



**Parsere & another (Suing as Administrators of the Estate of Peter Parsere Saire - Deceased) v Toyanga & another; Weru & another (Interested Parties) (Environment & Land Case E025 of 2024) [2025] KEELC 4742 (KLR) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4742 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**  
**ENVIRONMENT & LAND CASE E025 OF 2024**  
**LC KOMINGOI, J**  
**JUNE 26, 2025**

**BETWEEN**

**PENINAH SEKENET PARSERE ..... 1<sup>ST</sup> PLAINTIFF**  
**DIANA SOKOINE MELITA ..... 2<sup>ND</sup> PLAINTIFF**  
**SUING AS ADMINISTRATORS OF THE ESTATE OF PETER PARSERE SAIRE - DECEASED**

**AND**

**YIANGASO OLE TOYANGA ..... 1<sup>ST</sup> DEFENDANT**  
**WILFRED KILENYA TOYANGA ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**MIRRIAM WANGU WERU ..... INTERESTED PARTY**  
**NDUNGU KIARIE ..... INTERESTED PARTY**

**RULING**

1. This is the Ruling in respect of Notice of Motion dated 25<sup>th</sup> November 2024, is brought under; Order 1 Rule 9, 10(2), 14, & 25, of the Civil Procedure Rules 2010; Section 1A, 1B and 3A of the *Civil Procedure Act*, 2010 and all other enabling provisions of the law. It seeks:
  - i. Spent;
  - ii. That the Honourable Court orders that the 2<sup>nd</sup> defendant is wrongly sued in this case and should be removed/struck out as a defendant in this matter.



- iii. That the Honourable court directs the Plaintiffs to amend the Complaint and remove the 2<sup>nd</sup> Defendant/Applicant from this matter.
  - iv. Costs of this application be borne by the Plaintiffs/ Respondents.
2. The grounds are on the face of the application, supported by the sworn Affidavit of Wilfred Kilenyi Toyanga. He claims that there is no cause of action against him as the pleadings are about the 1<sup>st</sup> Defendant. Therefore, in the interests of justice, his name should be struck out. He adds that as a public figure and community elder, his inclusion in the suit is detrimental to his reputation and has caused his emotional and physical agony.
  3. The Plaintiff, Peninah Sekenet Parsere and a Co-Administrator of the Estate of her late husband Peter Parsere saire aka Peter Saire Ole Toyanga in her Replying Affidavit dated 24<sup>th</sup> April 2025 contested the prayer for removal of the 2<sup>nd</sup> Defendant/Applicant as a party to the suit on grounds that he greatly participated in the dispute leading to the institution of this suit. She stated that the 2<sup>nd</sup> Defendant was one of the Administrator's of the Estate of the late Toyanga Ole Saire (their father), who upon his demise and in succession cause No. 53 of 2019, each of his three sons (being the Plaintiff's husband- the late Peter, the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant) was to inherit 61 acres of land. That of the 61 acres, each son was to excise 2 acres of land from their portions and to be given to their mother- Kipinet Ene Toyanga. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants however declined to have their land excised and ended up excising the whole six (6) acres from Peter's portion on grounds that, he being the last born son, was entitled to inherit his mother's land.
  4. However, upon the demise of their mother, it was illegally agreed that the 6 acres of land carved out from the late Peter Parsere's portion would be subdivided equally amongst the brothers. An unjust decision which would result to unfair enrichment of the Defendants. Therefore, he was a proper party to the suit and his removal from the suit would be unfair and unjust.
  5. The application was to be canvassed by way of written submissions.

#### **Submissions of the 2<sup>nd</sup> Defendant/Applicant**

6. Counsel outlined the following as the issues for determination: Whether the 2<sup>nd</sup> defendant/Applicant is wrongly sued and enjoined as a defendant in this suit; whether the plaintiff should amend her pleadings and remove the 2<sup>nd</sup> defendant as a defendant in this matter; who should bear the costs of this application.
7. On whether the 2<sup>nd</sup> defendant/Applicant is wrongly sued and enjoined as a defendant in this suit, it was submitted that the Complaint only made reference to the acts or omissions of the 1<sup>st</sup> defendant together with their late brother Peter. Counsel also submitted that the complaint only mentioned the succession relating to the estate of their late father the late Toyanga and that of their late brother Peter Parsere Toyanga. The succession cause E70 of 2024 concerning the Estate of their late mother Tipina Ene Toyanga was not mentioned in the complaint. Therefore, no wrong doing or acts or omission committed by the 2<sup>nd</sup> defendant against the plaintiffs were disclosed. As such, the Plaintiffs had not met the threshold for joining a party in a suit as held in *Gladys Nduku Nthuki v Letshego Kenya LIMITED; Mueni Charles Maingi (intended Plaintiff) (2022) eKLR*.
8. On whether the plaintiff should amend her pleadings and remove the 2<sup>nd</sup> defendant in the suit, it was submitted that Order 10 Rule 1 (2) of the Civil Procedure Rules in the interest of justice and fairness, empowered Court to order the plaintiff to amend her pleadings and remove the name of the 2<sup>nd</sup> defendant.



