



**Waithaka & another v Ronoh; Kipnyolei (Intended Interested Party) (The Legal Representative of the Estate of Kiphyollei arap Tum) (Environment & Land Case 98 of 2015) [2025] KEELC 4461 (KLR) (11 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4461 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE 98 OF 2015**

**CK NZILI, J  
JUNE 11, 2025**

**BETWEEN**

**PATRICK KARIUKI WAITHAKA ..... 1<sup>ST</sup> PLAINTIFF**

**ROBERT KIMANI WANJIKU ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**DAVID CHERUIYOT RONOH ..... DEFENDANT**

**AND**

**SARAH CHESIRE KIPNYOLEI ..... INTENDED INTERESTED PARTY**

**THE LEGAL REPRESENTATIVE OF THE ESTATE OF KIPHYOLLEI ARAP  
TUM**

**RULING**

1. In an application dated 24/1/2025, the court is asked to join the applicant as an interested party; set aside, review, quash, vary and or discharge its judgment and decree of 31/3/2016. Further, the court to direct the land registrar to cancel the registration and titles for L.R Nos. Uasin Gishu/El-Lahre Scheme-1183,1184 and 1185 (the subdivisions) and find that it lacks jurisdiction to determine the suit or issue directions for the applicant to comply.
2. The applicant, vide grounds on the face of the motion and in her affidavit sworn on even date avers that; she was the spouse and is the legal representative of the estate of the deceased vide a copy of the grant ad litem annexed and marked as SCK-1; that in the judgment of 31/3/2016 marked as annexure SCK-12, the court apportioned interest to the respondents in L.R No. Uasin Gishu/EL-Lahre/142 (the suit land), measuring 0.51 Ha, which land belonged to the deceased who was in occupation as the



- registered absolute proprietor during land adjudication. She annexed and marked as SCK-2 a copy of the green card.
3. The applicant also avers that in spite of the suit being heard during the deceased's life time, he was never made a party and his land was therefore condemned un heard and his interest in land distributed without his consent or approval. That the deceased had only disposed off 5 plots out of the suit land to the defendant as seen in the agreement dated 13/7/1992 and marked as annexure SCK-3, but the defendant fraudulently registered himself as the proprietor of the entire suit land.
  4. Again, the applicant avers that suit land was subdivided despite Eldoret ELC Case No. 256 of 2018 and no disclosure on the existence of this suit involving the same suit land. The applicant avers that she only learnt of the judgment and subsequent subdivisions from the Uasin Gishu lands registry when she conducted a search through her advocates in her letter marked as annexure SCK-9. The subdivisions have been distributed as L.R Nos. 1183, 1184 and 1185 to the defendant, the 1<sup>st</sup> and 2<sup>nd</sup> respondents, respectively. The applicant has marked as annexures the green card and the searches as SCK- 10 and 11. Similarly, she avers that L.R No. 1185 is now registered in the name of Julius Waweru Kibwage.
  5. The applicant avers that in 2015, the 1<sup>st</sup> respondent filed Eldoret ELC Case No 84 of 2015, seeking eviction orders vide copy of the plaint dated 19/3/2015 and marked as annexure SCK-4, where the deceased entered appearance and filed a statement of defence annexed as SCK-5. The 2<sup>nd</sup> defendant in the suit entered appearance in 2018 and filed a defence marked as annexures SCK-6(a) and (b).
  6. Subsequently, the applicant avers that the deceased filed an application seeking to amend his defence and file a counterclaim. The applicant marks the application as annexure SCK-7 and adds that the deceased passed away on 14/4/2022, before the application was heard. She adds that the suit was subsequently dismissed for want of prosecution. The death certificate is marked as annexure SCK-8.
  7. The applicant contends that the court is bereft of jurisdiction to handle the suit since it was improperly filed as the suit land is situate in Uasin Gishu County and thus ought to have been filed at the Environment and Land Court at Eldoret and not Kitale. She further avers being in occupation and having interest in the suit land and shall suffer substantial loss if the orders sought are not granted. In addition, the applicant avers that the respondents stand to suffer no prejudice which cannot be remedied by way of costs.
  8. In response, the 1<sup>st</sup> respondent filed an affidavit sworn on 25/3/2025. He terms the application as misconceived and an afterthought. The 1<sup>st</sup> respondent has marked copies of the judgment and title deed for L.R No. 1184 as annexures marked PKW 1 and 2.
  9. Further, the 1<sup>st</sup> respondent avers that on 30/5/1997, the suit land was transferred to the defendant, to whom he purchased a plot measuring 50' x 100' and paid consideration of Kshs.150,000/=, vide an agreement dated 14/6/1999. He annexed copies the title extract for the suit land and the agreement as PKW 3 and 4. Further, that the 2<sup>nd</sup> respondent also purchased L.R No.1185 and later relocated to Moi's Bridge Town.
  10. The 1<sup>st</sup> respondent also avers that the deceased was the registered proprietor of the suit land up to 29/5/1997 since the land was transferred to the defendant on 30/5/1997. He further avers that the orders sought cannot issue after 9 years, since the judgment was regularly obtained.
  11. Additionally, he avers that the deceased had never filed any action for recovery of the suit land and thus any such claim now time barred under the *Limitation of Actions Act*, since it is over 28 years since it was transferred to the defendant. Similarly, that the applicant has failed to demonstrate her interest in the suit property for her to be joined in the suit and is therefore a stranger who is unnecessary in the



