



REPUBLIC OF KENYA



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Mbari (Suing as the Legal Representative of the Estate Of Jason M’Mbari Murungi alias Jason M’Mbari Murungi – Deceased) v Njoka & 2 others (Sued as the Legal Representatives of the Estate of Jakhin Njoka - Deceased) (Environment and Land Appeal E020 of 2024) [2025] KEELC 4796 (KLR) (24 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4796 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT AND LAND APPEAL E020 OF 2024**

BM EBOSO, J

JUNE 24, 2025

BETWEEN

MOSES NJAGI MBARI APPELLANT

**SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JASON
M’MBARI MURUNGI ALIAS JASON M’MBARI MURUNGI – DECEASED**

AND

JULIET CIAKATHA NJOKA 1ST RESPONDENT

MICHENI NJOKA 2ND RESPONDENT

ERASTUS NJOKA 3RD RESPONDENT

**SUED AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF JAKHIN
NJOKA - DECEASED**

(Being an Appeal arising from the Ruling of the Chief Magistrate Court at Chuka (Hon J M Gandani), delivered on 11/12/2024 in Chuka CMC E & L Case No. 71 of 2019)

JUDGMENT

Introduction

1. This appeal challenges the ruling rendered by the Chief Magistrate Court at Chuka (Hon J. M Gandani) on 11/12/2024 in Chuka CMC E&L Case No 71 of 2019. The key issue that fell for determination in the impugned ruling was whether the respondents’ application dated 13/8/2024 met the criteria for joinder of a new party to a suit. That is one of the two key issues that fall for determination in this first appeal. I will outline a brief background to the appeal before I analyse and dispose the issues that fall for determination.



Background

2. Through a plaint dated 6/12/2019, the appellant instituted Chuka CMC E&L *Case No 181 of 2019* against the respondents seeking:
 - (i) a permanent injunction restraining the respondents and their agents/servants against transferring, charging, sub-dividing, alienating, allotting, surveying or tampering with the Land Registry records relating to the parcel of land known as Chuka Township/7 (hereinafter referred to as “the suit land”);
 - (ii) a declaration that the suit land belongs to the appellant;
 - (iii) an order for resurvey of the suit land;
 - (iv) an order decreeing eviction of the respondent from the suit land;
 - (v) damages for trespass;
 - (vi) mesne profits;
 - (vii) costs of the suit; and
 - (viii) interest on
 - (i) and
 - (iii) (sic).
3. The case of the appellant was that the suit land measured 0.047 hectares and was located along Kanwa Road in Chuka Town. He contended that the suit land belonged to the late Jason M'mbari Murungi (hereinafter referred to as “the late Murungi”). Prior to his demise, the late Murungi used the suit land as a collateral to secure a loan of kshs. 200,000 which he took from the Industrial and Commercial Development Corporation, (the ICDC). Upon the demise of the late Murungi, the respondents encroached and trespassed onto the suit land and erected therein commercial shops. On 3/3/2019, he discovered that the respondents had undertaken fraudulent dealings in the Land Registry in relation to the suit land. He itemized various particulars of fraud. He added that despite notice of intention to sue, the respondents refused to vacate the suit land.
4. The respondents filed a joint statement of defence dated 5/10/2020 in which they contested the appellant's claim. The case of the respondents was that the suit land was compulsorily acquired from the late Murungi in 1981 and the late Murungi was duly compensated with kshs. 300,278 by the Government of Kenya. They added that the late Murungi did not own any property on Kanwa Road at the time of his demise. It was the case of the respondents that the suit land initially belonged to one Shah Motichand Lakamshi (AMM) who sold it to the late Jakhin Njoka (hereinafter referred to as “the late Njoka”) in 1969. They added that the suit land was initially designated as Chuka Plot 3 and was subsequently designated as Plot No C58.
5. The respondents denied encroaching on any property owned by the late Murungi, adding that the late Njoka had been in possession of the suit land since 1969. They added that the permanent structures standing on the suit land were constructed by the late Njoka in 1973 and 1989. They denied any form of fraud and averred that the appellant was engaging in deliberate misrepresentation with a view to fraudulently acquiring Plot No C58 disguised as Plot No 7. They urged the court to dismiss the claim.



