



**Munge v Nairobi City County & 3 others; Paul & 2 others (Proposed Defendant)
(Civil Suit 155 of 2021) [2025] KEELC 497 (KLR) (21 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 497 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
CIVIL SUIT 155 OF 2021
JO MBOYA, J
JANUARY 21, 2025**

BETWEEN

CHARLES MUNGE PLAINTIFF

AND

NAIROBI CITY COUNTY 1ST DEFENDANT

**JOYCE MUNJIRU MWANGI (BEING THE ADMINISTRATOR OF THE ESTATE
OF PAUL MWANGI NGUTHE) 2ND DEFENDANT**

CHIEF LANDS REGISTRAR 3RD DEFENDANT

JANE WAMBUI 4TH DEFENDANT

AND

KABEU KIRIU PAUL PROPOSED DEFENDANT

WILSON MWANGI MWAURA PROPOSED DEFENDANT

JAMES WANJAMA KAMAU PROPOSED DEFENDANT

RULING

1. The proposed Defendants/Applicants herein [hereinafter referred to as the Applicants] have approached the court vide Application dated the 24th October 2024 and wherein same [Applicants] have sought for the following reliefs;
 - i. That the Honourable Court be pleased to join the proposed Defendants/Applicants in this suit as the 5th, 6th, and 7th Defendants respectively.
 - ii. b. That the Honourable be pleased to review the judgment on record and set the same aside alongside all consequential orders issued thereunder and order that this suit is heard De novo.



- iii. That following (b) above, the Applicants be granted Leave to file a Statement of Defence and a Counterclaim against the Plaintiff and the Defendant.
2. The instant application is premised on the various/diverse grounds which have been highlighted in the body of the application. Moreover, the application is supported by the affidavit[s] of the Applicants sworn on even date and to which the Applicants have annexed assorted documents.
3. Upon being swerved with the instant application, the Plaintiff/Respondent filed a Replying affidavit sworn on the 11th November 2024 and wherein the Plaintiff/Respondent has averred inter-alia that the instant application is an afterthought and otherwise constitutes an abuse of the due process of the court.
4. Furthermore, it has been averred that the Applicants herein have no actionable stake and/or interest in respect of the suit property and hence the intended joinder shall not serve the interests of justice.
5. On the other hand, the 1st Defendant/ Respondent responded to the instant application vide Grounds of opposition dated the 19th November 2024. Pertinently, the 1st Defendant/Respondent has contended that the application by the Applicants herein is not only premature and misconceived, but same does not meet the statutory threshold to warrant review or at all.
6. The instant application came up for hearing on the 24th October 2024 whereupon the advocates for the respective parties covenanted to canvass and dispose of the application by way of written submissions. To this end, the court proceeded to and circumscribed the timeline for the filing and exchange of the written submissions.

- Parties' Submissions:

7. Pursuant to the directions of the court pertaining to and concerning the filing of written submissions, it suffices to state that the Applicants filed written submissions dated the 22nd November 2024 and wherein the Applicants have highlighted three [3] salient issues including the import of Order 1 Rule 10[2] of the Civil Procedure Rules 2010; the need to join the Applicants as parties to the instant suit and the necessity to avail an opportunity to the Applicant to demonstrate to the court that the property being claimed by the Plaintiff/Respondent does not exist on the ground.
8. The Plaintiff/Respondent filed written submissions dated the 28th November 2024 and wherein same highlighted and canvassed two [2] pertinent issues, namely, whether the Applicants have satisfied the requisite grounds to warrant review of the judgment and whether the Applicants herein ought to be joined into the suit or otherwise.
9. The 1st Defendant filed written submissions dated the 20th November 2024 and in respect of which the 1st Defendant/Respondent has canvassed two [2] pertinent issues including whether the Applicants have satisfied the grounds to warrant review and two, whether the Applicants are entitled to be joined into the suit [sic] as Defendants.
10. The three [3] sets of written submissions [details highlighted in the preceding paragraphs] form part of the record of the court. Suffice it to state that the court has reviewed and considered the submissions and same have been taken into account in determining the critical issues that underpin the instant application.



Issues For Determination

11. Having reviewed the instant application; the responses thereto and upon consideration of the written submissions filed by and on behalf of the parties, the following issues do arise [crystallise] and thus worthy for determination;
 - i. Whether the Applicants herein have established and/or satisfy the requisite ingredient to warrant review of the judgment and the consequential decree issue on the 10th July 2024.
 - ii. Whether the Applicants have established and/or demonstrated any actionable interests and or stake in the suit to warrant joinder of otherwise.

