



Kengen Staff Retirement Benefits(Suing through its Registered Trustees) v Weylley Investment Limited & 12 others; Kaab Investments Limited & another (Proposed Defendant) (Environment & Land Case E009 of 2023) [2025] KEELC 5081 (KLR) (3 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5081 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E009 OF 2023**

**EK MAKORI, J
JULY 3, 2025**

BETWEEN

KENGEN STAFF RETIREMENT BENEFITS(SUING THROUGH ITS REGISTERED TRUSTEES) APPLICANT

AND

- WEYLLEY INVESTMENT LIMITED 1ST RESPONDENT**
- ABDI SALAT AGALAB 2ND RESPONDENT**
- PEGI COMPANY LIMITED 3RD RESPONDENT**
- IGATE INVESTMENTS LTD 4TH RESPONDENT**
- NATIONAL LAND COMMISSION 5TH RESPONDENT**
- DIRECTORATE OF SURVEY 6TH RESPONDENT**
- CHIEF REGISTRAR OF LAND 7TH RESPONDENT**
- DIRECTOR OF PHYSICAL PLANNING 8TH RESPONDENT**
- ATTORNEY GENERAL 9TH RESPONDENT**
- PERMINDER SINGH SETH 10TH RESPONDENT**
- HARVEER SINGH SETH 11TH RESPONDENT**
- SAHIB SINGH SETH 12TH RESPONDENT**
- SATVEER SINGH SETH 13TH RESPONDENT**

AND

- KAAB INVESTMENTS LIMITED PROPOSED DEFENDANT**
- MIDDLE EAST BANK KENYA LTD PROPOSED DEFENDANT**



RULING

1. Four properties are involved in this complex matter. The parties allegedly own these properties as follows: The plaintiff owns L.R. No. 10693 (CR.51518). The first defendant owns L.R. No. 13779 (CR.72565). The third defendant owns L.R. No. 6833 (CR.34274). The fourth and fourteenth proposed defendants claim ownership of L.R. No. 13409 (CR.50567), which property is charged to the fifteenth proposed defendant.
2. The problem is that, on the ground, the four properties are said to overlap. The 5th, 6th, 7th, and 8th Defendants have a statutory duty to maintain accurate land records in Kenya—a duty imposed upon them by statute. The Plaintiffs contend that they have failed to fulfill this statutory duty.
3. Plaintiffs argue that all parties claiming to be owners of the overlapping properties are relevant parties in this case. They are interested in resolving the dispute. All the parties agree except for the proposed 15th Defendant. I did not see the participation of the 14th proposed Defendant.
4. The Notice of Motion dated 12th May, 2025, has been brought by the Plaintiff under the provisions of Sections 1A, 1B, and 3A of the *Civil Procedure Act*, and Sections 3 and 13 of the *Environment and Land Court Act*. The cited substantive law grants this Court inherent powers to issue such orders as are necessary for the ends of justice.
5. Plaintiff argues that the complexity of this dispute requires that all parties whose interests are affected or involved be joined.
6. The 15th Defendant raises a Preliminary Objection, contending that the application is based on incorrect provisions of the law. The intended amendment is a joinder disguised as an amendment and should have been addressed under Order 1 Rule 10 of the CPRs.
7. On the issue of injunction, the 15th proposed Defendant states that since they have not been joined, injunctive orders cannot bind them because they are not yet parties to respond to the same.
8. The issue then that falls for the determination of this court is whether the 14th and 15th proposed Defendants should be joined as parties to this suit.
9. As submitted by Mr. Wafula on behalf of the Plaintiffs, whom I concur with, citing Gikonyo J. on the issue of joinder in *Lucy Nungari Ngigi & Others v National Bank of Kenya Ltd & Another* (2015) KEHC 6785 (KLR):

“Joinder of parties is governed by Order 1 of the Civil Procedure Rules. In law, joinder should be permitted of all parties in whom any right to relief in respect of or arising out of the same acts or transactions or series of acts or transactions is alleged to exist, whether jointly, severally, or in the alternative where if such person brought separate suits, any common question of law of fact would arise. See Order 7 Rule 9 of the Civil Procedure Rules. The Court may even in its own motion add a party to the suit if such party is necessary for the determination of the real 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. Therefore, joinder of parties is permitted by law, and it can be done at any stage of the proceedings.”



10. The primary issue to be addressed in these proceedings is the overlap of the four properties. Clearly, joinder of the Proposed 14th and 15th Defendants is necessary to enable the Court to resolve the common issues definitively.
11. Whereas the Plaintiff may have premised the application as an amendment, I believe that the said amendment will be necessary to include all parties that could be affected by the outcome of this matter concerning the four suit properties.
12. On the issue of the injunctive orders binding the 14th and 15th proposed Defendants, that issue will be surmounted when the said parties are on board.
13. However, the orders regarding the four properties issued on June 10, 2025, will stay in effect. Costs shall be in the cause.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 3RD DAY OF JULY 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Wafula, for the Plaintiff

Mr. Gitonga, for the 1st and 2nd Defendants

Mr. Bujra, for the 3rd Defendant

Mr. Lusamba, for the 6th–9th Defendants.

Happy: Court Assistant

In the absence of:

The proposed 14th and 15th Defendants.