6. Trial commenced before the Chief Magistrate Court on 2/2/2022. The appellant testified as PW1. He led evidence by Mr. John Dominic Obed who testified as PW2. He closed his case at that point on 2/2/2022. The trial court set down the case for defence hearing on 8/6/2022.
7. Subsequent to that, the respondents filed a notice of motion dated 2/6/2022 seeking leave to amend their pleadings. The application for leave to amend the defence was canvassed orally on 8/6/2022 and was subsequently disposed through a ruling rendered on 24/8/2022. Through the ruling, the trial court granted the respondents leave to amend their pleadings. The draft amended defence was to be deemed filed upon payment of the requisite court fees.
8. Subsequent to that, the respondents effected a change of advocates. Through their new advocates, they filed a notice of preliminary objection contending that the appellant's claim was statute-barred. The preliminary objection was canvassed through written submissions. The record filed in this appeal shows that a ruling on the preliminary objection was reserved for delivery on 19/7/2023 but does not bear any record relating to the eventual delivery of the ruling.
9. The record shows that in August 2024, the respondents filed a notice of motion dated 13/8/2024 seeking orders joining the Director of Surveys and the Land Registrar, Chuka, as the 4th and 5th defendants in the suit. The application was opposed by the appellants and it was disposed through a ruling rendered by Hon Gandani (CM) on 11/12/2024 (the impugned ruling). Through the ruling, the trial court allowed the plea for joinder of the duo in the following terms:

“I now find that the issues raised by the 1st, 2nd and 3rd defendants warrant that the intended 4th and 5th defendants be joined to this suit as defendants. The application is allowed. The plaintiff is hereby ordered to amend the plaint within 21 days from the date of this ruling to include the intended 4th and 5th defendants in the suit.”

10. Aggrieved by the lower court's decision allowing the joinder of the 4th and 5th defendants in the suit, the appellant brought this appeal, advancing the following six (6) verbatim grounds:
 - “ 1) That the learned magistrate erred in law and in fact by failing to take into account the submissions and the evidence by the appellant herein.
 - 2) That the learned magistrate erred in law and in fact in ordering the plaintiff to amend his plaint within 21 days from the date of the ruling to include the intended 4th and 5th defendants in the suit without an application having been filed by the appellant herein, seeking for amendment of pleadings and or joinder of parties;
 - 3) That the learned magistrate erred in law and in fact by failing to appreciate the meaning of operative words of Order 1 rule 10 (2) of the Civil Procedure Rules, 2010, read together with Order 8 rule 3 of the Civil Procedure Rules 2010.
 - 4) That the learned magistrate erred in law and in fact by finding contrary to the orders sought by the 1st to 3rd respondents herein in their notice of motion dated 13th August 2024.
 - 5) That the learned magistrate erred in law and in fact by finding and ordering the appellant to amend his pleadings without reason given in the finding and anchored in law.



- 6) That the learned magistrate erred in law and fact ordering that the appellant amends his plaint within 21 days to include the intended 4th and 5th defendants while he has no claim against them.”

11. The appellant prayed for orders allowing the appeal and setting aside the impugned ruling and orders in their entirety. He also prayed for costs of the appeal.

Appellant’s Submissions

12. The appeal was canvassed through written submissions dated 5/3/2025, filed by M/s Murimi Murango & Associate Advocates. Counsel for the appellant identified the following as the five key issues that fell for determination in the appeal:

