



**Njuwangu Holdings Limited v Langata KPA Nairobi West Trading Company Limited & 10 others; Mimosa Vile Limited (Intended Plaintiff) (Environment & Land Case 139 of 2013 & 1134 of 2014 & 830 of 2015 (Consolidated)) [2025] KEELC 3983 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3983 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ENVIRONMENT & LAND CASE 139 OF 2013 &**  
**1134 OF 2014 & 830 OF 2015 (CONSOLIDATED)**  
**OA ANGOTE, J**  
**MAY 22, 2025**  
**MIMOSA VILE LIMITED .... INTENDED PLAINTIFF/APPLICANT**  
**IN THE MATTERS**

**BETWEEN**

**NJUWANGU HOLDINGS LIMITED ..... PLAINTIFF**

**AND**

**LANGATA KPA NAIROBI WEST TRADING COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**JOHN OCHIENG OCHOLA ..... 2<sup>ND</sup> DEFENDANT**

**DOUGLAS OWINO ..... 3<sup>RD</sup> DEFENDANT**

**LYDIA AKOTH ..... 4<sup>TH</sup> DEFENDANT**

**COMMISSIONER OF LANDS ..... 5<sup>TH</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 6<sup>TH</sup> DEFENDANT**

**AND**

**MIMOSA VILE LIMITED ..... INTENDED PLAINTIFF**

**AS CONSOLIDATED WITH**

**ENVIRONMENT & LAND CASE 1134 OF 2014**

**BETWEEN**

**NJUWANGU HOLDINGS LIMITED ..... PLAINTIFF**



**AND**

**AL MAHRA INDUSTRIES LIMITED ..... 1<sup>ST</sup> DEFENDANT**  
**NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT**  
**CHEF LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**  
**ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**AS CONSOLIDATED WITH**  
**ENVIRONMENT & LAND CASE 830 OF 2015**

**BETWEEN**

**NJUWANGU HOLDINGS LIMITED ..... PLAINTIFF**

**AND**

**TANA MINING COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**  
**NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT**  
**CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**  
**DIRECTOR OF SURVEY ..... 4<sup>TH</sup> DEFENDANT**  
**ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. What is coming up before this court is the Intended Plaintiff/Applicant's Notice of Motion application dated 11<sup>th</sup> November, 2024 brought pursuant to the provisions of Sections 1A and 1B of the *Civil Procedure Act* and Order 1 Rule 1 and 10(2) of the *Civil Procedure Rules*, seeking the following reliefs:
  - i. That this Honourable Court be pleased to order the joinder of the Applicant, Mimosa Vile Limited, as a Plaintiff in these proceedings and it be allowed to file and serve the requisite pleadings.
  - ii. That this Honourable Court be pleased to grant any other order it deems fit to grant in the circumstances.
  - iii. That the costs of this application be in the cause.
2. The Motion is based on the grounds on the face thereof and is supported by the Affidavit of Wako Galgallo Odha, a Director of the Intended Plaintiff/Applicant of an even date. He deponed that the Applicant is the registered owner of the parcel of land known as L.R No 209/10636-IR. 167376 having purchased the same from Ibrahim Jai Golicha who handed to it vacant possession of the suit property.
3. He deponed that neither the seller nor the Applicant were aware of the existence of these proceedings; that they have been in successive quiet occupation of the suit property making all the requisite statutory payments without any interference or impediment and that the company became aware of the present



- suit when two gentlemen came onto the property on 8<sup>th</sup> November, 2024 allegedly on instructions of the 1<sup>st</sup> Defendant in ELC 139 of 2013 with a view to conducting a valuation of the suit property.
4. The Applicant's Director stated that upon being notified of this development, the Applicant made inquiries which revealed the current proceedings; that they thereafter instructed Counsel to find out the status of the matter and that it is then that they discovered that the suit was scheduled for hearing on the 13<sup>th</sup> November, 2024.
  5. Mr Odha noted that a casual look at the proceedings reveals that the land reference numbers appear to be different; that the company is reasonably apprehensive that suit property in contention is the one it occupies and that the Applicant is a proper and necessary party to these proceedings to enable the court effectively and completely adjudicate upon and settle all questions in dispute. He urged that no prejudice would be suffered by any of the other parties should the plea be granted.
  6. In response to the Motion, the Plaintiff/Respondent filed Grounds of Opposition dated 17<sup>th</sup> January, 2025 premised on the grounds that:
    - i. The Plaintiff's suit and the Applicants' claim do not arise out of the same act or series of acts or transactions as contemplated under Order 1 Rule 1 of the Civil Procedure Rules for them to be co-Plaintiffs in the suit.
    - ii. The Applicant's claim is in fact averse to that of the Plaintiff in the suit in view of the fact that the Applicant purports to claim ownership of the same property as the Plaintiff and the Applicant cannot therefore be a co-Plaintiff with the Plaintiff.
    - iii. Neither can the Applicant enjoin the suit as a Defendant as the Plaintiff has not named them Defendant in any Plaint and there would be no claim for the Applicant to defend against the Plaintiff.
    - iv. It is open to the Applicant to file its own suit if it has any claim against any of the parties herein and have the suit heard on its merits.
    - v. The application is in violation of the provisions of Order 1 Rule 10(2) requiring that addition of any party as a Plaintiff be on the court's own motion or upon the application of either party to the suit.
    - vi. The lead suit is an old suit filed over 10 years ago and is already part heard. There have been numerous attempts by one of the parties to derail the just hearing of this suit and in the Plaintiff's view, the present application is mischievous and filed in collusion with some parties so late in the day to derail the hearing of the consolidated suits.
    - vii. The application is frivolous, vexatious and brought in bad faith and seeks to delay the just determination of the Plaintiff's suit.
  7. Both parties filed submissions and a list of authorities which I have considered.
  8. Vide the present Motion, the Applicant seeks to be joined in these proceedings as a Plaintiff. It contends that it has a legitimate and justiciable interest in the subject matter of the suit and that its participation is necessary for the effective and complete adjudication of the issues before the court.
  9. On its part, the Plaintiff in the suits, who is the Respondent herein, argues among other things, that the Applicant's claim does not arise from the same transaction or series of transactions forming the subject matter of the suit. It is further contended that the Applicant is a stranger to the proceedings and, as such, lacks the legal standing to seek joinder in a suit already commenced by other parties.



