



**Mwaura (Suing as the Legal Representative of the Estate of Peninah Wanjiru Mwaura - Deceased) v Thimba & another; Karanja (Applicant) (Environment and Land Case 1013 of 2014) [2025] KEELC 4521 (KLR) (16 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4521 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 1013 OF 2014**

**OA ANGOTE, J  
JUNE 16, 2025**

**BETWEEN**

**JACKSON GITAU MWAURA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF PENINAH WANJIRU MWAURA - DECEASED) .... PLAINTIFF**

**AND**

**SIMON KARANJA THIMBA ..... 1<sup>ST</sup> DEFENDANT**

**REGISTRAR OF LANDS ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**DAVID MWAURA KARANJA ..... APPLICANT**

**RULING**

1. Before this court is an application by the Intended Party/Applicant dated 20<sup>th</sup> June 2024 filed pursuant to Sections 1A, 1B, 3(a), (b),(c) and 63(e) of the *Civil Procedure Act*; Order 45 Rule 1(2) and 2; Order 10 Rule 11 of the Civil Procedure Rules and Articles 50(1) and 48 of *the Constitution*. The Intended Party has sought the following orders:
  - i. That the Applicant be joined to this matter for the limited purpose of prosecuting this application.
  - ii. That the firm of Morara Onsongo & Co. Advocates be granted leave to come on record for the Applicant.
  - iii. Spent- That there be stay of execution of the decree/ judgement dated 23<sup>rd</sup> May 2024 pending the hearing and determination of this application.



- iv. That Judgement/Decree entered by this Honourable Court as against the Defendant/ Judgement Debtor on 23<sup>rd</sup> May 2024 be and all consequential orders thereof be hereby reviewed and/ or set aside.
  - v. That the costs of this application be provided for by the Plaintiff/ Respondent.
  - vi. Any other orders the court deems fit for the interest of justice.
2. The application is supported by an Affidavit sworn by David Mwaura Karanja, the Intended Interested Party, who deponed that on 23<sup>rd</sup> May 2024, judgment was entered against the 1<sup>st</sup> Defendant revoking his title deed to the property which he sold to him and that the Plaintiff has already issued a seven-day eviction notice and decree notice.
  3. David Mwaura deponed that he is the biological grandson of the late Peninah Wanjiru David, who purchased Dagoretti/ Uthiru T.36, the suit property, in 1981 from one Kanyiri Kio; that his grandmother gifted and voluntarily transferred to him the property as he was living with her and taking care of her and that the suit property was transferred to his name on 25<sup>th</sup> July 1995 and a title deed was issued in his favour.
  4. The Applicant deposed that he then took possession of the property and continued being in possession of the suit property, with the knowledge of the Plaintiff, his blood uncle, who never protested to him being gifted the property by his grandmother.
  5. The deponent claims that the Plaintiff has concealed material facts to this dispute and has exhibited fraud by failing to invite him to explain to this court how he got the property; that in 2006, he opted to sell the property to the 1<sup>st</sup> Defendant through a sale agreement, and on 12<sup>th</sup> April 2006, after the 1<sup>st</sup> Defendant had paid all the purchase price, he transferred the property to him and a title deed was issued under his name. He swore that the 1<sup>st</sup> Defendant then took possession of the property, erected a perimeter wall, dug a borehole and built several temporary structures.
  6. David Mwaura Karanja stated the Plaintiff's claim is fraudulent as the Plaintiff personally knows him and knows how he got the suit property. He avers that accordingly, the judgment entered on 23<sup>rd</sup> May 2024 was obtained by fraud and concealing of material facts, and that it is in the interest of justice that the judgment be set aside and he be given an opportunity to defend himself and represent to the court how he got the title deed to the suit property.
  7. The Plaintiff averred that if this suit is not re-opened, he is bound to suffer irreparable loss and damage because he has already sold the property to the 1<sup>st</sup> Defendant.
  8. The 1<sup>st</sup> Defendant has supported this application through a Replying Affidavit dated 12<sup>th</sup> August 2024. Simon Karanja Thimba deponed that the application is wholly merited going by the grounds in its support and the supporting affidavit, and that the Plaintiff's cause of action rested on allegations concerning the alleged misconduct of the Intended Interested Party.
  9. The 1<sup>st</sup> Defendant argued that the judgment and decree delivered in this suit has meant that the applicant herein was condemned unheard. He pleaded that fraud has been perpetrated by the Plaintiff and vitiates all judicial proceedings whenever brought to the attention of the court.
  10. The Plaintiff has opposed the application through a Replying Affidavit sworn by Jackson Gitau Mwaura on 20<sup>th</sup> September 2024. The Plaintiff argued that the application is incompetent and an abuse of the court process as the jurisdiction and discretion to join a party to a suit can only be exercised by the court in the course of proceedings; that the proceedings have closed and judgement delivered,



and the application therefore does not lie unless the judgment is set aside and that this court is functus officio and there is an intended appeal.

