



**Osodo & another v Gitau & 6 others (Miscellaneous Application E859 of 2024) [2025] KEHC 9958 (KLR) (Civ) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9958 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**MISCELLANEOUS APPLICATION E859 OF 2024**

**JN MULWA, J**

**JULY 10, 2025**

**BETWEEN**

**JARED ODUOR OSODO ..... 1<sup>ST</sup> PLAINTIFF**

**WAZEE MAKADARA SELF HELP GROUP ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**JESSE GITAU ..... 1<sup>ST</sup> INTENDED INTERESTED PARTY**

**PETER MUTHEE KAHORA ..... 2<sup>ND</sup> INTENDED INTERESTED PARTY**

**HOT'TENSI AH GATURU ..... 3<sup>RD</sup> INTENDED INTERESTED PARTY**

**GIDEON MAITHA MANIKI ..... 4<sup>TH</sup> INTENDED INTERESTED PARTY**

**CRISPUS KINENE ..... 5<sup>TH</sup> INTENDED INTERESTED PARTY**

**TITUS THUO MURIITHI ..... 6<sup>TH</sup> INTENDED INTERESTED PARTY**

**JOSEPH MWAURA ..... 7<sup>TH</sup> INTENDED INTERESTED PARTY**

**RULING**

1. The dispute between the Plaintiffs, Defendants and the Interested Parties herein revolve around leadership wrangles of the Wazee Makadara Self-Help Group (2<sup>nd</sup> plaintiff), and assumption of leadership rules of the duly elected officials of the group (hereinafter the group)
2. Prior to filing of the instant motion dated 4/11/2024 the Intended Interested Parties approached the court by a motion dated 19/09/2024 in which they sought court orders to stop a meeting called by the Defendant Paulne Masaka scheduled for 20/09/2024 ostensibly for purposes of effecting and/



or registering a change of group office bearers without knowledge of the entire full membership and without a resolution by the members.

3. It was in the court's view that the wrangles had split the group into two factions and therefore on the 20/09/2024 upon the application under a certificate of urgency, the court issued interim interlocutory orders whereof pending hearing and determination of the suit, the Defendant/Respondent and her agents were restrained from effecting any changes of officials of the group to await a resolution of all the members procedurally passed as well as to await for the full hearing and determination of a case involving the same parties in the Nairobi ELC case No. 508 of 2010 (the orders have since been extracted and issued on 23/09/2024).
4. The motion is yet to be heard *interpartes*, and the court has not been notified of the outcome of the ELC case.
5. Meanwhile, there is a Motion dated 4/11/2024 filed by the 7 intended interested parties, citing Section 1A, 1B and 3A of the *Civil Procedure Act*, and Order 1 Rule 12 of the Civil Procedure Rules (CPR) seeking leave for joinder to the suit as interested parties, upon grounds stated on its face, and affidavit of Peter Muthee Kahoa, the 2<sup>nd</sup> intended Interested party.
6. It is the Applicants' case that they are members of the group and that the plaintiffs wish to be enjoined in the suit to protect the group members interest including representations in the leadership of the group particularly in transactions of the group's land known as Nairobi Block 83/893 with an approximate value of kshs. 2 Billion urging that their interests cannot be represented by the embattled officials.
7. In Opposition to the Application, the Respondents- (the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs) filed a Replying affidavit sworn by the 1<sup>st</sup> Plaintiff on 8/01/2025. It is his disposition that the Applicants (Intended Interested Parties) motion is defective and misconceived as they have failed to tender evidence of fraud or intention to transfer the group's land parcel; adding that the deponent has unilaterally collected money in the group's name to the tune of Kshs. 80 million and transferred it to his personal account, among other allegations of misappropriation of group monies.
8. In a rejoinder to the reply, the Applicants by a further affidavit by the 2<sup>nd</sup> Applicant deposes that the Respondents affidavit is full of falsehoods and defamatory statements and added that the deponent (1<sup>st</sup> Plaintiff) has been charged in Makara Law Court, vide MCCR/E405 of 2025 with 3 counts of the offense of making a document without authority contrary to section 357(A) of the *Penal Code* and Forgery contrary to Section 345 of the *Penal Code*; in respect of 5 counts all in respect of the 2<sup>nd</sup> Plaintiff's Group; that the case is pending hearing and determination.
9. Finally the Applicants urge the court to allow them to be enjoined in the suit to enable the court to make a fair determination based on all material facts as presented.

