



**Wanjala v Kings of Kings Christian Joy Center (Suing through the Chairman,  
Secretary and Treasurer of the Board of Trustees) (Environment and Land  
Appeal E001 of 2023) [2025] KEELC 4664 (KLR) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4664 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT AND LAND APPEAL E001 OF 2023**

**EC CHERONO, J  
JUNE 19, 2025**

**BETWEEN**

**ELIAS MALIIBA WANJALA ..... APPELLANT**

**AND**

**KINGS OF KINGS CHRISTIAN JOY CENTER (SUING THROUGH THE  
CHAIRMAN, SECRETARY AND TREASURER OF THE BOARD OF  
TRUSTEES) ..... RESPONDENT**

*(being an appeal from the Ruling/order by the Principal Magistrate Hon. C.A.S  
MUTAI delivered on 16/12/2022 in BUNGOMA CM-ELC NO.89 of 2018)*

**JUDGMENT**

**Introduction.**

1. Vide a Memorandum of Appeal dated 12/01/2023, Elias Maliiba Wanjala, the Appellant herein who was the defendant before the trial Court in Bungoma CM-ELC Case No. 89 of 2018 preferred this appeal challenging the ruling delivered by the Senior Principal Magistrate Hon.C.A.S Mutaion 16/12/2022.
2. In a brief background, the Respondent herein sued the Appellant in the former suit vide an amended plaint dated 15/07/20 wherein she averred that she was the registered owner of all that parcel of land known as E. Bukusu/N.Kanduyi/ 8143 which shares a common boundary with the Appellant's homestead. That the suit property was purchased from one Patrick Waswa who caused a sub-division from the larger parcel and a registration in their name. That sometime in November 2016, the Appellant blocked the access road to his land and placed a warning sign thereon. She sought a permanent injunction against the Appellant and his agents from blocking their entrance or preventing



members from peacefully enjoying all that parcel of land known as E. Bukusu/N.Kanduyi/ 8143, costs and interests of the suit.

3. The Appellant filed a defence dated 20/07/2019 denying the Respondent's claim and averred that he purchased from Patrick Waswa land parcel no. E.Bukusu/N.Kanduyi/4614 which was later subdivided to create LR NO E.Bukusu/N.Kanduyi/759 and 7460 and that he was the absolute owner of E.Bukusu/N.Kanduyi/7459. He stated that the Respondent's claim was non-existent on the ground and urged the court to dismiss the case against him.
4. A reply to defence dated 08/06/2020 was filed in response to the statement of defence.
5. In the course of the trial, the Respondent filed an application dated 15/02/2022 seeking leave to further amend its plaint. The proposed amendments sought to add one Patrick Waswa Makhanau as a 2<sup>nd</sup> plaintiff and one Jonathan Sande as a 2<sup>nd</sup> defendant. The said application was opposed with a replying affidavit sworn on 27/06/2022. The Respondent thereafter filed a supplementary affidavit which prompted the Appellant to seek leave and filed a further affidavit sworn on 12/08/2022. Directions were taken and parties agreed that the be canvassed by way of written submissions. The Respondents filed submissions dated 18/07/2022 while the Appellant filing his submissions dated 22/08/2022. After considering the said application, the trial court allowed the amendments vide its Ruling delivered on 16/12/2022.
6. Aggrieved by the trial court's decision, the Appellant preferred the current appeal on the following grounds;
  - a. The trial magistrate erred in law and fact in allowing the Respondent's application dated 15/2/2022 which application was frivolous, vexatious and scandalous hence arriving at a wrong decision.
  - b. The trial magistrate erred in law and fact in allowing the application dated 15/02/2022 hence making one Patrick Waswa Makhanu 2<sup>nd</sup> plaintiff when the said Patrick Waswa Makhanu ought to have filed his independent case applied to be enjoined as an interested-party hence arriving at a wrong decision.
  - c. The trial magistrate erred in law and fact in allowing the Respondent's application dated 15/2/2022 hence making one Patrick Waswa Makhanu as 2<sup>nd</sup> plaintiff and making one Jonathan Sande as 2<sup>nd</sup> defendant when the said Patrick Waswa Makhanu was the one supposed to file a case against the appellant herein and one Jonathan Sande hence arriving at a wrong decision.
  - d. The trial magistrate erred in law and fact in allowing the Respondent application dated 15/02/2022 when the Respondent's claim is far different from the interest of one Patrick Waswa Makhanu hence arriving at a wrong decision.
  - e. The trial magistrate erred in law and fact by allowing the Respondent's application dated 15/02/2022 without considering the evidence of the appellant contained in the replying affidavit and submissions hence arriving at a wrong decision.
  - f. The trial magistrate erred in law and fact in allowing the Respondent's application dated 15/2/2022 when the same application was bad in law hence arriving at a wrong decision.
7. The appellant in his appeal sought for the following orders;
  - a. The appeal be allowed.