11. The Plaintiff asserts that there was no claim filed by the Plaintiff against the Interested Party and the Intended Interested Party was not a necessary party to the suit and that the Applicant does not have any stake in the proceedings and has not been affected by the decision of the court.
12. The Plaintiff maintains that the judgment given on 23<sup>rd</sup> May 2024 is lawful, procedural, sound and reasonable and arrived at judiciously, after the parties were heard and that this matter has been in court for the last ten years and the Intended Interested Party cannot wait until judgment has been entered then oppose this suit.
13. He further asserted that there is no evidence to show the relationship between the Intended Interested Party and the Plaintiff's deceased's mother; that the Intended Interested Party has not attached any document to show how the suit property was transferred from the deceased to him.
14. The Intended Interested Party, in his Supplementary Affidavit, deponed that this court has inherent powers to ensure justice is done, regardless of the stage of the case and the status of the proceedings and that while the Plaintiff deponed that he has no claim against him, in the Plaintiff, the Plaintiff alleged that he fraudulently transferred the suit property to himself.
15. It was deposed that the Plaintiff also sought in his Plaintiff for an order declaring the registration of the Interested Party as proprietor of the suit property as illegal and fraudulent, and that the court in its judgment was persuaded to agree to the said allegations by the Plaintiff since he was not a party to the case.
16. The deponent stated that he was not aware of the existence of this case and at no time did the Plaintiff inform him of the case despite him being his uncle and that he only became aware of this matter in mid-June 2024 when the 1<sup>st</sup> Defendant summoned him through the area chief and informed him that the court had ruled that the property he sold to him was obtained by fraud.
17. This application was canvassed through written submissions.

### **Submissions**

18. The Applicant's counsel submitted that the inclusion of the Applicant in these proceedings was necessary as the Applicant sold the property to the 1<sup>st</sup> Defendant and the Plaintiff has sought various orders against the Applicant and alleged fraud on the Applicant's part and that the pleadings speak for themselves and the Plaintiffs are bound by their pleadings.
19. With respect to the jurisdiction of this court to allow joinder, the Applicant's counsel relied on the Court of Appeal's sentiments in Attorney General vs Kenya Bureau of Standards [2018] eKLR. Counsel submitted that under Order 1 Rule 10(2) of the Civil Procedure Rules, this court has powers to order any person to be joined as a party in a suit at any stage of the proceedings. Counsel quoted the Court of Appeal case of JMK vs MWN & Another (2015) eKLR.
20. The Applicant's Counsel submitted that the Plaintiff prosecuted the suit in the Applicant's absence and that the court should allow the Applicant's joinder. He relied on the case of Fanikiwa Limited vs Sirikwa Squatters Group and 24 others Civil Appeal (Application) No. 45 of 2017.
21. It was submitted that the Applicant has been denied his right to be heard. Counsel relied on the case of Mbaki & Others vs Macharia & another [2005] 2 EA 206 at page 210 which underscored the significance of the right to be heard.