10. According to the Respondent, the proper course for the Applicant, if it so wishes to ventilate its grievances, would be to file a separate and independent suit, and seek for consolidation. Order 1 Rule 1 of the Civil Procedure Rules under which the application is brought provides as hereunder:

“All persons may be joined in one suit as plaintiffs in 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 such persons brought separate suits, any common question of law or fact would arise.”

11. On the other hand, Order 1 Rule 10(2) of the *Civil Procedure Rules* gives the court wide discretion to join parties whose presence is necessary for complete adjudication of all questions before it. It provides as follows:

“(2) 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.”

12. The Court of Appeal in *Civicon Limited v Kivuwatt Limited and 2 Others* [2015] eKLR discussed the import of Order 1 Rule 10 hereinabove thus:

“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.”

13. In *Pravin Bowry vs John Ward and Another* [2015] eKLR, the Court of Appeal while considering the principles to be considered in an application for joinder of parties to a suit referred to the Ugandan case of *Deported Asians Custodian Board vs Jaffer Brothers Ltd* [1999] 1 E.A. 55 (SCU) where the court stated as follows:

“A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. A party may be joined in a suit because the party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the cause or matter...”

For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the court in that suit. Alternatively, a person qualifies (on an application of a defendant) to be joined as a co-defendant, where it



is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.”

14. The court is so guided.
15. Before embarking on a determination of whether the parameters aforesaid have been met by the Applicant, the court must answer the question of whether the Applicant, a non-party to these proceedings can seek to be joined as a Plaintiff.
16. Faced with a similar predicament, Odunga J (as he then was) in the case of *Gladys Nduku Ntbuki vs Letshego Kenya Limited; Mueni Charles Maingi (Intended Plaintiff)* [2022] eKLR expounded as follows:

“In this case, the application has been made by an intending party as either Plaintiff or Interested Party. Whereas there is nothing inherently objectionable in a person applying to be joined as an interested party in a pending suit, it is doubtful whether such a person joined as an interested party can transform the suit into one in which he becomes the principal claimant and seek substantive reliefs in the suit. In this case, it is clear that the Applicant intends to protect his rights in the suit property by contending that he was not served with the statutory notice. That in my view is a substantive claim that cannot be determined by the Applicant being joined as an interested party. As regards his joinder as a Plaintiff, as indicated above he may only be so joined by the court on own motion or by an application by either party. Nambuye, J (as she then was) in *Kingori vs. Chege & 3 Others* [2002] 2 KLR 243 held that: “...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 recognisable 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.” [Emphasis added]. Similarly, in this case none of the parties to the suit has sought to have the Applicant joined as a party to the suit. Accordingly, the Applicant cannot seek that he be joined as a Plaintiff to these proceedings.”



17. The court concurs. A reading of Order 1 Rule 10(2) of the *Civil Procedure Rules* makes it clear that in so far as the plea for joinder has not been made by the parties to the proceedings, nor suo moto by the court, the same cannot lie in so far as the Applicant wants to be joined in the suit as a Plaintiff.
18. Even if the court were to take the position that the Applicant can on its own motion seek to be joined, in the circumstances, it cannot be a co-Plaintiff to an existing Plaintiff whilst seeking different reliefs from the existing Plaintiff and/or possibly exclusively seeking ownership of property distinctly from the Plaintiff.
19. If the Applicant wishes to make claims against the Plaintiff or indeed any other parties, it should file its own separate suit and subsequently, should it deem that the two suits raise similar or common issues, or relate to the same land, apply for either consolidation of the suits or for the hearing of the suits concurrently.
20. Counsel for the Applicant submitted that the Applicant is also willing to be joined into the proceedings as a Defendant. In response, the Respondent argues that the Applicant cannot now purport to seek joinder as a Defendant, having initially approached the court with a request to be joined as a Plaintiff.
21. It is indeed a settled principle that parties are bound by their pleadings. However, with respect to joinder, the court's jurisdiction is both broad and discretionary and the court has the power, in appropriate circumstances, to join a party to proceedings in a manner that serves the interests of justice and ensures the effective and complete adjudication of all matters in dispute.
22. Accordingly, the court may determine that, notwithstanding the terms on which the application has been made, a party seeking to be joined as a Plaintiff may more appropriately be joined as a Defendant, or vice versa if such a course better aligns with the substance of the dispute. However, as aforesaid, a non-party to the suit cannot seek to be joined in a suit as a Plaintiff or Defendant.
23. In the end the court finds the Motion to be unmerited, the same is dismissed with costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 22<sup>ND</sup> DAY OF MAY, 2025.**

**O. A. ANGOTE**

**JUDGE**

In the presence of;

Ms Macheru for Plaintiffs

Mr. Malenga for 1<sup>st</sup> Defendant

No appearance for 2<sup>nd</sup> Defendant

Court Assistant: Tracy