matter, for the court to. He also avers that the suit land is situate in Moi's Bridge and therefore within this court's jurisdiction.

12. The 1<sup>st</sup> respondent avers he has occupied and owned his plot since 1999, with the knowledge of the deceased and the applicant. That the application is lacks merit and should be dismissed.
13. In written submissions filed on 26/3/2025, the 1<sup>st</sup> respondent submits that the impugned judgment was fully executed where orders of adverse possession were granted. He also submits that the applicant has not met the requirements for joinder as set out in *Kingori -vs- Chege & 3 others* (2000) eKLR.
14. Further relying on *Francis Muruatetu & another -vs- Republic & 5 others* (2016) eKLR, the 1<sup>st</sup> respondent submits that in an application for joinder, an applicant must show personal interest or stake; the interest must be identifiable and proximate and must also show the prejudice to be suffered in case of non-joinder. An applicant must also set out its case, submissions and demonstrate the relevance.
15. On whether the applicant has demonstrated personal interest in the suit, the 1<sup>st</sup> respondent submits that the suit land was transferred to the defendant in 1997 as seen in the title extract. That upon sale and occupation of respective portions by the respondents, they sought orders of adverse possession which the court granted, leading to the subdivision of the suit land. Again, the 1<sup>st</sup> respondent submits that the deceased had registered a restriction on the title to the suit land disputing the transfer, hence he was aware of the transfer since 1997. Further, the 1<sup>st</sup> respondent submits that the deceased had 12 years within which to challenge the defendants title, time which expired in 2020.
16. Regarding prejudice likely to be suffered by the applicant if the application is dismissed, the 1<sup>st</sup> respondent submits that the applicants cause of action is already time barred under Section 7 of the *Limitation of Actions Act*. Further, the 1<sup>st</sup> respondent submits that prayers 3, 4 and 5 can only be sought by a party and not a proposed interested party.
17. Having looked at the application, affidavits and submissions, the issue for determination is whether the application for joinder of the intended interested party is merited and if the subsequent orders can issue.
18. Joinder of parties is governed by Order 1 Rule 10 (2) of the Civil Procedure Rules, it provides 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.”
19. In law, the court may at any stage of the proceedings either on application or on its own motion add a party to the suit if such party is necessary for the determination of the issues in dispute or whose presence is necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit. As such, joinder of parties is allowed in law and can be done at any state of the proceedings. However, joinder of parties is declined where the cause of action being proposed or the relief being sought is incompatible to or totally different from the existing cause of action or the relief. The determining factor in an application for joinder is that a common question of fact or law would arise between the existing and the intended parties. See *Erdemann Property Limited -vs- Co-operative Bank (K) Limited; Lake Basin Development Authority (Intended Interested Party)* (Civil Case E271 of 2022) [2024] KEHC 10187 (KLR) (Commercial & Admiralty) (11 July 2024) (Ruling).



20. The intended interested party is seeking to be joined to the suit and for the court to subsequently review and set aside orders made in 2016, approximately over 9 years ago. The applicant has not disclosed the reason for the delay in bringing the application yet she wants the court to consider her a necessary party within the holding in Joseph Njau Kingori –vs- Robert Maina Chege & 3 Others [2002] eKLR, Nambuye, J (as she then was) set out the guiding principles applications seeking for 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.
21. The court went on to hold that, “ 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.”
22. Guided by the above decisions, it comes out that the applicant is not a necessary party to the suit who would necessitate the court to reopen the matter. Equity does not aid the indolent. Being the spouse of the deceased, she was in a better position to know the transactions on the suit land, bearing in mind the case in Eldoret.
23. On the prayer for cancellation of the titles, the court cannot order cancellation of titles without according the registered owners an opportunity to be heard as title deeds, are prima facie evidence of proprietorship, protected by the law under Section 26 of the *Land Registration Act*, 2012. The prayers therefore fail.
24. The application, as rightly put by the respondents is an afterthought. It is hereby dismissed with costs to the respondents.

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 11<sup>TH</sup> DAY OF JUNE 2025.**

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

In the presence of:

Court Assistant - Dennis

Kiarie for the Plaintiff

Ogeto for the Proposed Interested Party present

