



REPUBLIC OF KENYA



Wanyonyi & 29 others v County Government of Trans Nzoia & another; Ministry of Land, Public Works, Housing & Urban Development & 2 others (Proposed Defendant) (Environment & Land Case 4 of 2018) [2025] KEELC 4342 (KLR) (9 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4342 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 4 OF 2018**

CK NZILI, J

JUNE 9, 2025

BETWEEN

ISAIAH WANYONYI 1ST PLAINTIFF
AGGREY NYONGESA 2ND PLAINTIFF
VICTOR BARASA 3RD PLAINTIFF
JOHN WAMALWA NDIMU 4TH PLAINTIFF
YOHANA M MANG'ENI 5TH PLAINTIFF
EUNICE NASIMIYU WANYAMA 6TH PLAINTIFF
PROTUS ARASA KILISWA 7TH PLAINTIFF
ANNA NAFULA WANYONYI 8TH PLAINTIFF
PRISCILLA IMINZA BUSAKA 9TH PLAINTIFF
PETER MUSUNGU SIFUNA 10TH PLAINTIFF
GODFREY JUMA 11TH PLAINTIFF
DAVID SIMIYU 12TH PLAINTIFF
MARTIN SIMIYU 13TH PLAINTIFF
ELIZABETH NEKESA JUMA 14TH PLAINTIFF
SOROPHINA MASAKARI 15TH PLAINTIFF
FREDRICK SAMBULA WAFULA 16TH PLAINTIFF
WANJALA WASELA WEKESA 17TH PLAINTIFF
MERCY NASIMIYU WANJALA 18TH PLAINTIFF



LEONARD KIVEU	19 TH PLAINTIFF
ISAAC WAFULA SIMIYU	20 TH PLAINTIFF
REUBEN ADEKHELA MUYIA	21 ST PLAINTIFF
EVANS MAKHANU MAKOKHA	22 ND PLAINTIFF
ISAAC KUMBA CHARLES	23 RD PLAINTIFF
ROBERT KIBOI	24 TH PLAINTIFF
LEONARD KIBEO MUKIWA	25 TH PLAINTIFF
SAMUEL NYONGESA	26 TH PLAINTIFF
CHRISTOPHER OKELLO	27 TH PLAINTIFF
RICHARD SIMIYU WEKHOBELLA	28 TH PLAINTIFF
DORCAS NAMWENYA LUSAMBA	29 TH PLAINTIFF
JEREMIAH MUCHIRI ITALIA	30 TH PLAINTIFF

AND

THE COUNTY GOVERNMENT OF TRANS NZOIA	1 ST DEFENDANT
THE NATIONAL LAND COMMISSION	2 ND DEFENDANT

AND

MINISTRY OF LAND, PUBLIC WORKS, HOUSING & URBAN DEVELOPMENT	PROPOSED DEFENDANT
MINISTRY OF AGRICULTURE & LIVESTOCK DEVELOPMENT ..	PROPOSED DEFENDANT
HON. ATTORNEY GENERAL	PROPOSED DEFENDANT

RULING

1. The court, by an application dated 3/3/2025 filed by the 2nd defendant/applicant, is asked to join the Ministry of Lands, Public Works, Housing and Urban Development, Ministry of Agriculture and Livestock Development and the Hon. Attorney General as the 3rd to 5th defendants in the suit. The reasons are contained on the face of the application and in a supporting affidavit of Brian Ikol, sworn on 3/3/2025.
2. The applicant deposes that the suit land on which the plaintiffs seek declaratory orders on ownership, is registered as public land reserved for use by the Agricultural Mechanization Station, under the Ministry of Agriculture and Livestock, and it is unclear if the land was surrendered or its rights ceded, for it to have been available for allocation, and if so; whether the proper procedure was followed in its allocation.
3. Further, the applicant deposes that when the letters of allocation were purportedly issued, they had not come into existence by virtue of Article 67 of *the Constitution* and the *National Land Commission Act*. The applicant deposes that the purported letters issued by the defunct Commissioner of Lands have to be verified after the joinder of the Ministry of Lands, Public Works, Housing and Urban Development,



