



**Matuva v Aimi Ma Kilungu Limited & another (Environment & Land
Case 63 of 2018) [2025] KEELC 3599 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3599 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE 63 OF 2018**

EO OBAGA, J

MAY 8, 2025

BETWEEN

PRISCILLA MUNYIVA MATUVA PLAINTIFF

AND

AIMI MA KILUNGU LIMITED 1ST DEFENDANT

NAZIMA MALIK 2ND DEFENDANT

RULING

1. Before this Court for determination is the Chamber Summons dated 19th June, 2023 brought under the provisions of Sections 1A, 1B and 3A of the Civil Procedure Act in addition to Order 1 Rules 10 (2) and 25 of the Civil Procedure Rules.
2. The Applicant seeks issuance of the following orders: -
 1. That this Honourable Court be pleased to strike out the 2nd Defendant from the suit herein.
 2. That costs of this application be awarded to the 2nd Defendant.
3. The application is premised upon the grounds appearing on its face together with the supporting affidavit of Nazima Malik sworn on even date. The Applicant averred that the further amended plaint dated 21st March, 2022 does not disclose a cause of action against the 2nd Defendant. She further averred that she does not hold and has never held the title in respect of the suit property or any other property named in the further amended plaint.
4. The Applicant contended that she has never been in possession of the suit property and that there is no relief which has been sought by the Plaintiff from the 2nd Defendant. The Applicant maintained that she has been wrongly enjoined in the suit and that striking out her name from the suit will not prejudice the interests of the respective parties.



5. The Applicant contended that her presence is not necessary to enable the effectual and complete adjudication of the suit by the court. It was her contention that it is in the interest of justice that the application herein be allowed as prayed.
6. Opposing the application, the Plaintiff filed her replying on 26th February, 2024. It was her contention that the application is not competent since the name of the 2nd Defendant was given by the 1st Defendant as the person to whom the land parcel was allocated. The Respondent urged the court to dismiss the application with costs.
7. The 1st Defendant did not file a reply to the application.
8. Directions were issued that the application be canvassed by way of written submissions.
9. In the Applicant's submissions dated 27th September, 2024, Counsel argued that the cause of action in the further amended plaint arose from the 1st Defendant's conduct and that the 2nd Defendant did not play any role in the transaction between the Plaintiff and the 1st Defendant. Counsel contended that the Plaintiff's claim against the 2nd Defendant is unclear and predicated on false facts.
10. Urging the court to allow the application as prayed, Counsel made reference to the following authorities: -
 - i. Investments and Mortgages Bank limited v Nancy Thumari & 3 others [2015] eKLR
 - ii. Opele v Biometric Technology & 3 others (Cause E350 of 2020) [2022] KEELRC 3778 (KLR)
 - iii. Mbugua v Olang & another [1979] eKLR
11. In the Plaintiff/Respondent's submissions dated 16th January, 2025, Counsel identified the following issues for determination: -
 - i. Whether the 2nd Defendant is a necessary party to the suit; and
 - ii. Whether there is a cause of action against the 2nd Defendant.
12. On the first issue, Counsel submitted that the 2nd Defendant is a necessary party in accordance with Order 1 Rule 10 (2) of the Civil Procedure Rules. That the court has discretion to strike out any party who is improperly joined in any proceedings. Counsel contended that since the 2nd Defendant was joined in the suit vide a formal application dated 22/3/2022, they should not raise any objection at this stage.
13. Submitting on the second issue, Counsel contended that the 2nd Defendant's involvement is intertwined with the Plaintiff's claims against the 1st Defendant and thus she is an integral party to the suit. It was further contended that the striking out of the 2nd Defendant at this stage would result in a piecemeal adjudication of the dispute. Counsel urged the court to dismiss the application with costs.
14. Reliance was placed on the following case law to buttress the Plaintiff's submissions: -
 - i. Jan Bolden Nielsen v Herman Phillipus Steyn & 2 others [2012] eKLR
15. The sole issue for determination is whether the 2nd Defendant has demonstrated merit in the application for striking out of the 2nd Defendant.
16. Order 1 Rule 10 (2) of the Civil Procedure Rules outlines as follows:-
 - (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.

17. It is the Applicant's contention that her name ought to be struck out as the further amended plaint does not disclose a reasonable cause of action against her. It was further contended that the 2nd Defendant does not hold the title in respect of the suit property and that no relief is available to the Plaintiff from the 2nd Defendant.
18. In opposition, the Plaintiff contended that the 1st Defendant entered into a sale agreement with the 2nd Defendant and illegally sold the suit property to her. These allegations were pleaded under paragraphs 9(b) and 9(c) of the further amended plaint. The Plaintiff further annexed a letter from the 1st Defendant (Exhibit PMM1) confirming that indeed the suit property measuring approximately 4.466 hectares is registered in the name of the 2nd Defendant.
19. In the case of *Werrot and Company Ltd & Others v Andrew Douglas Gregory & Others* [1998] eKLR it was held as follows: -
 - “For determining the question of who is a necessary party there are two tests; (i) there must be a right to some relief against such a party in respect of the matter involved in the proceeding in question and (ii) it should not be possible to pass an effective decree in the absence of such a party.”
20. Among the prayers sought by the Plaintiff in her further amended Plaint are a permanent injunction against the Defendants from selling or transferring the suit property and an order for the Plaintiff's registration as proprietor thereof.
21. These are substantive orders which ultimately may prejudice the 2nd Defendant if she is not a party to these proceedings and therefore, her presence is necessary for purposes of defending her proprietary interest in the suit property.
22. In *Pravin Bowry v John Ward & another* [2015] eKLR, the Court of Appeal commenting on who is a necessary party referred to the Ugandan case in *Deported Asians Custodian Board v Jaffer Brothers Ltd* [1999] 1 E.A. 55 (SCU) where the court stated as follows: -

“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 involved in the suit. A party may be joined in a suit because the party's presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved 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 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.”



23. It is therefore in the interest of effectual and complete adjudication of the dispute herein that the 2nd Defendant should remain a party to the proceedings. Again, since the orders sought would affect her rights if at all she is the registered proprietor of the suit property, it would prevent unnecessary protraction and multiplicity of suits since the parties' can effectively champion their interests within the present case.

24. In the end, I find that the application herein is devoid of merit and is dismissed with costs to the Plaintiff.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 8TH DAY OF MAY, 2025.

In the presence of:

Ms. Nyangweso for 2nd Defendant/Applicant.

Ms. Nyambili for Mr. Masika for Plaintiff/Respondent

Court assistant – Steve Musyoki

