



**Deliverance Church Registered Trustees & 85 others v Worldwide Freighters Limited
(Environment & Land Case 140 of 2019) [2025] KEELC 943 (KLR) (3 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 943 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 140 OF 2019**

AY KOROSS, J

MARCH 3, 2025

BETWEEN

**DELIVERANCE CHURCH REGISTERED TRUSTEES & 85 OTHERS & 85
OTHERS PLAINTIFF**

AND

WORLDWIDE FREIGHTERS LIMITED DEFENDANT

RULING

Plaintiff's case

1. This ruling seeks to determine the notice of motion dated 18/12/2023 allegedly filed by the 3rd defendant. It seeks several reliefs from this court some of which are spent and the residual prayers for determination are: -
 - a. The honourable court joins Tropical Blooms Ltd, Mayor H.K Langat, and Muigai Commercial Agencies in the proceedings.
 - b. Costs of the suit be provided for.
3. The motion is supported by the grounds set out on the body thereof and the supporting affidavit of Jackson Kasamu Kavisu who has been described as the 3rd defendant.
4. In brief, it is contended Tropical Blooms Ltd, Mayor H.K Langat and Muigai Commercial Agencies are claiming ownership of the suit property that is the subject of the proceedings and the suit cannot be determined in their absence. Furthermore, it would be detrimental to the interests of these parties if they are condemned unheard as they are also claiming against the defendant.



Defendant's case

5. By the law firm of M/s.Mutungu Kithinji & Co. Advocates, Bishop Joseph Mutua Muindi who described himself as a representative of all the other plaintiffs deposed an affidavit dated 27/03/2024 in opposition to the motion.
6. In summary, he denied the assertions contained in the alleged 3rd defendant's affidavit and stated no evidence had been tendered signifying these parties wished to be joined to the proceedings.
7. Additionally, he asserts the motion is an afterthought, made late in the day after pleadings had closed and the plaintiffs would be highly prejudiced.

Parties' submissions

8. The court directed parties to file written submissions. In compliance, the plaintiff's counsel did file written submissions dated 13/01/2025 whilst the alleged 3rd defendant's law firm on record Ms. Kalwa & Co. Advocates did not file any and their request for an extension of time was rejected by the court.
9. In the plaintiff's submissions, their counsel framed 2 issues for determination which were whether the court should join Tropical Blooms Ltd, Mayor H.K Langat and Muigai Commercial Agencies as interested parties and who should bear costs.
10. Pointedly, despite relying on several authorities to support the plaintiffs' position, their counsel did not avail them to court. Further, the authorities annexed as the list of authorities have not been referred to in the submissions albeit relevant to the plaintiff's arguments.
11. Therefore, upon identifying and considering the issues for determination, this ruling shall later on in its analysis and determination, consider the plaintiffs' counsel's arguments on the particular issue and also bear in mind the law and judicial precedents.

Issues for determination.

12. I have carefully considered the motion, its grounds, affidavits, and plaintiff's submissions. In cognition, the following issues arise for resolution: -
 - a. Whether the alleged 3rd defendant is a party to the proceedings.
 - b. Whether Tropical Blooms Ltd, Mayor H.K Langat and Muigai Commercial Agencies should be joined as interested parties to these proceedings.
 - c. What orders should be issued including an order as to costs?

Analysis and Determination

13. These issues will be dealt with chronologically.

a. Whether the alleged 3rd defendant is a party to the proceedings.

14. By the provisions of Order 4 Rule 1 (c) of the Civil Procedure Rules (CPR), a plaintiff is required to adequately make disclosures on the defendant one has sued and these include the name, description and place of residence of this defendant.
15. Being guided by Order 1 Rule 3 of the CPR, the plaintiffs' amended plaintiff on record which is dated 15/09/2021 identified Worldwide Freighters Limited as the sole defendant. Put another way, Worldwide Freighters Limited was the only person they sought reliefs against.



16. The amended defence on record dated 10/06/2022 was only filed by Worldwide Freighters Limited herein and there is no evidence on record the alleged 3rd defendant is a party to the proceedings. In other words, the alleged 3rd defendant is a stranger to these proceedings.
17. The identification of parties and the extent of their participation in a suit was emphasized by the Supreme Court of Kenya decision in *Trusted Society of Human Rights Alliance v Matemo & 5 others* [2014] KESC 32 (KLR) as follows:-
 - “ 8. A suit in court involved a solemn process owned solely by the parties. That was the reason why there were laws and rules, under the Civil Procedure Code, regarding parties to a suit. A suit could be struck out if a wrong party is enjoined in it. Consequently, where a person not initially a party to a suit was enjoined as an interested party, that new party could not be heard to seek orders to strike out the suit, on the grounds of defective pleadings.”
18. Having lacked locus standi, it was not tenable for the alleged 3rd defendant to file the motion, and seek audience or orders in these proceedings. In my humble view, the motion should have been moved by the parties to the suit or the intended interested parties. Therefore, I find the motion is incompetent.
19. I must mention it is surprising that the stranger has sought to join other interested parties in these proceedings without making revelations on the identifiable personal stake or legal interest that Tropical Blooms Ltd, Mayor H.K Langat and Muigai Commercial Agencies have in the suit such as a certificate of registration, existence of another suit or title documents.
20. Even if the alleged 3rd defendant had locus standi to file the instant motion which for emphasis he does not, I would have found the intended interested parties have not met the settled principles as stated in the recent Supreme Court of Kenya decision of *Freedom Limited v Mbarak; Attorney General on behalf of Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development & 3 others (Proposed Interested Parties)* [2024] KESC 37 (KLR).
21. On the premises, and on the finding on the 1st issue, it is the considered view of this court that it would be superfluous to consider issue (b).
22. For the finding and reasons herein stated above and in addressing issue (c), I ultimately find the notice of motion dated 18/12/2023 as unmerited and it is hereby dismissed with costs to the plaintiffs. Matter to be mentioned before this court for case conference and issuance of a hearing date on 19.05.2025.

It is so ordered.

DATED AT MACHAKOS THIS 3RD DAY OF MARCH, 2025.

HON A. Y. KOROSS

JUDGE

03/03/2025

Delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of:

Mr. Kimani for plaintiff.

M/s Kimulu holding brief for M/s Ngugi for 6th and 8th defendants

N/A for other parties