- who is the custodian of the documents and or records. Again, the applicant deposes that the proposed parties are necessary in this suit and will provide the needed clarity to the court to arrive at a just decision.
4. The respondents oppose the application through a replying affidavit sworn on 4/3/2025 by Isaiah Wanyonyi. According to the respondents, the applicant lacks capacity to bring the application and that it falls short of the threshold under Order 1 Rule 10 of the Civil Procedure Rules. The respondents further depose that, the applicant has not demonstrated how the intended parties have a direct legal interest in the subject matter, based on credible documentary evidence, other than making speculative and unsubstantiated allegations. Again, the respondents depose that there is also no demonstration of how the proposed parties are necessary for just determination of the case, more so, in the absence of material to show that the land had been set aside for the intended parties.
 5. Equally, the respondents depose that the application is an afterthought; a delaying tactic; a tool for introducing new claims or defences and would be detrimental to the suit for it will bring unnecessary complexity or delay in the matter.
 6. The respondents relied on written submissions dated 6/3/2025. They submitted that for a party to be allowed to join a suit, it must demonstrate having a direct legal interest in the subject matter, as held in *Mumo Matemu v Trusted Society of Human Rights Alliance & Others* [2013] eKLR. In this application, it was submitted that no material evidence has been attached to sustain the alleged legal interest. The respondents also submitted that the application fails the threshold test under Order 1 Rule 10 of the Civil Procedure Rules, going by the case of *Joseph Njau Kingori v Robert Maina Chege & Others* [2002] eKLR, since he has not sought any reliefs against the intended parties. Therefore, it was submitted that there are no justifiable reasons why they must be joined in the suit, when no reliefs flows from the intended parties. Reliance was placed on *JMK v MWM & Another* [2015] eKLR and *Kingori v Maina* (supra).
 7. The respondents submit that the applicant has not discharged the burden under Section 107 of the *Evidence Act* to be entitled to the reliefs sought as held in *Koinange & Others v Koinange* [1986] eKLR.
 8. Again, the respondents submitted that the application was an afterthought, aimed at delaying or occasioning prejudice. Reliance was placed on *Railway Housing Co-operative Society Ltd v Attorney General & Others* [2019] eKLR, that courts should not entertain applications that are designed to derail the expeditious determination of cases.
 9. The single issue for determination is whether the proposed parties are necessary in this suit. The power to join a party to a suit under Order 1 Rule 10 of the Civil Procedure Rules is discretionary in nature. Equally, the court, under Order 8 Rule 5 thereof, may allow amendments to any document or pleading, to enable the court to wholly and effectually adjudicate on the matters in controversy. The objective is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time, without protraction inconvenience, and to avoid multiplicity of suits.
 10. In *Civicon Ltd v Kivuwatt Ltd & Others* [2015] eKLR, the court observed that the power is discretionary and that any party reasonably affected by the pending litigation is a necessary and proper party and should therefore be joined, including a defendant, if he is likely to suffer prejudice, and that also considering the practicability of execution of the order sought in the suit in the event the plaintiff was to succeed. The court said that all that a party needs is to demonstrate sufficient interest in the suit and that the interest raised is not the kind that must succeed at the end of the trial.