- (i) Whether the appellant would be prejudiced by the joinder of the parties;
 - (ii) Whether the Magistrate misapplied Order 1 rule 10 and Order 8 rule 3 of the Civil Procedure Rules, 2010;
 - (iii) Whether the Magistrate erred in ordering the appellant to amend his plaint without the appellant having made a formal application;
 - (iv) Whether the Magistrate’s ruling was inconsistent with the respondent’s own prayers; and
 - (v) Whether the order to amend the plaint was supported by reasons and legal justification.
13. On whether the appellant will be prejudiced by the joinder of the parties, counsel reiterated the appellant’s opposition to the amendments on-boarding the new parties. Noting that the joinder order was made after the appellant had closed his case, counsel observed that the trial court did not indicate whether the case will start *denovo*. Counsel added that joinder of the new parties will necessitate a *denovo* hearing, contending that the appellant will be prejudiced because he will incur fresh costs in availing a surveyor or to prepare a report and testify in court. Counsel argued that the appellant will incur additional legal fees due to the *denovo* hearing. Counsel submitted that compelling the appellant to carry the burden of joinder costs went against the tenets of Article 25 (1) of the Constitution.
14. Citing the pronouncement in Nova Holdings Limited v Waithera & 5 others (2023) KEELC 22571, counsel submitted that a plea for joinder would be declined in instances where it is demonstrated that there would be practical problems of handling an existing cause of action alongside the cause of action relating to an intended new party.
15. On whether the magistrate misapplied Order 1 rule 10 and Order 8 rule 3 of the Civil Procedure Rules, counsel submitted that the trial magistrate was expected to exercise her discretion within the framework of Order 1 rule 10 of the Civil Procedure Rules and Article 159 (2) of the Constitution. Counsel argued that whereas Order 1 rule 10 (2) of the Civil Procedure Rules allowed the court discretion to allow joinder of parties whose presence was necessary for effectual and complete adjudication and settlement of all questions in the suit, the rule did not allow a court to arbitrarily impose new defendants against whom a claimant did not have a claim.
16. Counsel added that Order 8 rule 3 provided that amendment to pleadings should be sought through applications and should be justified. Counsel faulted the court for granting an order for amendment *suo moto* and in the absence of any counterclaim by the respondents. Counsel argued that the inclusion of the new parties improperly expanded the scope of the litigation and imposed an unnecessary burden on the appellant.



17. On whether the magistrate erred in ordering the appellant to amend his plaint without having made a formal application, counsel reiterated that the power to amend pleadings and join parties to a suit should be exercised only in instances where an application is made. Counsel contended that the order of the trial magistrate violated the principle of fair hearing under Article 50 of the Constitution.
18. On whether the impugned ruling was inconsistent with the respondents' own prayers, counsel for the appellant submitted that the respondents only sought orders of joinder. Counsel argued that the respondents never made a plea for amendment of the plaint, adding that the trial court "went beyond the respondents' pleadings and issued an order that none of the parties had sought."
19. On whether the order to amend the plaint was supported by reason and legal justification, counsel argued that the trial magistrate failed to provide adequate reasons and a legal basis for ordering the amendment. Counsel contended that this was a serious procedural flaw, adding that a court of law must provide reasons for its decisions, to enable the parties understand the basis of their decisions. Counsel contended that the absence of reasons violated the principle of fairness enshrined in Article 50 of the Constitution. Counsel urged the court to allow the appeal.

1st, 2nd and 3rd Respondents' Submissions

20. The 1st, 2nd and 3rd respondents filed written submissions dated 25/4/2025 through M/s Brian Otieno & Company Advocates. Counsel for the respondents identified the following as the six issues that fell for determination in the appeal:
 - (i) Whether the learned magistrate erred in law and in fact by failing to take into account the submissions and evidence by the appellant;
 - (ii) Whether the magistrate erred in law and in fact in holding the plaintiff/appellant to amend his plaint within 21 days from the date of the ruling without an application having been filed by the appellant herein seeking for amendment of pleadings and/or joinder of parties;
 - (iii) Whether the learned magistrate misapplied Order 1 rule 10 and Order 8 rule 3 of the Civil Procedure Rules, 2010 by allowing the joinder of the Director of Surveys and the Registrar of Lands at the trial stage;
 - (iv) Whether the learned magistrate erred in law and in fact by finding contrary to the orders sought by the 1st to 3rd respondents in their notice of motion dated 13/8/2024;
 - (v) Whether the appellant will be prejudiced by the joinder of the 4th and 5th defendants and;
 - (vi) who shall bear the costs of the appeal.
21. On whether the trial court erred in failing to consider the submissions and evidence of the appellant, counsel submitted that it was a well settled principle of law that an appellate court interferes with the discretionary decision of a trial court only where it is demonstrated that the trial court misconstrued the law and or failed to consider material evidence that would lead to a different outcome. Counsel argued that the trial court exercised its judicial discretion properly after weighing all the arguments and the evidence presented by the parties. Counsel added that the trial court acknowledged the appellant's objections and addressed them substantively before arriving at her decision.
22. Counsel argued that the learned magistrate properly relied on Order 1 rule 10 (2) of the Civil Procedure Rules, 2010, Article 159 (2) (d) of the Constitution and Order 8 rule 5 (1) of the Civil Procedure Rules to justify both the joinder of the intended 4th and 5th defendants and the consequential amendment



of the plaint. Counsel contended that the above provisions confer upon the court the discretion to join any party for effectual and complete adjudication of the issues in dispute.

