



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muchina & 2 others v Mathenge & 4 others (Civil Case  
E030 of 2022) [2025] KEHC 13006 (KLR) (17 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 13006 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL CASE E030 OF 2022  
DO CHEPKWONY, J  
JUNE 17, 2025**

**BETWEEN**

**PAULINE WANGARI MUCHINA ..... 1<sup>ST</sup> PLAINTIFF  
ANTHONY MWAURA WAWERU ..... 2<sup>ND</sup> PLAINTIFF  
DAVID MBUGUA NDICHU ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**THUO MATHENGE ..... 1<sup>ST</sup> DEFENDANT  
JOSEPH KIMANI KAGETHE ..... 2<sup>ND</sup> DEFENDANT  
RAPHAEL MUCHIRI NDUATI ..... 3<sup>RD</sup> DEFENDANT  
MBOI KAMITI FARMERS CO. LTD ..... 4<sup>TH</sup> DEFENDANT  
REGISTRAR OF COMPANIES ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. On 12<sup>th</sup> June, 2025, this matter came up before court for mention for respective parties to confirm compliance of Pre-trial directions and take a hearing date.
2. All counsel appearing for the respective parties were in agreement that, the suit having been filed over three (3) years ago, was yet to be set down for hearing and there was now need to prioritise the same and set it down for expeditious determination. The counsel then urged the court to grant the matter an early hearing date with strict timelines on compliance of directions so as to ensure timely conclusion of the matter given that prolonged focus on interlocutory applications to date.
3. Counsel for the Plaintiff submitted that the Plaintiffs had fully complied by filing all their pleadings and had duly served upon the Defendants. In response, most of the other parties sought additional time to either comply with procedural requirements or to file their respective defences. Notably, Mr.



Gakunji, learned advocate appearing for a Proposed Interested Party sought leave to file an application seeking to have the General Manager of the 6<sup>th</sup> Defendant enjoined as an Interested Party.

4. The basis of this application was that the said General Manager would be better positioned to assist the court in comprehensively addressing and resolving the issues pertaining to the 4<sup>th</sup> Defendant. Counsel urged the court to first hear and determine this application before proceeding with the substantive hearing of the main suit.
5. However, this application was strongly opposed by Ms. Kibebo, learned counsel for the Plaintiffs. She submitted that since the inception of the suit, the 1<sup>st</sup> Defendant/Respondent has consistently represented himself as the Director and Chairman of the 4<sup>th</sup> Defendant and has actively participated in the proceedings. It is argued that the proposed General Manager served under the same leadership as the 1<sup>st</sup> Defendant and was unlikely to introduce any new or credible evidence which the 1<sup>st</sup> Defendant has not already presented.
6. Ms. Kibebo further contended that the application was a veiled attempt to introduce internal management disputes within the 4<sup>th</sup> Defendant's structure and would only serve to delay and protract the resolution of the matter. In her view, the application was unnecessary and calculated to derail the hearing of the main suit by creating confusion over who should properly represent the 4<sup>th</sup> Defendant in this litigation.
7. Therefore, before issuing directions on how to proceed with the case, the key issues arising for determination are:-
  - a. Whether the proposed Interested Party meets the legal threshold for joinder; and,
  - b. Whether his inclusion as a party is necessary for the effective and complete adjudication of the dispute under Order 1 Rule 10(2) of the Civil Procedure Rules.
8. Order 1 Rule 10(2) of the Civil Procedure Rules provides:-

“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 to effectively and completely adjudicate upon and settle all questions involved in the suit, be added”.
9. The test is therefore, whether the party sought to be enjoined;-
  - a. Has a direct legal interest in the subject matter of the proceedings, or,
  - b. Whether their presence is necessary for the court to effectively and completely adjudicate upon and settle the questions in controversy.
10. In the case of *Trusted Society of Human Rights Alliance –vs- Mumo Matemo & 5 Others* [2014]eKLR, the Court of Appeal emphasized that:-

“An Interested Party is one who has a stake in the proceedings, though he or she was not a party from the beginning. He or she may not be directly involved in the litigation but has a stake in the outcome. It is a party who will be affected by the decision of the court”.