22. Lastly, the Applicant's counsel submitted that the annexed Defence raises serious triable issues that the court ought to interrogate through viva vice evidence.
23. The Plaintiff's counsel submitted that this suit was filed on 31<sup>st</sup> July 2014 and the 1<sup>st</sup> Defendant filed a Defence on 9<sup>th</sup> June 2015. He contended that the 1<sup>st</sup> Defendant was all along aware of the allegations of fact and of fraud against him and David Mwaura Karanja and that he did not see any question or issue relating to the suit property to be determined between the Plaintiff, the 1<sup>st</sup> Defendant and the Applicant, so as to join the Applicant as a third party to the suit. Counsel relied on Order 1 Rule 15(1) (c) of the Civil Procedure Rules on issuance of a third-party notice.
24. Counsel relied on Order 1 Rule 10 of the Civil Procedure Rules on joinder. He also relied on the Court of Appeal case of Alton Homes Limited & another vs Davis Nathan Chelogoi & 5 others [2020] eKLR on joinder of a party after judgment.
25. It was submitted that this court is functus officio, having heard the parties and delivered its judgment; that the 1<sup>st</sup> Defendant has filed a Notice of Appeal implying that there is an intended appeal and that the Applicant can still seek to be joined in the appeal and ventilate his case. Plaintiff's Counsel quoted the Supreme Court case of Raila Odinga vs IEBC & 3 others [2013] KESC 8 (KLR) which referred to the case of Jersey Evening Post Limited vs A. Thani [2002] Jlr 542 at pg. 550 as well as the case of David Kiptugen vs Commissioner of Lands, Nairobi & 4 others [2016] eKLR on joinder under Rule 77 of the Court of Appeal Rules.
26. It was submitted that the Intended Party was not a necessary party to this suit as the Plaintiff had no claim against him; that the Intended Party does not have any stake in the proceedings and that the Intended Party has not been affected by the decision of the court.
27. Reliance was placed on the cases of Dig-Tec Images Limited vs Kenya Railways Staff Retirement and Benefits Scheme and 4 others [2015] eKLR, Zephir Holdings Ltd vs Mimosa Plantations Ltd, Jeremiah Maztagaro, Ezekiel Misango Mutisya (2014) eKLR, Trusted Society of Human Rights vs Mumo Matemo & 5 others [2014] eKLR and Joseph Mwangi Mbote & 2 others vs Kenya Tea Development Agency (Holdings) Ltd; Kiru Tea Factory Limited (Proposed Co-Petitioner) [2020] eKLR.
28. On the prayer for setting aside the judgment, the Plaintiff's Counsel submitted that this application is a ploy to scuttle the judgment and stall this matter. He relied on the case of Shah vs Mbogo [1967] 116, Mbogo vs Shah [1968] EA 93 and Ivita v Kyumbu [1984] KLR 441.
29. Counsel for the 1<sup>st</sup> Defendant submitted that judgment was pronounced in proceedings that made serious allegations against David Mwaura Karanja, in which the said David Mwaura Karanja was never made a party. Counsel relied on the case of John Kamunya & another vs John Nginyi Muchiri & 3 others [2015] eKLR where the Court of Appeal held that a suit prosecuted without enjoining the necessary parties to the suit must fail.

### **Analysis and determination**

30. Upon consideration of the application and responses thereto, the issues for this court's determination are as follows:
  - a. Whether this court should join the David Mwaura Karanja to this suit as a Defendant.
  - b. Whether this court should review and set aside the judgment dated 23<sup>rd</sup> May 2024.



31. The Plaintiff instituted this suit through a Complaint dated 30<sup>th</sup> July 2014. The 1<sup>st</sup> Defendant entered appearance and filed a Defence. Following full hearing, where the Plaintiff and the 1<sup>st</sup> Defendant presented witnesses' testimony and documentary evidence, this court entered judgment in favour of the Plaintiff on 23<sup>rd</sup> May 2024, and found that the title acquired by David Mwaura was procured through a fraudulent and/or irregular scheme and he could not have passed any title to the 1<sup>st</sup> Defendant.
32. The Intended Party, David Mwaura, has sought to be joined to this suit and for this court to review and set aside its judgment and the matter be heard afresh. He contends that he ought to have been joined to this suit as the Plaintiff had sought orders against him; that the Plaintiff concealed material fact that he is well known to him and they are related to each other and that he was condemned unheard and stands to suffer loss and damages if the said judgment is not set aside. The 1<sup>st</sup> Defendant has supported this application.
33. The Plaintiff argues that this court cannot allow the joinder of the Applicant at this stage as the court is functus officio. He asserts that the Applicant was not necessary to this suit as he has no stake in the suit property. He further argues that the judgment in this matter was lawfully entered and a Notice of Appeal has been filed by the 1<sup>st</sup> Defendant.
34. The governing law on joinder of parties is Order 1 Rule 10 (2) of the Civil Procedure Rules, under which a court may, either on application made by a party or without, allow joinder of a party whose presence it considers to be necessary in a suit. This rule 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.”
35. The applicable principles in joinder were considered by this Court in *Pravin Bowry vs John Ward & Another* [2015] eKLR, where the Court referenced the decision of the Supreme Court of Uganda in *Deported Asians Custodian Board vs. Jaffer Brothers Ltd* [1999] 1 EA 55 (SCU) 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.” [Emphasis added]

36. In *Communications Commission of Kenya & 3 Others vs Royal Media Services Limited & 7 Others* [2014] eKLR the Supreme Court stated thus:

“Similarly, in the case of *Meme vs. Republic* [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- i. joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
- ii. Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- iii. joinder to prevent a likely course of proliferated litigation.”

