



**Kirong v Mutwol; Kirwa (Proposed Interested Party) (Environment & Land Case E061 of 2021) [2024] KEELC 13508 (KLR) (3 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13508 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE E061 OF 2021  
JM ONYANGO, J  
DECEMBER 3, 2024**

**BETWEEN**

**DUNCAN KIBET KIRONG ..... PLAINTIFF**

**AND**

**EMILY MUTWOL ..... DEFENDANT**

**AND**

**HENRY KIPRONO KIRWA ..... PROPOSED INTERESTED PARTY**

**RULING**

1. By Notice of Motion dated 10<sup>th</sup> October, 2023, the Applicant sought the following orders: -
  - a. Spent.
  - b. That the Interested Party herein be made a party to this suit as a 2<sup>nd</sup> Defendant for purposes of the Application and the entire suit generally.
  - c. That leave be granted to the Plaintiff to amend his Plaint to include the Proposed Interested Party as a 2<sup>nd</sup> Defendant and the 2<sup>nd</sup> Defendant be granted adequate time to file his Statement of Defence to the suit.
  - d. That the honourable court be pleased to make other orders as it may deem necessary to achieve the ends of justice.
  - e. That the costs of this application be in the cause.
2. The application is based on the 7 grounds set out on the face of the Notice of Motion and on the Applicant's Supporting Affidavit sworn on even date. The Applicant avers that the subject matter of the suit is in respect to a land transaction involving parcel Nos. LR No. Kapsaret/ Lemook/cheplaskei/ Block 1 (Inder) and LR No. Uasin Gishu/ Kimumu/1850.



3. It is his contention that the proposed Interested Party is the registered owner of parcel No. Uasin Gishu/ Kimumu/1850 measuring approx. 0.2Ha and states that it is important and in the interest of justice for the said proposed interested party to be enjoined to the proceedings to help the court adjudicate upon the issues in controversy.
4. It is further his claim that he stands to be adversely affected and suffer great loss and damage unless the orders sought are granted and the matter proceeds with the participation of the proposed interested party who has a recognizable stake in the suit. He further states that the application had been made promptly and in utmost good faith.
5. He maintains that no prejudice would be occasioned to the Defendant/ Respondent if the orders sought are granted and urged the court to allow the application.
6. The application was opposed. The Defendant/ Respondent filed a Replying Affidavit sworn on 14.12.2023. She dismissed the application as being bad in law, incompetent and an abuse of the court process. It is her assertion that the Applicant cannot make an application on behalf of the interested party and the same can only be done by the proposed interested party himself, and who in this case has not demonstrated his interest in the suit.
7. She further contends that the application is ambiguous as it is not clear whether the Applicant wants to enjoin the party as an interested party or as a defendant. She avers that the application has not met the standard outlined under Order 1 and Order 9 of the Civil Procedure Rules and is therefore fatally defective and ought to be struck out with costs.
8. The application was canvassed by way of written submissions. The Applicant's counsel filed their submissions dated 15.01.2024 whilst the Respondent's counsel filed their submissions dated 03.09.2024, which I have read and considered;

### **Analysis and Determination**

9. This court is of the considered opinion that the main issue for determination is whether the Applicant has met the threshold to warrant the grant of the orders sought;
10. The Applicant has premised the application on sections 1,1A, 3A and 63(e) of the Civil Procedure Act as read with Order 1 Rule 10 (2) of the Civil Procedure Rules. The Applicant seeks that the proposed interested party be enjoined in the suit as a 2<sup>nd</sup> defendant; for the reason that he is the registered owner of the LR No. Uasin Gishu/ Kimumu/1850, which is the subject of the suit herein. He maintained that the presence of the said party is necessary to enable the court resolve the issues in controversy and that he stands to suffer great loss and damage unless the said orders are granted.
11. The Respondent on the other dismissed the application for being incurably defective, bad in law, incompetent and ripe for striking out. It is her claim that the application is ambiguous as it is not clear whether the Applicant is seeking the joinder of an interested party or that of a defendant.
12. I have carefully looked at the application and on face of it, the Applicant is seeking both the joinder of Henry Kiprono Kirwa as an Interested Party and as a 2<sup>nd</sup> Defendant. The Application is however anchored on Order 1 Rule 10(2) which empowers the court to allow the joinder of a party whom it considers necessary to a suit.
13. While the importance of proper pleadings cannot be over-emphasized; I do find that the said error is not fatal to warrant the striking out of the Application. Article 159 of the Constitution is clear on this regard and emphasizes on the need for substantive justice.



