



**Hi Jung Oh Children's Home v Life Reformation Centre & 4 others; Thome Farmers Company (No 1) Limited (Interested Party) (Environment & Land Case E223 of 2022) [2025] KEELC 4660 (KLR) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4660 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E223 OF 2022**

**CG MBOGO, J**

**JUNE 24, 2025**

**BETWEEN**

**HI JUNG OH CHILDREN'S HOME ..... PLAINTIFF**

**AND**

**LIFE REFORMATION CENTRE ..... 1<sup>ST</sup> DEFENDANT**

**THE NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT**

**NAIROBI CITY COUNCIL ..... 3<sup>RD</sup> DEFENDANT**

**SOSPETER GATHAHU MUMBI ..... 4<sup>TH</sup> DEFENDANT**

**ANTI-CORRUPTION COMMISSION ..... 5<sup>TH</sup> DEFENDANT**

**AND**

**THOME FARMERS COMPANY (NO 1) LIMITED ..... INTERESTED PARTY**

**RULING**

1. Before me is the notice of motion dated 4<sup>th</sup> April, 2025 filed by the intended interested party/applicant, and it is expressed to be brought under Order 1 Rule 10 (2) and (4) of the *Civil Procedure Rules*, seeking the following orders: -
  1. Spent.
  2. Thome Farmers Company (No.1) Limited be and is hereby joined to this suit as the 6<sup>th</sup> defendant.
  3. Thome Farmers Company (No.1) Limited be granted leave to file a defence and counterclaim in terms of the draft annexed to the supporting affidavit of Esther Wangeci Kariuki.



4. The costs of this application be provided for.
2. The application is premised on the grounds on its face. The application is supported by the affidavit of Esther Wangeci Kariuki, the chief executive officer of the intended interested party/applicant sworn on even date. The intended interested party/applicant deposed that the plaintiff/respondent filed this suit asserting ownership of property known as Land Reference Number Nairobi/Block 110/686 measuring 4.8 hectares by relying on a lease registered on 30<sup>th</sup> October 1995. It was deposed that the intended interested party/applicant is the registered owner of the original land reference number Nairobi/Block/110 which was subdivided in 1988, and the original certificate surrendered to the Lands Office for issuance of the titles of the sub-divisions.
3. The intended interested party/applicant deposed that the suit property is a subdivision of the mother title, and that it is registered in its name as per the report published by the Ministry of Lands and Physical Planning on 11<sup>th</sup> February, 2023. That in the circumstances, it ought to be joined as a defendant in this suit, and that its presence is necessary in order to enable the court to effectually adjudicate and settle all questions involved in the suit.
4. The application was opposed by the replying affidavit of Byum-Soo Oh, Alexander Makau Mwema and Sang Mi Oh jointly sworn on 6<sup>th</sup> May, 2025. They deposed that the draft counterclaim is time barred and that it offends Section 7 of the Limitation of Actions Act. Further, that the intended interested party/applicant is not a necessary party since it has not demonstrated sufficient grounds warranting the joinder in these proceedings. Further, they deposed that the intended interested party/ applicant has come to court with unclean hands for failing to indicate to the court that there existed a suit between itself and the plaintiff in *HCC No. 1882 of 1999*, Nairobi which was dismissed for want of prosecution. Further, that the remedy they seek cannot be sought in the manner in which it intends to move the court. Further, that it is a peripheral party and cannot introduce new issues for determination by court vide the counterclaim.
5. The application was canvassed by way of written submissions. The intended interested party/applicant filed its written submissions dated 19<sup>th</sup> May, 2025. The intended interested party/applicant submitted that there can never be any doubt on the propriety of the participation of Thome Farmers Company in the determination of the right of title to the suit property. That the fact that the suit property is a subdivision of the main property and the confirmation by the Land Department suffices. Further, it was submitted that whether or not the counterclaim sought to be introduced is barred by limitation is a matter that can only be determined after a defence is filed to the counterclaim and not now. To buttress on this issue, the intended interested party/applicant relied on the cases of Central Kenya Ltd v Trust Bank Ltd & 5 others [2000] eKLR, and Civicon Limited v Kivuwatt Limited [2015] eKLR.
6. The intended interested party/applicant further submitted that the application is made at an early stage of the proceedings, before the case is certified ready for trial, and that the objections by the plaintiff/respondent and the 3<sup>rd</sup> defendant are not of the kind that can preclude the court from exercising its discretion on joinder.
7. The plaintiff/respondent did not file their written submissions. Be that as it may, I have considered the application, the replying affidavit by the plaintiff/respondent and the written submissions filed by the intended interested party/applicant. In my view, the issue for determination is whether the intended interested party/applicant ought to be joined as a defendant in this suit.



