



**Ghotman Cotova & General Commission Agents & another v Gerald & another; Blatterman
(Suing through his Attorney Shabir Hatim Ali Taher) (Intended Interested Party)
(Environment & Land Case E082 of 2024) [2025] KEELC 4253 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4253 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E082 OF 2024**

**EK MAKORI, J
JUNE 5, 2025**

BETWEEN

GHOTMAN COTOVA & GENERAL COMMISSION AGENTS PLAINTIFF

AND

**MIRKO BLATTERMAN (SUING THROUGH HIS ATTORNEY SHABIR HATIM
ALI TAHER) APPLICANT**

AND

ERICH GERALD 1ST DEFENDANT

BEATRICE WANJIKU 2ND DEFENDANT

AND

**MARKO BLATTERMAN (SUING THROUGH HIS ATTORNEY SHABIR
HATIM ALI TAHER) INTENDED INTERESTED PARTY**

RULING

1. We have two motions: one for joinder, dated November 5, 2024, and another for injunctive orders filed on the same date by the Intended Interested Party/Applicant. Additionally, a Preliminary Objection has been raised by the same party, contesting the pendency of the entire suit based on the principles of the doctrine of *res judicata*. This legal doctrine prevents the same matter from being litigated again once a court has resolved it finally. The party argues that other suits have fully and finally addressed the issues raised in the current suit; therefore, it should be struck out in limine.
2. The motions were opposed on the significant grounds that the capacity of the Intended Interested Party/Applicant to sustain the current suit/motions is based on a power of Attorney executed by a donor who is already deceased.



3. This court previously endeavored to render a singular ruling on the motions. However, this proved infeasible, as numerous court actions cited by the parties were not provided to this court.
4. On the 7th of May, 2025, this court directed the involved parties to resubmit their submissions and the decisions pertaining to the referenced court actions. Once more, the parties failed to respond.
5. To advance the matter further, I note that the applicant, intended interested party, asserts a claim to the suit property by dint of the Powers of Attorney he holds and seeks to propagate the suit on the donor who is allegedly dead.
6. The joinder of parties is governed by Order 1 Rule 10(2) of the [Civil Procedure Rules](#), which stipulates the following:

“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 to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

7. In legal proceedings, the court retains the authority to add a party to the lawsuit at any stage, either upon application by one of the parties involved or by the court's initiative. This addition is permissible when the presence of the newly added party is essential for resolving the issues in dispute or is necessary to enable the court to comprehensively and effectively settle all questions about the case. Consequently, the inclusion of parties is sanctioned under the law and may be executed at any point during the proceedings. Nevertheless, the court will decline the addition of parties when the proposed cause of action or the relief sought is incompatible with, or wholly distinct from, the existing cause of action or relief. The pivotal consideration in assessing a request for joinder is whether a common question of fact or law will arise between the current and proposed parties.
8. In the case of [Joseph Njau Kingori v Robert Maina Chege & 3 Others](#) [2002] eKLR, Nambuye, J. (as she was then) articulated the guiding principles for applications seeking the joinder of parties as follows:

“...parties cannot be added so as to introduce quite a new cause of action or to alter the nature of the suit. Necessary parties who ought to have been joined are parties who are necessary to [the constitution](#) of the suit, without whom no decree at all can be passed. Therefore, in case of a Defendant, two conditions must be met: (1) There must be a right to some relief against him in respect of the matter involved in the suit. (2) His presence should be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit being one without whom no decree can be made effectively and one whose presence is necessary for complete and final decision on the questions involved in the proceedings. A proper party is one who has a designed subsisting direct and substantive interest in the issues arising in the litigation which interest will be recognizable in the Court of law being an interest, which the Court will enforce. A person who is only indicated or commercially interested in the proceedings is not entitled to be added as a party. But a person may be added as a Defendant though no relief may be claimed against him provided his presence is proper for a complete and final decision of the question involved in the suit and such a person is called a proper party as distinguished from a necessary party... Order 1 rule 10 allows the Court to add a Defendant on its own motion or upon application by either party either orally or formally by summons in chambers under Order 1 rule 22. Here the



party has not moved on its own but has been moved by the intending party on its own formally. The use of the words “either party” denotes that the formal move has to be made by a party already participating in the proceedings and it would mean that an intending party cannot come on his own and choose which position he wants.”

9. The intended interested party—who holds a Power of Attorney—asserts that the property in question has a lengthy history of litigation extending to the Court of Appeal, which has adjudicated that the disputed property—plot No. 622 Malindi (Original No. M17G) LT. 21 Folio 368 File No. 3853—is owned by the donor of the Powers of Attorney, Mirko Blattermann.
10. Whether the aforementioned donor is deceased will be determined as the situation unfolds, as I have not been provided with a document indicating his death.
11. In my opinion, it would be wise to include the applicant as an interested party in these proceedings to ensure that the issues raised here are thoroughly resolved once and for all.
12. Consequently, the motion application dated November 5, 2024, for joinder is hereby granted. As indicated, this will facilitate an orderly trial. The remaining motions will now proceed from this point. Costs shall follow the events thereafter.

DATED, SIGNED, AND DELIVERED ELECTRONICALLY IN MALINDI ON THIS 5TH DAY OF JUNE, 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Mwadilo for the Intended Interested Party.

Ms Minyanzi holding brief for Mr. Obaga for the 1st and 2nd Respondents

Mr. Muiruri, Plaintiff/Respondent, representing himself

Happy: Court Assistant