Analysis And Determination

Issue Number 1 Whether the Applicants herein have established and/or satisfy the requisite ingredient to warrant review of the judgment and the consequential decree issue on the 10th July 2024.

12. The instant suit was filed and/or commenced by the Plaintiff/Respondent and wherein same [Plaintiff/Respondent] sought for a plethora of reliefs touching on and concerning ownership of L.R No. Nairobi Block 107/1/1118; which the Plaintiff/Respondent contended to belong unto him.
13. Additionally, the Plaintiff/Respondent also sought for an order of declaration that the title over and in respect of L.R No. Nairobi Block 107/1118, allegedly belonging to and registered in the name of Paul Mwangi Ngutu was illegal, unlawful and thus invalid.
14. For good measure, it suffices to state that the suit was heard and determined vide Judgment rendered on the 10th July 2024 and whereupon the court found and held that the Plaintiff/Respondent is the lawful owner and proprietor of the suit property.
15. Suffice it to state that the Applicants herein were not parties to the suit. Nevertheless, following the delivery of the Judgment and the issuance of the resultant decree, the Applicants herein have now approached the court seeking for review of the impugned decree on various grounds that have been highlighted at the foot of the application dated the 24th October 2024 [hereinbefore referred to as the instant Application].
16. Pertinently, the application dated the 24th October 2024 seeks to review the Judgment and the resultant decree pursuant to the provisions of Order 45 Rule 1 of the Civil Procedure Rules 2010; as read together with the provisions of Section 80 of the Civil Procedure Act, Chapter 21, Laws of Kenya.
17. Owing to the fact that the instant application seeks to review of the decree, it is therefore imperative to discern/decipher whether the Applicants have met and/or satisfied the requisite grounds that underpin an application for review. However, before descending into the arena of discernment of whether the ingredients for review have been met, it is apposite to reproduce the provisions of Order 45 Rule 1 of the Civil Procedure Rules, 2010.
18. Same are reproduced as hereunder;
 1.
 - (1) Any person considering himself aggrieved—
 - (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or



- (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

- 19. There is no gainsaying that the provisions of Order 45 Rule 1 of the Civil Procedure Rules [Supra] envisage a scenario where any aggrieved person, whether the aggrieved person was a party to the suit or otherwise, can approach the court with an application for review. In this regard, it is common ground that a person who was not a party to the suit is at liberty to file/mount an application for review.
- 20. Owing to the foregoing, it is my finding and holding that even though the Applicants herein were not parties to the suit from the onset, same [Applicants] can invoke the provisions of Order 45 Rule 1 of the Civil Procedure Rules [supra] and seek to procure an order for review where just, expedient and/or appropriate.
- 21. To buttress the foregoing exposition of the law, it suffices to cite and reference the decision of the Court of Appeal in *Accredo Ag & 3 others v Stefano Uccelli & another* [2017] eKLR, where the court held thus;

- 26. In the appellants' view, the 1st respondent, having joined the fray so late in the day, lacked legal authority or locus standi to bring the application for review, for he was not an aggrieved party within the meaning of Order 45 rule 1 aforesaid. Locus standi is defined in the Oxford Dictionary of Law, 5th Ed. as 'the right to bring an action or challenge some decision. It is also defined in Black's Law Dictionary, 9th Ed. as 'the right to bring an action or to be heard in a given forum.'

Our understanding of Order 45 is that it has two distinct parts and accords locus standi in review applications to two distinct persons. Under sub rule (1) thereof, the review application may be brought by 'any person considering himself aggrieved' and under sub rule (2), by 'a party who is not appealing from the decree or order'. Consequently, Order 45 recognizes that review may be sought either by; a non party or by a party to the proceedings.

While some may argue (as the 1st respondent did) that recognition of applications for review instigated by non parties opens the flood gates to interference by busy bodies, it is to be remembered that the person aggrieved is required to meet certain conditions. Under sub rule (1) (b), the aggrieved person instituting such review must satisfy the court that

- a. There has been discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or
- b. There is some mistake or error apparent on the face of the record, or
- c. There exists sufficient reason to review the decree/ order.

In short, he has to prove that though he maybe a non party, he is no busybody and that the decision he seeks to have reviewed affects his cognizable rights.