8. Order 1 Rule 10(2) of the Civil Procedure Rules 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 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.”

9. In Civicon Limited versus Kivuwatt Limited and 2 Others [2015] eKLR the court observed as follows:-

“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...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”

10. Looking at the above cited authority, joinder of parties is permitted by law and it can be done at any stage of the proceedings. But, joinder of a party may be refused where such joinder: will lead into practical problems of handling the existing cause of action together with the one party being joined; is unnecessary; or will just occasion unnecessary delay or costs on the parties in the suit. In other words, joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible to or totally different from existing cause of action or the relief. The determining factor in joinder of parties is that a common question of fact or law would arise between the existing and the intended parties.

11. In this case, the intended interested party/applicant contended that the property in which the plaintiff/respondent asserts ownership is registered in its name, and that it is a subdivision of the original title known as land reference number Nairobi/Block/110 which was subdivided in 1988. Further, it was argued that it is necessary that the intended interested party is joined in these proceedings as a defendant, and also file the defence and counter claim annexed to the application. This, it was stated, is necessary to enable the court effectually adjudicate the issues in this suit. In support thereof, the intended interested party/ applicant annexed a copy of the maps, the report published by the Ministry of Lands and the draft defence and counterclaim.

12. On the other hand, the plaintiff/respondent opposed this application on the grounds that the intended interested party/applicant has come to court with unclean hands for failure to disclose the existence of a former suit in *Nairobi HCC 1882 of 1999*. They argued that it is not a necessary party and that the intended interested party/applicant cannot introduce new issues vide a counterclaim. In contending with this application, the plaintiff/respondent annexed a copy of the plaint filed in *Nairobi Civil Suit No. 1882 of 1999*, and the proceedings before court.



13. I have carefully analysed the documents relied on by the respective parties. The subject matter in *Nairobi Civil Suit 1882 of 1999* revolved around the suit property which was filed by the representative members of Thome Marurui Self Help Association and Windsor View Estate Company Limited. On 6<sup>th</sup> December, 2001, the court delivered a ruling wherein it was observed that the plaintiffs in that suit had not taken steps to have the matter heard and disposed of. The suit was dismissed for want of prosecution with costs.
14. While the decision to allow a party for joinder is discretionary, the discretion ought to be reasonable in the circumstance considering all the factors stated above. The intended interested party/applicant has not disowned the pleadings in *Nairobi HCC No. 1882 of 1999* which leaves no doubt that a suit was once filed by the intended interested party/ applicant or its proxies on the same issue. While the orders dismissing the suit for want of prosecution are still in force and have not been set aside, the intended interested party/applicant cannot seek to file a defence and counterclaim in total disregard of the existing orders. The intended interested party/applicant has indeed approached the court with unclean hands, and is undeserving of the orders.
15. The notice of motion dated April 4, 2025 is hereby dismissed with costs to the plaintiff/respondent.  
Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 24<sup>TH</sup> DAY OF JUNE, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

24/06/2025

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Lusiola for the Plaintiff

Mr. Nelson Havi for the Intended Interested party/Applicant

Ms. Ochola for the 5<sup>th</sup> Defendant

Ms. Ruth Kirunga holding brief for Mr. Erick Theuri for the 3<sup>rd</sup> Defendant

Mr. Ongegu for the 1<sup>st</sup> Defendant

