



REPUBLIC OF KENYA



**Wasonga v Obura; Nur (Interested Party) (Environmental and Land Originating Summons E010 of 2024) [2025] KEELC 2973 (KLR) (1 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 2973 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E010 OF 2024**

**AY KOROSS, J**

**APRIL 1, 2025**

**BETWEEN**

**MICHAEL OMOLE WASONGA ..... PLAINTIFF**

**AND**

**GEOFFREY AGGREY ORAO OBURA ..... DEFENDANT**

**AND**

**MOHAMED KORIOW NUR ..... INTERESTED PARTY**

**RULING**

1. This ruling seeks to determine the notice of motion dated 28/06/2024 filed by the intended IP, and he seeks the following reliefs from this court:
  - a. That Mohamed Koriow Nur be joined as an interested party in this suit.
  - b. That costs of this application be in cause.
2. The motion is supported by the grounds set out in the body thereof and the supporting affidavit of Mohamed Koriow Nur, the intended IP.
3. In brief, he contended that he was the rightful owner of land parcel no. L.R. no. 12715/474 I.R NO. 45919 (suit property), and he had only learnt of the suit herein, which for some reason neglected to reference him as the registered owner of the suit property. According to him, there was fraudulent conduct amongst the parties.
4. He further averred that his interests in the suit were at great risk, and it was only just that he be enjoined as a party in the instant case so that his interests could be taken care of.



### **Plaintiff's case**

5. The motion was opposed by the plaintiff's affidavit, which he deposed on 24/09/2024.
6. In summary, he stated he resided on the suit property, which is registered in the defendant's name. He accused the intended IP of mischievously failing to avail copies of certain entries in his alleged title document.
7. He maintained the intended IP had an obligation to the court to make the fullest possible disclosure of all material facts within his knowledge, and if he failed to so do, then he could not obtain any advantage from the proceedings.
8. He stated that, moreover, the equitable principle of he who comes to equity must do so with clean hands should suffice in the circumstances of this case and urged this court to dismiss the motion.
9. The defendant's counsel, M/s. Bonyo appeared before this court and informed it that though the defendant did not oppose the motion, she would be seeking certain documents from the Ministry of Lands.

### **Parties' submissions**

10. Despite directions by the court on the disposal of the motion by written submissions, only the intended IP's law firm on record, Ms. Abdirazak & Co. Advocates Advocates, filed written submissions dated 28/01/2025, which generally submitted on the merits of the motion.

### **Issues for determination.**

11. I have carefully considered the motion; its grounds and affidavits and the following issues arise for resolution: -
  - a. Whether the intended IP should be joined as a party to these proceedings.
  - b. What orders should be issued, including an order as to costs?

### **Analysis and Determination**

12. Since the outcome of the first issue will determine the nature of the disposal orders on the 2<sup>nd</sup> issue, this court will deal with the 2 issues conjunctively.
13. Order 1 Rule 10(2) of the *Civil Procedure Rules* (CPR) has largely been interpreted to mean that the party who ought to be joined or added to civil proceedings as a party to the suit either as a defendant, plaintiff or interested party whose presence in the proceedings would be necessary to assist the court determine the matter effectually and completely should be joined to the proceedings.
14. This proviso, which has been relied upon by the intended IP states as follows: -

“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.”



15. The *Black's Law Dictionary, 11<sup>th</sup> Edn, page 1351* has defined an interested party in the following terms:  
-  
“A party who has a recognizable stake (and therefore standing) in a matter.”
16. The meaning of this definition was resounded in the Supreme Court of Kenya's decision of *Trusted Society of Human Rights Alliance v Matemo & 5 others* [2014] KESC 32 (KLR) in the following words:  
-  
“3. An interested party was one who had a stake in the proceedings, though they were not initially a party to the cause. Such a person felt that their interest would not be well articulated unless they personally appeared in the proceedings, and championed their cause.”
17. When considering a motion for joinder, the court exercises judicious discretion which is anchored on law and reason and therefore, this court adopts the guiding principles established in *Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae)* [2016] KESC 12 (KLR) in the following words: -  
“37. From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party: One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements: The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.”
18. Turning to the peculiar circumstances of this case, it appears there are 2 alleged title deeds over the suit property, whereby the one waved by the intended IP shows he is the suit property's registered owner, whereas the plaintiff's certificate of official search shows the intended IP's registration was cancelled.
19. Although the plaintiff has invited this court to consider the propriety of the title availed to this court by the intended IP, the court declines to do so at this stage of the proceedings.
20. The plaintiff's case is on a claim of adverse possession and there is the likelihood the intended IP is the registered owner of the suit property and his title document may be cancelled in the plaintiff's favour, hence, this court is satisfied the intended IP has a stake in the matter and he will be prejudiced if he is not joined to the proceedings. Thus, this court finds that the intended IP has met the tests of *Muruatetu (Supra)*.
21. Although the intended IP has sought to be joined as a mere IP and therefore his participation in the proceedings will be peripheral as the issues this court will determine will principally be drawn from the



pleadings and submissions of the primary parties, this court hereby invokes the provision of Order 1 Rule 10(2) of the CPR and joins him as a defendant.

22. At last, this court hereby finds the notice of motion is merited and since it is trite law costs follow the event, costs shall be in the cause. Having so found and held, as above, this court hereby issues the following disposal orders: -

- a. That the intended interested party be joined to these proceedings as a defendant;
- b. The plaintiff is directed to serve all pleadings and the pending application on the intended interested party within 14 days hereof;
- c. That upon being served, the intended interested party shall file responses to the pleadings, including the application, within 21 days of service, and he shall serve his filings on all the parties hereto;
- d. That the defendant is directed to file responses to the pleadings, including the application, within 21 days hereof, and he shall serve his filings on all the parties hereto;
- e. That to fast-track the hearing of this matter, parties are encouraged to reach a consent on maintenance of status quo pending hearing and determination of the main suit.
- f. That, from now henceforth, no other or further applications shall be entertained by the court unless with leave.
- g. That strict timelines shall apply.
- h. That matter shall be mentioned for further directions on 16/06/2025.

Orders accordingly.

**DELIVERED AND DATED AT MACHAKOS THIS 1<sup>ST</sup> DAY OF APRIL, 2025.**

**HON. A. Y. KOROSS**

**JUDGE**

**01.04.2025**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Mr. Otieno Obwanda for plaintiff.

Mr Sewe holding brief for Mrs Bonyo for defendant.

Mr. Kimanzi for intended interested party.

Ms Kanja Court Assistant.