Recognizing Order 45 as allowing the inclusivity of a non party to institute review does not expose it to abuse by busy bodies. On the contrary, when read holistically, Order 45 is in fact designed to facilitate



- the exercise of the court's inherent powers, and to protect the rights of persons directly affected by decisions which they were not made parties to.
22. Be that as it may, it is important to underscore that the mere fact that the Applicants [who were not parties in the suit] can apply for review, does not by and of itself denote that such an application would succeed without proof of the requisite conditions highlighted at the foot of the Order 45 of the Civil Procedure Rules. Simply put, it behooves any Applicant [whether same was a party to the suit or an aggrieved person] to satisfy the statutory grounds for review.
 23. Premised on the foregoing, I am therefore minded to venture forward and ascertain whether the Applicants herein have met the statutory threshold. To start with, there is no gainsaying that an application for review can only be mounted where no appeal has been proffered and/or filed in respect of the impugned order and/or decree.
 24. However, in respect of the instant matter it is worthy to recall that the 2nd Defendant/Respondent filed a supplementary affidavit sworn on the 3rd October 2024 and wherein same [2nd Defendant] annexed a copy of the record of appeal filed before the court of appeal.
 25. Other than the contents of the supplementary affidavit which was sworn by the 2nd Defendant herein and which forms part of the record of the court, it is imperative to recall that the 2nd and 3rd Defendants had also filed a Notice of appeal in respect of this matter. For good measure, it suffices to state that a Notice of appeal filed in accordance with the Rules of the said Court is deemed to constitute an appeal to the court of appeal. [See Order 42 Rules 6[4] of the Civil Procedure Rules 2010].
 26. In my humble view, the existence of an appeal to the court of appeal in respect of the impugned Judgment and decree, takes the subject matter out of the purview of the provisions of Order 45 Rule 1 [a] of the Civil Procedure Rules, 2010.
 27. Consequently, and on this account only, I would have been minded to dismiss the application and to terminate the ruling. However, there is the other perspective that merits mention and a short discussion.
 28. The perspective adverted to in the preceding paragraph touches on and concerns whether the Applicants herein have established any of the grounds to warrant review. It is not lost on the court that in an endeavor to demonstrate the ground for review, it is not enough to raise the grounds and throw same on the face of the Court without substantiating same.
 29. Notwithstanding the foregoing, it is my finding and holding that the Applicants herein who have contended that same [Applicants] have discovered new and important evidence have not ventured forward to prove the alleged new and important evidence. [See the decision of the Court of Appeal in the case of Otieno Ragot and Company Advocates versus National Bank of Kenya Limited [2020]eklr]
 30. Further and in any event, it suffices to posit that none of the Applicants herein annexed and/or exhibited the requisite certificate of title/lease pertaining to [sic] the properties claimed by same. Instructively, it is a Certificate of Title or Lease issued under the relevant Statute that vests Rights to or interests over Land and not otherwise. [See the Decision of the Court of Appeal in the case of Dr. Joseph N.K Arap Ngok versus Justice Moiwo Ole Keiwua [1997]eklr]
 31. In the absence of the requisite certificate of title, the question that does arise is what interest[s] and/or rights, if any, do the Applicants have to warrant the invocation of the provisions of Article 50 of *the Constitution* that underpins the rights to fair hearing.



32. To my mind, the Applicants herein have neither satisfied the first limb of Order 45 Rule 1[a] nor have the Applicant satisfied the second limb of Order 45 Rule 1[b] of the Civil Procedure Rules 2010.
33. Arising from the foregoing analysis, my answer to issue number one [1] is to the effect that the Applicants herein have failed to meet and/or satisfy the statutory threshold to warrant the grant of an order for review. In this respect, the application for review of the judgment and the resultant decree is misconceived and legally untenable. [See the decision in the case of Republic versus Advocates Disciplinary Tribunal Ex-Parte Appollo Mboya [2019] eKLR-per Justice Mativo, Judge [as he then was]

Issue Number 2 Whether the Applicants have established and/or demonstrated any actionable interests and or stake in the suit to warrant joinder or otherwise.

34. The Applicants herein sought to be joined into the suit with a view to vindicating what same [Applicants] contended to be their lawful rights to and in respect of properties which same [Applicants] contended arose from the sub-division of L.R No. Nairobi Block 107/1118.
35. Even though the Applicants contended that same were the lawful owners and proprietors of sub-division[s] that arose from L.R No. Nairobi/Block 107/1118, it is worthy to recall that neither of the Applicants herein annexed and/or exhibited to the court a copy of the certificate of title/lease to demonstrate ownership to [sic] the property alluded to.
36. The question that does arise relates to and/or concerns whether in the absence of certificate of title or Lease [whichever is applicable] the Applicants herein have placed before the court evidence of any actionable stake and/or interests in the suit property and by extension the suit herein.
37. To my mind, any person, the Applicant not excepted, can only seek joinder into a suit, if same [Applicant] can demonstrate the existence of an actionable stake and/or interests in the matter. In any event, the actionable stake and/or interests must not be remote, preposterous and/or imaginary.
38. The parameters to be demonstrated by an Applicant seeking joinder were highlighted and elaborated upon by the Supreme Court in the case of Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated)) [2016] KESC 12 (KLR) (Civ) (28 January 2016) (Ruling), wherein the court stated as hereunder;
 41. Having carefully considered all arguments, we are of the opinion that any party seeking to join proceedings in any capacity, must come to terms with the fact that the overriding interest or stake in any matter is that of the primary/principal parties before the Court. The determination of any matter will always have a direct effect on the primary/principal parties. Third parties admitted as interested parties may only be remotely or indirectly affected, but the primary impact is on the parties that first moved the Court. This is true, more so, in proceedings that were not commenced as Public Interest Litigation (PIL), like the proceedings now before us.