23. On whether the trial magistrate erred in ordering the appellant to amend the plaint without an application by the appellant, counsel submitted that, having arrived at the conclusion that joinder of the two new parties was necessary for the effectual and complete adjudication and settlement of all the questions involved in the suit, it was consequently necessary for the plaint to be amended to effect the joinder. Counsel added that there was no need for a subsequent application for leave to amend the plaint to effect the joinder.
24. On whether the trial magistrate misapplied Order 1 rule 10 and Order 8 rule 3 of the Civil Procedure Rules, counsel submitted that Order 1 rule 10 provided the framework for joinder while Order 8 rule 3 provided the framework for amendments. Citing various decided cases, counsel submitted that amendments under Order 1 rule 10 (2) can be effected at any stage of the proceedings prior to judgment. Counsel faulted the appellant for giving Order 1 rule 10 (2) what he described as a narrow interpretation to the effect that joinder must occur only at the initial stage of the proceedings.
25. On the contention that the trial magistrate erred in finding contrary to the orders sought by the respondents, counsel submitted that the trial court was categorical that the two new parties were necessary within the meaning of Order 1 rule 10 (2) of the Civil Procedure Rules and having reached that finding made two orders:
 - (i) an order for joinder of the two parties; and
 - (ii) an order granting leave to amend the plaint to effect the joinder. Counsel termed the appellant's contention as misplaced.
26. On whether the appellant will be prejudiced by the joinder, counsel for the respondents submitted that no prejudice will be suffered by the appellant, adding that the two parties were key to the dispute. On costs of the appeal, counsel urged the court to dismiss the appeal with costs.

Analysis and Determination

27. The court has read and considered the record of appeal, the grounds of appeal and the parties' respective submissions. The court has also considered the relevant legal frameworks and the jurisprudence relevant to the key issues in the appeal. The following are the two key issues that fall for determination in the appeal:
 - (i) Whether the application dated 13/8/2024 met the criterion for joinder of a new party to a suit; and
 - (ii) Whether the trial court erred in ordering the appellant to amend his plaint. I will dispose the two issues sequentially in the above order. Before I do that, I will briefly outline the general principle which guides this court when exercising jurisdiction as a first appellate court. I will also outline the principle which guides the court when it is invited to interfere with the discretionary jurisdiction of a lower court.
28. The principle upon which a first appellate court exercises jurisdiction is well settled. The principle was summarized by the Court of Appeal in the case of Susan Munyi v Keshar Shiani [2013] eKLR as follows:

“As a first appellate court our duty of course is to approach the whole of the evidence on record from a fresh perspective and with an open mind. We are to analyze, evaluate,



assess, weigh, interrogate and scrutinize all the evidence and arrive at our own independent conclusions.”

29. The above principle was similarly outlined in *Abok James Odera t/a A.J Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates* [2013] eKLR as follows:

“This being a first appeal, we are reminded of our primary role as a first appellate court, namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way.”

30. The principle which guides a superior court whenever it is invited to interfere with the exercise of discretionally jurisdiction by a lower court was outlined by the Court of Appeal in *Mbogo & Another v Shab* (1968) EA 98 as follows:

“A Court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising his discretion misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and trial as a result there has been misjustice.”

31. Did the application dated 13/8/2024 meet the criteria for joinder of a new party to an existing suit? The trial court was invited to exercise jurisdiction under Order 1 rule 10 (2) of the *Civil Procedure Rules*. The relevant framework which the trial court relied on is Order 1 rule 10 (2) which provides as follows:

“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.”

32. The Court of Appeal outlined the relevant principle on joinder in *Central Kenya Ltd v Trust Bank Ltd & 4 others*, Civil Appeal No. 222 of 1998 as follows:

“The jurisdiction of the court under O.1 rule 10 (2) and O.vi rule 3 (1) of the *Civil Procedure Rules*, respectively is specific. The decision as to who to sue is essentially that of the plaintiff, and the court’s duty thereafter, is to consider the allegations made against the named defendants and if it considers that there are other parties who should have been joined or were improperly joined, give appropriate directions under Order 1 rule 10 (2) above.

