the suit land from the late John Kithinji, now represented by the proposed interested party, through a sale agreement dated 12/4/1977. He also attached copies of the same and several letters dated 26/2/1982, 14/12/1982, and 15/7/1986 as an annexures marked SKC '1 - 4'.
3. The applicant deposes that the beneficiaries of the deceased are in exclusive occupation of the land and that the deceased unfortunately died before effecting registration in his favor as per a letter dated 23/2/2021, from the land's office annexed as SKC'5'. The applicant avers that the manner of acquisition and registration 38 years after the death of the initial owner is before this court and cannot conclusively be determined in the absence of the proposed party. The applicant urges the court to find



that the intended interested party is a necessary party for purposes of determining the fundamental matter in controversy, and there will be no prejudice to the opposite party if the application is allowed. The defendant is not opposed to the application.

4. Under Order 1 of the Civil Procedure Rules, the court may grant leave for joinder of any or all parties in whom any right to relief in respect of or arising out of the same and or transactions or series of acts or transaction or, where a common question of law or fact would arise. Joinder of parties may be allowed suo moto or through an application by a party to the suit at any stage of the proceedings if such a party is necessary for the determination of the fundamental matter in dispute or where the presence of the party is necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit. Joinder of parties may also be refused where such joinder will lead to practical problems in handling the existing cause of action, where it is unnecessary or where it will occasion unnecessary delay or costs on the parties in the suit, or if the cause of action being proposed or the relief though is incompatible or is totally different from the existing cause of action or relief.
5. In *Bellevue Development Co Ltd -vs- Vinayak Builder Ltd & another* (2014) eKLR, the court observed that the joinder of parties is permissible after judgment. Further in *JMK -vs- MWM & Another* [2015] eKLR, the court observed that Order 1 Rule 10 of the Civil Procedure Rules contemplates an application for amendment or joinder of parties in pending proceedings. What the applicant/plaintiff is seeking is a joinder of an interested party.
6. In *Trusted Societies of Human Rights Alliance -vs- Mumo Matemu & Others* [2014] eKLR, an interested party was defined as one with a stake in the proceedings. See also *Francis Kariuki Muruatetu & Another -vs- Republic & Others* [2016] eKLR. In *Skov Estate Limited & 6 others v Agricultural Development Corporation* (2015) eKLR, the court took the view that a mere interest without demonstration that the presence of such party will assist in the settlement of the question involved in the suit is not enough to entitle one to be joined in a suit as an interested party.
7. In *Izera Enterprises Ltd -vs- Image Font Ltd* [2022] KEELC 12585 [KLR], the court held that the joinder of parties is based on the principle of natural justice not to be condemned unheard and without being accorded an opportunity to be heard.
8. The applicant avers that he bought the suit land, now registered in the name of the defendant, from the late John Kithinji as per the annexed sale agreement and letters, who has since passed on. The applicant says that the legal representative of the deceased seller is a necessary party to this suit and will assist the court in effectually and conclusively determining the real issue in controversy. The defendant, in paragraphs 6, 7, 8, and 10 of the statement of defense dated 11/12/2023, has admitted that the late John Kithinji was the initial registered owner of the land, said to be currently legitimately registered in the name of the defendant. Both the plaintiff and the defendant maintain to have acquired the same land for value from the late John Kithinji. In my view, therefore, I find the proposed party is crucial for determining and settling the issue in controversy.
9. The upshot is that I allow the proposed party to be joined as an interested party. Costs shall be in the cause.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 5TH DAY OF MARCH 2025.

In the presence of:

Court Assistant - Chemutai

Mukabane for the Defendant/Respondent present



Kibii for the Plaintiff/Applicant present

HON. C.K. NZILI

JUDGE, ELC KITALE.