42

39. In the absence of a demonstrable stake and/ or actionable interests in the suit property and by extension, the Suit; I am afraid that the Applicants herein have no basis to warrant joinder into the suit.
40. Secondly, there is no gainsaying that the court has since declined to set aside and/or review the judgment and the resultant decree. Pertinently, the court found and held that the Applicants have not met the statutory threshold to warrant review of the impugned decree.



41. Having found and held that the Applicants have not met the conditions to warrant review and having declined to set aside the impugned judgment, the question that does arise and which the Court must grapple with, is whether the Applicants herein can be joined into a suit that is already determined and finalized.
42. To start with, there is no gainsaying that any person, the Applicants herein not excepted can invoke and deploy the provisions of Order 1 Rule 10[2] of the Civil Procedure Rules, 2010 with a view to be joined into the proceedings herein. Nevertheless, there is no gainsaying that joinder of the party, in whatever capacity; can only be taken at any stage during the pendency of the suit and not otherwise.
43. In any event, it is not lost on this court that the joinder of a party into the suit in whatsoever capacity, whether as a co-Plaintiff, Defendant, Interested Party and/or Necessary party, or otherwise, is undertaken to enable the court to effectively and effectually determine the issue[s] in dispute. Suffice to state that issue[s] of controversy can only exist prior to and or before the rendition of a Judgment; and effective determination of the Suit.
44. Put differently, the issues in dispute and which are placed before a court of law stand resolved and determined vide a judgment. Instructively, a Judgment determines all the rights and claim of the parties to the suit. Henceforth, one cannot contend that there remains an issue worthy of determination, unless the judgment is varied and/or set aside.
45. Moreover, it is not lost on this court that parties, the Applicants herein not excepted, are not to be joined into proceedings for cosmetic and/or aesthetic purposes. Certainly, there must be a legal and lawful basis underpinning the intended joinder.
46. Without belaboring the point, I hold the view that the proposed joinder of the Applicants herein shall not serve any useful purpose for as long as the Judgment has not been varied and or set aside. For coherence, a Court of Law does not act in vanity or futility.
47. Before departing from the subject issue, it is imperative to reference and reiterate the decision of the Court of Appeal in the case of JMK v MWM & another [2015] Eklr; where the Court stated thus:

We would however agree with the respondent that Order 1 Rule (10)(2) contemplates an application for amendment or joinder of parties where proceedings are still pending before the Court. Sarkar's Code, (supra) quoting as authority, decisions of Indian Courts on the provision, expresses the view that an application for joinder of parties can be filed only in pending proceedings. In the same vein, the Court of Appeal of Tanzania, while considering the equivalent of Order 1 Rule 10(2) of our Civil Procedure Rules, in TANG GAS DISTRIBUTORS LTD V. SAID & OTHERS [2014] EA 448, stated that the power of the court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before, or during the trial; that it can be done even after judgment where damages are yet to be assessed; that it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable;

Final Disposition:

48. Arising from the foregoing analysis, it must have become crystal clear that the Application dated the 24th October 2024 is not only premature and misconceived, but same is legally untenable.
49. In the circumstances, the final orders that commend themselves to the court are as hereunder;
 - i. The Application dated the 24th October 2024 be and is hereby dismissed.



- ii. Costs of the Application be and are hereby awarded to the Plaintiff/Respondent and the 1st Defendant/Respondent.

50. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF JANUARY 2025.

OGUTTU MBOYA

JUDGE

In the presence of

Benson/Mutuma Court Assistant

Ms. Purity Makori for the Plaintiff/Respondent

Mr. Delson Ojong'a for the 1st Defendant/Respondent

Mr. JM Njenga for the 2nd and 3rd Defendants/Respondent

N/A for the 4th Defendant/Respondent

N/A for the Proposed Defendants/Applicants