In *Civil Appeal No 215 of 1996* aforementioned, this court made observations which suggested that some of the proposed defendants should have been made parties to facilitate the effectual, complete and just adjudication of the appellant’s suit. The Learned trial judge should have but did not take a cue from them and granted leave the appellant had sought in its application.”



33. In *JMK and MWM* Misc Mombasa Civil Appeal No.15 of 2015, the Court of Appeal reiterated the above principle as follows:

“Order 1 Rule (10) (2) of the *Civil Procedure Rules* empowers the court, at any stage of the proceedings, upon application by either party or *suo moto*, to order the name of a person who ought to have been joined or whose presence before the court is necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit, to be added as a party. Commenting on this provision, the learned authors of *Sarkar’s Code of Civil Procedure* (11th Ed. Reprint, 2011, Vol. 1 P. 887), state that: “The section should be interpreted liberally and widely and should not be restricted merely to the parties involved in the suit, but all persons necessary for a complete adjudication should be made parties.”

34. The Court of Appeal cited with approval the following excerpt from *Sarkars’s Code of Civil Procedure* (11th Ed Reprint 2011, Vol 1 P.887:

“This section should be interpreted liberally and widely and should not be restricted merely to the parties involved in the suit, but all persons necessary for a complete adjudication should be made parties.”

35. The parties whose joinder the respondents sought were the Director of Surveys and the Land Registrar in charge of Chuka Land Registry. The dispute in the trial court revolve around the issue of ownership of a parcel of land which the appellant described as number Chuka Township/7. The respondents described the same parcel of land as Plot No C58. The respondents contended that the late Njoka became the owner of the said land in 1969; the late Njoka erected permanent buildings on the land in 1973 and 1982; and the late Njoka had been in occupation of the land all along. The respondents alleged that the appellant was “seeking to fraudulently convert” the said land and “pass it as Chuka No.7.” Through the suit, the appellant sought a permanent injunction restraining the respondents against occupying the land. He also sought a resurvey of the suit land.

36. It is clear from the above outline of the issues that some of the key questions that the court was expected to adjudicate upon and settle related to:

- (i) the true identity of the suit land; and
- (ii) the legitimate ownership of the suit land. Taking the foregoing into account, the trial court came to the conclusion that the Director of Surveys and the Land Registrar in Charge of Chuka Land Registry were necessary parties. I entirely agree with that finding. The two statutory officers were necessary for the effectual adjudication and complete settlement of the above questions.

37. The two parties became necessary the moment the respondents filed their defence. Given the fact that the appellant wanted the respondents to be enjoined against occupying land which they claimed to be part of the estate of the late Njoka and which they contended the late Njoka had occupied since 1969 under a different plot designation, it was the responsibility of the appellant, as the plaintiff in the trial court, to apply for joinder of the two necessary parties. He failed to do so. In the above circumstances, the respondents properly moved the Court and the court properly joined them. That is the finding of the court on the first issue.

38. Did the trial court err in ordering the appellant to amend the plaint *suo motto*? I do not think the trial court erred. Having come to the finding that the Director of Surveys and the Land Registrar at Chuka were necessary parties under Order 1 rule 10 (2) of the *Civil Procedure Rules*, it logically followed that



the duo were to be joined as parties to the suit through amendments to the plaint. On being served with the amended plaint, the duo would be expected to file their pleadings outlining their respective positions on the key questions. Suffice it to state that, once an order of joinder of a new party to a suit is made, it logically follows that the pleadings stand to be amended to reflect the new coram. I therefore do not see any error in the trial court's Order to the effect that the plaint was to be amended to reflect the newly joined parties.

39. On costs, I have taken into account the fact that although the respondents properly moved the court for the joinder order, they took long to do so. They should ideally have done so the moment the appellant testified and they realized that he was waving survey and registration documents relating to land that they believed belonged to the late Njoka. For this reason, there will be no award of costs in this appeal.

Disposal Orders

40. For the above reasons, this appeal is rejected and dismissed for lack of merit. Parties shall bear their respective costs of the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 24TH DAY OF JUNE, 2025.

B M EBOSO [MR]

JUDGE

In the Presence of:

Mr. Murimi Murango Advocate for the Appellants

Mr. Lumumba holding brief for Mr. Otieno for the Respondents

Court Assistant – Mr. Mwangi

