



**Kinyanjui v Ngigi & 3 others; Kenya Commercial Bank Limited (Interested Party)  
(Environment & Land Case 181 of 2017) [2025] KEELC 4915 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4915 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 181 OF 2017**

**JM ONYANGO, J**

**JUNE 30, 2025**

**BETWEEN**

**TERESIA NJUHI KINYANJUI ..... PLAINTIFF**

**AND**

**FRANCIS WAINAINA NGIGI ..... 1<sup>ST</sup> DEFENDANT**

**FRANCIS HENRY WAINAINA KIHORO ..... 2<sup>ND</sup> DEFENDANT**

**JOSEPH KANYINGI KAMAU ..... 3<sup>RD</sup> DEFENDANT**

**THE LAND REGISTRAR RUIRU ..... 4<sup>TH</sup> DEFENDANT**

**AND**

**KENYA COMMERCIAL BANK LIMITED ..... INTERESTED PARTY**

**RULING**

1. Before me is an application dated 31<sup>st</sup> May 2023 which seeks the joinder of the applicant, that is Michael Kimani Ndungu, as a Defendant in this suit. The Application is anchored on the Affidavit of Michael Kimani Ndungu sworn on even date.
2. The Application did not go unchallenged; it was vehemently opposed by the Replying Affidavits of Teresia Njuhi Kinyanjui sworn on 4<sup>th</sup> July 2023 and 24<sup>th</sup> December 2024.
3. The Application was canvassed by way of written submissions duly filed by the Applicant and the Plaintiff/Respondent.
4. Having perused the application, the replying affidavits in opposition and the parties' respective submissions, the singular issue for determination is whether the Applicant satisfies the threshold to be joined as a party.



## Analysis and Determination

5. The Court's power to order joinder is a discretionary one, to be exercised not capriciously but with careful regard to settled legal principles. That discretion, while broad, is not unbounded. It must be applied judiciously and within the framework set out in Order 1 Rule 10(2) of the Civil Procedure Rules, which directs the Court to consider whether the presence of a party is necessary to enable it to effectually and completely adjudicate upon all questions involved in the suit.
6. Order 1 Rule 10(2) of the Civil Procedure Rules provides for the addition and substitution of parties to a case in the following terms:
  - “10. Substitution and addition of parties [Order 1, rule 10] ...
    - (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...”
7. This provision affirms the Court's solemn duty to ensure that all persons whose presence is necessary for the just and complete determination of the issues are brought before it, so that no corner of the dispute remains shrouded by the absence of a proper party.
8. Learned counsel for the Applicant submits that it is necessary for the Applicant to be joined as a Defendant in the suit to enable the Court to make a proper and conclusive determination with regard to the suit property. To buttress his point, counsel places reliance on the High Court decision in *Joseph Njau Kingori v Robert Maina Chege & 3 others* [2002] eKLR where the Court distilled the principles governing the joinder of a party as follows:
  - “1. He must be a necessary party
  2. He must be a proper party.
  3. In the case of a 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 to effectively and completely to adjudicate upon and settle all questions involved in the suit.”
9. Applying these principles, the question is whether the Applicant is so connected to the issues in dispute that his presence is necessary for the Court to resolve the matter fully and fairly.
10. Learned counsel for the Respondent contends that the Applicant has not drawn any clear line, whether legal or factual, between his Ballot Certificate 1799 and share certificate 5615 with the suit land. In counsel's view, the Applicant stands at a distance too remote to warrant joinder, having failed to establish the requisite nexus that would anchor his claim within the framework of this dispute.



11. In *Pravin Bowry v John Ward & another* [2015] eKLR the Court of Appeal while addressing the question of joinder found persuasive footing in the Ugandan case of *Deported Asians Property Custodian Board v Jaffer Brothers Limited* [1999] I EA 55 (SCU) where the court stated:

“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, not because there is a cause of action against it, but because that party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the 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 a 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.” (emphasis by underline).”

12. From this exposition, it becomes plain that the right to be joined is not tethered solely to the existence of a cause of action against the party, but may rest entirely upon the necessity of that party’s presence to secure a just, complete, and conclusive determination of all matters in controversy; lest the Court, in resolving one dispute, sows the seeds of another.
13. The case of *Deported Asians Property Custodian Board v Jaffer Brothers Limited* (Supra) defines a necessary party as one whose presence is essential to the just and complete determination of the matter. Such a party may be so closely linked to the questions in controversy that the orders sought would legally affect his interests, or whose absence would render the Court’s decision incomplete, perhaps even hollow, for want of the very person it ought to bind. His joinder is not a matter of procedural generosity, but of substantive necessity.
14. I must now turn to the central question; whether the proposed Defendant is one whose presence is so necessary to the full and fair determination of the issues at hand that justice compels his joinder.
15. I take note that Ballot Certificate 1799 annexed by the Applicant in their Supporting Affidavit is the very one allegedly issued to the 1<sup>st</sup> Defendant by Githunguri Constituency Ranching Company Limited from which the Applicant draws his claim to the suit property. This is no trivial overlap. It forges a tangible evidentiary link between the Applicant and the suit property. In such circumstances, the Court cannot turn a blind eye. Where two hands lay claim to the same token of title, justice cannot fully speak until both are heard.
16. Having considered the totality of the material placed before me, I am satisfied that the Applicant’s presence is essential to the just and conclusive determination of the issues in dispute.
17. The law does not favour fragmented justice, and neither shall this Court. The Applicant’s claim, tethered as it is to the very instrument upon which the 1<sup>st</sup> Defendant stakes his own, renders the Applicant a necessary party to these proceedings. The convergence of claims compels convergence of parties. The Applicant is, by all measures that matter in law and equity, a necessary party to this litigation, and his joinder as a Defendant is warranted.



18. Before I pen off, let me weigh in on the persistent confusion between the terms “joined” and “enjoined”. The distinction is not merely semantic. It is foundational to the architecture of procedural law. The former “joined” is the appropriate vessel in procedural law to denote the addition of a party to a suit. The latter “enjoined” is a term of constraint, most often invoked where the hand of the Court is asked to restrain or prohibit conduct through the solemn power of injunction.
19. I echo the clarity offered by Musyoka J in *In re Estate of Barasa Kanenje Manya (Deceased)* [2020] eKLR, where he elucidated the distinction between the two terms and noted that, ‘joinder’ relates to addition of parties whereas ‘enjoined’ pertains to restraint. The distinction is not academic; it is judicially operative. To conflate the two is to blur the boundary between inclusion and prohibition.
20. I urge learned counsel, henceforth, to choose their words as they would their weapons; informed by both purpose and propriety. Words are the very sinews of justice, and when twisted or misapplied, they do not merely fail; they mislead and they risk distorting the truth they were supposed to convey.
22. Back to the application, the same is merited and it is hereby granted. The applicant is added to the suit as the 4th defendant.
23. The costs shall be in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY, AT THIKA THIS 30<sup>TH</sup> DAY OF JUNE 2025.**

.....

**J. M ONYANGO**

**JUDGE**

In the presence of:

Miss Wanjiku for Mr Njiri for the Plaintiff

No appearance for the Defendants

Court Assistant: Hinga