9. On the issue of costs it was submitted that the Applicant was warranted to costs for being wrongly sued.

### **Submissions of the Plaintiff/Respondent**

10. Counsel highlighted the following two issues for determination as summarised hereunder:
11. On whether the 2<sup>nd</sup> Defendant was improperly joined in the suit, counsel submitted that while striking out of a party was a Court's discretion as espoused under Order 1 Rule 10 of the Civil procedure Rules, it was important to note that presence of parties in the suit was to facilitate effective determination of the dispute. It was submitted that the 2<sup>nd</sup> Defendant was a necessary party to the suit as an Administrator of the Estate of the late Toyianga Ole Saire (their father), and the brother to the 1<sup>st</sup> Defendant as well as the late Pater Saire's (the 1<sup>st</sup> Plaintiff's late husband). Reference was made to the cases of *Meme vs Republic* [2004] KLR 637 and *Civicon Ltd vs Kivu Watt Ltd & 2 others* [2015] KECA 588 (KLR) where it was held that joinder was for effectual settlement of issues as provided for under Order 1 Rule 3 Civil Procedure Rules. Counsel submitted that the 2<sup>nd</sup> Defendant had a lot of involvement in the dispute and was also using his position as the area sub-chief to intimidate the Plaintiff's counsel for surrender of the title deeds in his possession. Therefore, as per Section 1A *Civil Procedure Act*, the Court had a duty to ensure just and expeditious disposal of cases by refusing to strike him out of the suit.
12. On the issue of costs, it was submitted that the 2<sup>nd</sup> Defendant/Applicant should be condemned to pay costs of the Application for his part in the dispute.

### **Analysis and Determination**

13. I have considered the application, statutes and legal authorities and find that the issues for determination are:
- i. Whether the 2<sup>nd</sup> Defendant/ Applicant ought to be removed from these proceedings.
  - ii. Who should bear costs of the application?
14. The 2<sup>nd</sup> Defendant/Applicant claims to be wrongly joined in the suit and asks Court to order for his removal on grounds that the Plaintiff/Respondent does not disclose any cause of action against him.
15. The Plaintiff/Respondent has contested this stating that the 2<sup>nd</sup> Defendant who was her late husband's brother was a proper party to the suit because his actions as well as that of the 1<sup>st</sup> Defendant, her other brother in-law were the reason for the suit.
16. Order 1 Rule 3 of the Civil Procedure Rules provides as follows on who may be joined as Defendants:
- “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.
17. Order 1 rule 9 goes on to provide that no suit shall be defeated on grounds of misjoinder, non-joinder: It states; “No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.”
18. It is settled that the non-joinder or misjoinder of parties is not fatal to a suit. The overriding objective is to do substantive justice and determine the real question in controversy between the parties before the



court. It is safe to state that misjoinder and non-joinder of parties are procedural issues which should not be used to defeat justice. In any case, Courts have power to strike out or add parties at any stage of the proceedings to ensure that justice is done as provided under Order 1 rule 10(2) Civil Procedure Rules provides that;

“(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.”

19. I therefore find that, procedural technicalities like joinder should not override the duty to administer justice under Article 159(2)(d) of *the Constitution*, which mandates courts to deliver justice without undue regard to technicalities. The court is more concerned with substantive justice because parties can be added or removed at any stage before judgment.
20. This Court therefore finds that the application to strike out the 2<sup>nd</sup> Defendant / Applicant from the suit is not merited.
21. The application dated 25<sup>th</sup> November 2024 is hereby dismissed with no orders as to costs.
22. There is also the Notice of Motion dated 2<sup>nd</sup> September 2024 brought under Section 140 of the *Land Act*, 2021 and order 51 rule 1 of the Civil Procedure Rules.
23. It seeks orders;
  1. Spent.
  2. Spent.
  3. That this Honourable Court be pleased to issue a temporary injunction restraining the 1<sup>st</sup> Plaintiff, her servants and/or agents from constructing, barricading, obstructing or in any other way denying the 1<sup>st</sup> Defendant his agents and/or visitors and his livestock access to the watering place located at KJD/OlchorE Onyore/29670the access of which goes through part of the suit property registered as KJD/OlchorE Onyore/29669.
  4. That the orders be served upon and enforced by the Officer Commanding Police Division Isinya.
  5. That the costs of this Application be provided for.
24. The grounds are on the face of the Application and set out in paragraphs a to g.  
The Application is supported by the affidavit of Yiangoso Ole Toyianga, the 1<sup>st</sup> Defendant/Applicant, sworn on the 2<sup>nd</sup> September 2024.
25. I have considered the said Application, the Affidavit in support, the response thereto, the rival submissions and the authorities cited. The issue for determination is whether the Application is merited.
26. It is the 1<sup>st</sup> Defendants/Applicants submission that there has always been an access road to the watering place through KJD/Olchor/Onyore/29699. He states that the said access has been blocked by the 1<sup>st</sup> Plaintiff.



27. I find that these averments were not controverted.
28. I find merit in this application and I grant the orders sought namely;
- a. That a temporary injunction is hereby issued restraining the 1<sup>st</sup> Plaintiff, her servants and/or agents from constructing, barricading or in any other way denying the 1<sup>st</sup> Defendant, his agents and/or his livestock access to the watering place located at KJD/Olchor Onyore/29670, the access which goes through KJD/Olchor Onyore/29669, pending the hearing and determination of this suit.
  - b. That the OCPD Isinya do ensure compliance of (a) above.
  - c. That costs do abide the outcome of the main suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 26<sup>TH</sup> DAY OF JUNE 2025.**

**L.KOMINGOI**

**JUDGE.**

In The Presence Of:

Ms. Achieng for Ms. Mongare for Plaintiffs.

Ms. Wasilwa for the 1<sup>st</sup>, 2<sup>nd</sup> Defendants.

Ms. Karanja for the 2<sup>nd</sup> Interested Party.

Court Assistant – Mateli.