### **Analysis and Determination**

10. All the parties in this suit, including the intended interested parties are members of the 2<sup>nd</sup> Plaintiff Self-Help Group.

Order 1 Rule 10(2) of the CPR provides that:

“ 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 or defendant or



whose presence before the court may be necessary in order to enable the court to adjudicate upon and settle all questions involved in the suit be added”.

11. The Applicants have stated in their depositions their interest and stake in the suit. What the court needs to determine is whether they are necessary parties in the suit, and whether the final decree cannot be enforced without their participation in the suit.
12. In the case of *Civicon Limited v. Kivuwatt Limited [2015] & 2 Others (2015)* klr the court held that the power given under the rules is discretionary and must be exercised judiciously, that the objective of the rules is to bring on record all persons to a dispute relating to the subject matter so that the dispute may be determined in their presence at the same time without any protraction or inconvenience and to avoid multiplicity of proceedings.
13. Therefore, any party reasonably affected by the pending litigation is a necessary party and should be enjoined. Such parties could be so enjoined as a defendant or an interested party in line with Order 1 Rule 10 CPR.
14. In the circumstances of the matter before me, the Applicants have stated their stake and interest in the suit. They are stakeholders in the group’s properly whose value is about Kshs. 2 Billion. They are apprehensive that the plaintiff may continue to misappropriate funds from the said property materially as may be deduced from the criminal charges already preferred against the 1<sup>st</sup> Plaintiff. If that be true, they stand to lose their shares and profits arising from the leadership wrangles of the self-help group.
15. The Court of Appeal in the case of *Meme v. Republic [2004]KLR 637*, the court observed that joinder will be permissible:
  - a. Where the presence of the party will result in the complete settlement of all questions involved in the proceedings
  - b. Where the joinder will result in the complete settlement of all the questions involved in the proceedings.
  - c. Where the joinder will prevent a likely course of proliferated litigation.
16. The above parameters have since been applied in numerous Superior Court decisions.
17. The Applicants’ interest in the pending litigation is well tabulated in their supporting affidavit as well as their fears in respect of the 1<sup>st</sup> Plaintiff’s alleged misappropriation of the group monies. They are also apprehensive that the 1<sup>st</sup> Plaintiff may even transfer the suit land parcel without authority of the Group to himself.

There are pending in court Criminal cases against the 1<sup>st</sup> plaintiff all related to the suit property and others which would impact negatively on the group. They seek to have representation in the group done with participation of all the members.
18. As held in the case of *Joseph Njau Kingori v. Robert Maina Chege & 3 Others [2002] eKLR* all what an applicant to be enjoined as a party to a suit ought to do is to show sufficient interest and stake in the proceedings, not because there is a cause of action against it, but because the party’s presence is necessary in order to enable the court effectually and completely settle all questions involved in the cause of matter.
19. For the foregoing, I am satisfied that the Applicants are deserving of the orders they seek in their motion dated 4/11/2024. They are enjoined into these proceedings as Interested Parties.



Let the Applicants by their Advocates take the procedural steps within 30 days of this order. Each party shall bear own costs.

20. The matter shall be listed for mention for further directions before the DR of the Division on 10/09/2025.

Orders accordingly.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 10<sup>TH</sup> DAY OF JULY, 2025**

.....

**JANET MULWA.**

**JUDGE**