11. In the present application, the Proposed Interested Party is the General Manager of the 4<sup>th</sup> Defendant, a corporate entity duly enjoined as a party to be proceedings. The General Manager has neither asserted any independent legal right, nor has he demonstrated that he stands to suffer personal prejudice from the outcome of these proceedings. Instead, it is undisputed that he is an officer or agent acting in his representative capacity within the 4<sup>th</sup> Defendant.
12. A Company, being an artificial legal person, can only act through its authorised agents or officers. It is trite that such officers, including the General Managers and Directors, may be called upon to testify or swear affidavits on behalf of the Company. However, this does not render them separate legal entities entitled to be enjoined in their individual capacity where they lack a personal cause of action or defence.
13. In the case of Francis Karioko Muruatetu & Another –vs- Republic & 5 Others[2016]eKLR, the Supreme Court held that:-

“A party must demonstrate the personal interest that he or she has in the matter. It is not enough for one to merely be associated with a party or to merely have an opinion or desire in the outcome of the proceedings” .
14. Accordingly, the Proposed Interested Party in this case has no legal claim or defence that is independent of the 4<sup>th</sup> Defendant. His involvement is purely representative, and any evidence he may wish to adduce or statements he wishes to make can be made through the 4<sup>th</sup> Defendant, either by way of affidavit or oral testimony.
15. Further, the court has noted that this matter has been pending for over three (3) years without substantive hearing. The prolonged pendency has largely been occasioned by the pursuit of interlocutory applications, such as the present one. This Court is guided by the overriding objective under Sections 1A and 1B, both of the *Civil Procedure Act*, whose provisions mandate the just, expeditious, proportionate, and affordable resolution of disputes. Additionally, Article 159(2)(b) of the *Constitution* emphasizes that justice shall not be delayed.
16. Thus, the Court is persuaded by the submissions of learned counsel for the Plaintiffs, Ms. Kibebo, that allowing the joinder of the General Manager at this stage is likely to open up or escalate internal management disputes within the 4<sup>th</sup> Defendant, as to who should be its proper representative. Such disputes are best resolved internally and do not belong in this forum. To allow the application would, in effect, grant a platform for a collateral contest between corporate officials, which falls outside the scope of this Court’s current mandate.
17. In the case of Deported Asians Property Custodian Board –vs- Jaffer Brothers Ltd [1999]1 EA 55, the Court held that the joinder of a party should not be allowed where it only serves to “complicate and protract the proceedings” without contributing to the resolution of the core dispute.
18. In light of the foregoing, the Court finds that the Proposed Interested Party has no personal legal interest in the subject matter of this suit and that his role and evidence can be adequately presented through the already enjoined 4<sup>th</sup> Defendant. Therefore, the Court finds that the application does not meet the legal threshold for joinder and will only serve to delay and derail the expeditious resolution of the matter. As such, the Court directs as follows:-
  - a. All parties who have not filed their responses or complied with Order 11 of the Civil Procedure Rules are directed to file and serve their respective statements of defence and accompanying documents within fourteen (14) days from the date of this ruling. Failure to comply with



the prescribed timelines will render the pleading(s) stand expunged from the record without recourse to the con-compliant party.

- b. This Court strongly reiterates its earlier directions/orders that no further interlocutory applications should be filed unless it is by the parties herein and with the leave of court to enable the focus be shifted to the preparation for the substantive hearing and determination of the main suit on the real issues in controversy on their merit.
- c. Due to the interest this case has attracted, this Court suo moto proceeds to grant the parties special hearing date during the vacation pursuant to the High Court Rules.
- d. Hearing on 9<sup>th</sup> and 10<sup>th</sup> September, 2025.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 17<sup>TH</sup> DAY OF JUNE 2025.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

M/S Kibebo counsel for the Plaintiffs

M/S Kabai holding brief for M/S Mutiso counsel for 1<sup>st</sup> and 4<sup>th</sup> Defendants

Court Assistant - Martin