14. Order 1 Rule 3 of the [Civil Procedure Rules](#) provides that a person may be joined in a suit as a Defendant against whom any right to relief arising out of an act or transaction is alleged to exist and states as follows:-

“All persons may be joined as Defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.”

15. Order 1 Rule 10(2) further provides that a court may, either on application made by a party or without, allow joinder of a party whose presence it considers to be necessary in a suit. The Rule 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.”

16. The Court of Appeal in discussing the discretionary power of the court to order joinder of a party as set out in Order 1 Rule 10(2) in the case of [Civicon Limited v. Kivuwatt Limited and 2 Others](#) [2015] eKLR held as follows:

“Again the power given under the Rules is discretionary which discretion must be exercised judicially. The objective of these Rules 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 any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”

17. The guiding principles in considering whether or not to allow joinder of an intending party were laid out in the case of [Joseph Njau Kingori v Robert Maina Chege & 3 Others](#) [2002] eKLR where the court held as follows:-

- “1. He must be a necessary party.
2. He must be a proper party.
3. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.
”


4. The ultimate order or decree cannot be enforced without his presence in the matter.
  5. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.”
18. The Court of Appeal buttressed this position in the case of *Meme v Republic* (2004) KLR 637 and further provided that joinder will be permissible where: -
- i. Where the presence of the party will result in the complete settlement of all the question involved in the proceedings;
  - ii. Where the joinder will provide protection for the rights of a party who would otherwise be adversely affected in law;
  - iii. Where the joinder will prevent a likely course of proliferated litigation.
19. Guided by the above legal provisions and authorities, the question that follows is whether the said Henry Kiprono Kirwa is a necessary party to the suit and ought to be joined as a party herein. As outlined above; a party may be enjoined in a suit where the party’s presence is necessary to enable the court effectively and completely adjudicate upon and settle all the questions involved in the claim.
20. I have carefully considered the plaintiff’s claim in the main suit as well as the allegations raised in the instant application; it is his claim that the defendant/respondent fraudulently duped and misled him into entering into a land Exchange Agreement, wherein the defendant misrepresented herself as the registered owner of LR No. Uasin Gishu/ Kimumu/1850 when in fact the actual registered owner of the said parcel of land is the said Henry Kiprono Kirwa. The Respondent either deliberately or out of omission failed to comment on the allegations of registration of the suit property in the name of the proposed 2<sup>nd</sup> Defendant as raised by the Applicant.
21. This court is careful not to delve into the merits of the main suit at this interlocutory stage. However, I must state that the subject matter of the main suit arises from the Land Exchange Agreement between the plaintiff and the defendant and at the center of it lies the issue of registration and ownership of the two parcels of land which are the subject of the claim herein.
22. It is therefore my considered opinion that the intended party Henry Kiprono Kirwa is a necessary party to the suit herein as his presence will result in the complete settlement of all the questions involved in the proceedings, particularly touching on the subject land LR No. Uasin Gishu/ Kimumu/1850 and the Land Exchange Agreement. Having the said Hery Kiproth Kirwa as a party in the suit will enable the court to effectively and completely adjudicate upon all the issues arising in the suit. Further, I find that no prejudice will be occasioned to the Defendant/ Respondent as she will have an equal opportunity to respond to any issue that may arise. I will therefore proceed to exercise my discretion in allowing the application and ordering the joinder of Henry Kiprono Kirwa as a Defendant in the suit.
23. In view of the foregoing, I find that the Application dated 10<sup>th</sup> October, 2023 and filed on 16<sup>th</sup> October, 2023 is merited and I allow the same and make the following orders;
- a. Henry Kiprono Kirwa be and is hereby joined to the suit herein as a 2<sup>nd</sup> Defendant.
  - b. Leave is hereby granted to the Plaintiff to amend his Plaintiff to include the said Henry Kiprono Kirwa as a 2<sup>nd</sup> Defendant, within 14 days from the date of this Ruling.
  - c. Further, the 2<sup>nd</sup> Defendant is hereby granted 14 days upon service of the Amended Plaintiff to file his Statement of Defence to the suit.



d. The costs of this Application shall be in the Cause.

**DATED, SIGNED DELIVERED AT ELDORET THIS 3<sup>RD</sup> DAY OF DECEMBER, 2024.**

**J. ONYANGO**

**JUDGE**

In the presence of;

Miss Kosgey for the Plaintiff/Applicant

Mr. Kipkemboi for Nyambegera for the Defendant

Court Assistant: Brian