11. In *Zephir Holdings Limited v Mimosa Plantations Limited, Jeremiah Matagaro & Ezekiel Misango Mutisya* [2014] eKLR, the court observed that the presence of the party must be necessary or relevant for the determination of the fundamental matter in controversy, to enable the court to effectually and completely adjudicate upon and settle all the questions involved in the suit. Order 1 Rule 10(2) of the Civil Procedure Rules provides that joinder of parties can be considered at any stage of the proceedings, on such terms as may appear just to the court.
12. In *Kingori v Chege & Others* [2002] 2 KLR 243, the court held that the party to be joined must be necessary, proper, and in the case of a defendant, there must be a relief flowing from that defendant to the plaintiff, the ultimate decree or order cannot be enforced without his presence and that his presence is necessary for the court to effectually and completely answer all the questions arising out of the suit.
13. In *Sammy Kanyi Kareithi v Barclays Bank of Kenya & 2 others; Ross Xavier Whitley (Applicant)* [2021] eKLR, the court said that a mere delay in applying for a joinder is not fatal, especially if the suit is yet to be heard and where the plaintiff has not demonstrated what prejudice it will suffer by the late filing.
14. In *Central Bank of Kenya v Trust Bank Ltd & Others* [2015] eKLR, the High Court had declined to grant leave to join an additional party. The Court of Appeal said that a mere delay was not sufficient ground for declining the application, unless such delay was the kind that would prejudice the opposite party, beyond compensation by way of costs. In *Saminico Limited v Mutiso (As the administrator of the Estate of Michael Mutiso Sila - Deceased) (Civil Application 235 of 2019)* [2025] KECA 225 (KLR) (7 February 2025) (Ruling), the court held that it was fair and in the interest of justice to join the applicant on appeal, to protect the interests of the estate of the deceased as the outcome of the appeal was likely, either way, to affect the estate. The court found the applicant to have demonstrated a personal interest and stake in the matter.
15. Applying the foregoing guiding principles in the instant application, the suit is yet to be heard. The 2nd defendant was brought on board through an amended amended plaint dated 5/6/2023. Paragraphs 3 and 4 of the said plaint confirm that the suit parcels of land initially belonged to the government of Kenya and were allocated to the plaintiffs by the defunct Commissioner of Lands. Out of an alleged repossession and reallocation by the 1st defendant, they were demolished, leading to the cause of action before the court. The plaintiffs seek to be declared bona fide allottees or owners of the suit parcel of land.
16. In the statement of defence by the 1st defendant dated 24/8/2022, averments are made that the plaintiffs, though initially allocated the plots, were unable to meet the terms and conditions of the offer letter, to which the letters of offer lapsed. The critical issue raised by the plaintiffs in their pleadings is whether or not the 1st defendant had justification for repossessing, reallocating and or demolishing the developments that were on suit properties. After the 2nd defendant was joined in the suit, it is not clear if it filed any statement of defence and or pleaded any of the issues raised in the current application that the land was initially set apart and or reserved for the proposed parties. Equally, no material has been attached by way of documentary evidence to support the allegation of the reservation.
17. A defendant may not be forced on a plaintiff when he has no valid claim against him. The 2nd defendant may not declare what party should be a co-defendant without legal basis or justification. From the pleadings filed, there appears to be no relief flowing from the proposed defendants to the plaintiffs. The allegation that the plaintiffs' plots or developments have already been demolished or repossessed is not disputed. The claim is not against the proposed parties as the ones who allowed or caused the repossession, demolition, loss or damage. How the presence or participation of the proposed parties



helps the court to effectually and ultimately determine the fundamental questions in controversy solely as defendants is not clear.

18. In *Gathariki v Cheko Plot Owners Association & another* (Civil Appeal 116 of 2019) [2025] KECA 313 (KLR) (21 February 2025) (Judgment), the court observed that a court ought not to decide a case without the persons who would be vitally affected by its judgment being before it as parties. The court also held that Article 50 of *the Constitution* imposes a duty to the court to accord a person a hearing before a decision is made, that affects his rights and that before such a right is made, he ought to know the case sought to be made against him and be given an opportunity to reply. The issue of whether or not the suit land was lawfully, regularly and legally available for allocation in the first instance is key to this suit. Whether or not it was initially reserved as public land before the alleged conversion and allocation, is a question to be determined at the hearing. Therefore, and on that score alone, I am persuaded to find the proposed parties necessary to participate in the complete and effectual determination of all the controversies raised in this suit. Consequently, I find the application with merits. It is allowed.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 9TH DAY OF JUNE 2025.

In the presence of:

Court Assistant - Laban

Teti for the plaintiff present

Obino for applicant present

HON. C.K. NZILI

JUDGE, ELC KITALE.