- b. The order allowing the application dated 15/12/2022 be reversed by an order dismissing the same.
  - c. The respondent be condemned to pay cost of this appeal and costs the lower court.
8. When this appeal came for directions, it was agreed that the same be canvassed by way of written submissions.
  9. The appellant filed submissions dated 17/04/2025 and submitted that if one Patrick Waswa Makhanu has a viable case against the Appellant, he is at liberty to file an independent case or be enjoined as an interested party. they relied in the case of Marigat Group Ranch & 3 Others v Wesley Chepkoimet & 19 Other 92014) eKLR.
  10. The Respondent on the other hand filed submissions dated 04/05/2025 and submitted that Order 1 Rule 1 and 10(2) of the Civil Procedure Rules allows them to enjoin parties as sought in their intended amended plaint. They cited the case of Mbindyo v. Ndolo [E 3 Others Civil Appeal No. 118 of 2021](#)

### **Legal Analysis And Decision**

11. I have considered the Memorandum of appeal, the record of appeal and the submissions by the parties. The application for amendment of the plaint involved the exercise of judicial discretion by the learned Judge and, generally, amendments to pleadings should be freely allowed if they can be made without injustice to the other side. See Eastern Bakery v Castelino [1958] EA 461 and Central Kenya Limited v Trust Bank Limited [2006] 2 EA 365. It is also trite that the power to allow amendments can be exercised at any stage of the proceedings.
12. The circumstances in which an Appellate court may interfere with the exercise of judicial discretion by a judge are limited. In Mbogo & another v Shah [1968] EA 93 Sir Charles Newbold P. held as follows:
 

“...a Court of Appeal should not interfere with the exercise of the discretion of a single Judge unless it is satisfied that the Judge in exercising his discretion has 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 that as a result there has been misjustice...”
13. The issue for determination therefore is whether the grant of leave by the trial court to the Respondent to amend the plaint constituted an erroneous exercise of discretion. The trial court in its ruling stated that the Respondent could not force Patrick Waswa Makhanu to be a co-plaintiff and that he could only be added as a third party. There was no mention of the intended amendment to add a 2<sup>nd</sup> defendant. Notably, the trial court went ahead and allowed the application for amendment and awarded costs to the Appellant.
14. I agree with the trial magistrate that the Respondent could not be joined as a plaintiff.
15. The provisions of Order 1 Rule 1, Order 1 Rule 3 and Order 1 Rule 10(2) of the Civil Procedure Rules and the holding in the case of Kingori v Chege and 3 Others [2002] eKLR set out the guiding principles in an application for joinder as follows: -
  - a. He must be a necessary party.
  - b. He must be a proper party.
  - c. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.



- d. The ultimate order or decree cannot be enforced without his presence in the matter.
- e. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.
16. In *Departed Asians Property Custodian Board v Jaffer Brothers Ltd* [1999] 1 EA 55 it was held as follows:
- “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.”
17. It is alleged that the intended 2<sup>nd</sup> Plaintiff sold portions of the suit property to both the Appellant and the Respondent. It is further alleged that the intended 2<sup>nd</sup> Defendant was fraudulently registered as the proprietor of land parcel number E.Bukusu/N.Kanduyi/7460, a subdivision of the original title, E.Bukusu/N.Kanduyi/4616, from which the Respondent claims to have acquired their portion. In view of these assertions, and considering that the rights and liabilities of the intended parties are directly connected to the subject matter in dispute, the Court is satisfied that their joinder is necessary for the effectual and complete adjudication of the issues at hand and to avoid the risk of inconsistent decisions or multiplicity of suits.
18. It is therefore evident that the participation of the intended parties in these proceedings is not only necessary to enable this Court to effectually and completely adjudicate upon and settle all the questions in controversy, but also imperative, given that the orders which this Court may issue are likely to affect their legal rights and interests. Moreover, considering the nature of the transaction giving rise to the dispute, and the relationship between the existing and intended parties, the Court finds it desirable in the interest of justice and for the avoidance of a multiplicity of suits to join the said parties, so that they may be bound by the outcome of these proceedings. I rely in the case of *Martin Kirima Baithambu v Jeremiah Miriti* [2017] eKLR, where the court pronounced itself as hereunder:
- “The pragmatic reality has been for courts to add parties in a suit based on guarantee if it is desirable to add such party so that the court can resolve all the matters in controversy effectually and completely. Aptly here would be to invoke the procedure provided under Order 1 Rule 15 of the Civil Procedure Rules. I say these things for the sake of jurisprudence.”
19. Having considered the issues raised in the appeal and the submissions by the parties herein, I find the amendments were necessary and therefore merited. This appeal therefore lacks merit and the same is hereby dismissed with costs to the Respondent.



20. It is do ordered.

**DATED, SIGNED and DELIVERED at BUNGOMA this 19<sup>th</sup> day of June, 2025.**

.....

**HON.E.C CHERONO**

**ELC JUDGE**

In the presence of;

1. Mr. Wekesa for the Respondent.
2. Appellant/Advocate-absent.
- 3 Bett C/A.