37. This court in *Joseph Njau Kingori vs Robert Maina Chege & 3 others* [2002] eKLR distilled the guiding principles in considering whether to allow joinder of an intending party as follows:

- i. He must be a necessary party.
- ii. He must be a proper party.
- iii. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.
- iv. The ultimate order or decree cannot be enforced without his presence in the matter.
- v. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.

38. Ordinarily, applications for joinder should be made before or during trial. There are, however, some instances where it may be necessary to enjoin a party after judgment. The Court of Appeal in *JMK vs MWM & Another* [2015] eKLR was of the view that joinder can be done post-judgment and even at the appellate stage.

39. Similarly, in *Teachers Service Commission vs Kenya National Union of Teachers; Secretary/Chief Executive Officer, Teachers Service Commission & Another (Contemnors); Cabinet Secretary for Labour and Social Protection & 2 Others (Interested Parties)* [2021] eKLR, the court held that there are circumstances in which it would be necessary to join an interested party at the post-judgment stage, as in interpreting or executing a Judgment, a party may affect the rights and interests of non-parties.

40. The circumstances in this case are that execution proceedings are ongoing. The question is then whether the Intended Applicant’s legal rights and interests stand to be adversely affected by the implementation of this court’s judgment.

41. This court notes that at the time of judgment, David Mwaura Karanja was not the registered proprietor of the suit property, having sold the same to the 1<sup>st</sup> Defendant on 12<sup>th</sup> April 2006. This is reflected in the judgment delivered by this court on 23<sup>rd</sup> May 2024 which issued an order directing the Chief Land Registrar to cancel the registration of Land Title No. Dagoretti/ Uthiru/T36 in the name of Simon Karanja Thimba and register the same in the Plaintiff’s name.



42. It is apparent that the Intended Party therefore had no rights in the subject property and is equally unaffected by the judgment of this court because he neither holds legal title to the land nor is he in possession of it. There is therefore no basis to join David Mwaura Karanja at this advanced stage of the suit.
43. This court finds that there is no basis to allow the joinder of David Mwaura Karanja to this suit because he is not a necessary party, there is no relief flowing from him to the Plaintiff, and the judgment delivered by this court can in fact be executed in his absence.
44. Even if this court were to admit the Applicant solely for the purpose of adjudicating this application for review and setting aside, it would still find that the said application is unmerited.
45. I say so because under Order 45 Rule 1, there are three grounds upon which a claimant may seek review: (1) on the discovery of new and important evidence which was previously unknown or could not be produced at the time the court made its decision; (2) on account of a mistake or error apparent on the face of the record or (3) for any other sufficient reason.
46. The Applicant states that the suit property was lawfully and voluntarily transferred to him by his late grandmother, Peninah Wanjiru David and that he took possession of the suit property and the Plaintiff, his uncle, never protested his ownership of the suit property. The Applicant has, however, not presented any documents to support that he has a legal basis on how he acquired ownership to the suit property. There is therefore no basis for this court to review or set aside its judgment.
47. Further still, while the Applicant argues that he stands to suffer loss and damages should this suit not be reopened, such loss and damages has not been sufficiently pleaded and proved, and to this court's mind, will not be a direct consequence of the judgment in this matter.
48. In any case, in this suit, as the registered proprietor of the subject property, it was upon the 1<sup>st</sup> Defendant to establish his root of title, which he failed to do. As argued by the Plaintiff, nothing prevented the 1<sup>st</sup> Defendant from joining the Applicant as a third party to this suit or even calling the Applicant as a witness in the suit.
49. The upshot of the foregoing is that the application dated 20<sup>th</sup> June 2024 is wholly unmerited and is for dismissal. Costs of the application shall be borne by the Applicant, David Mwaura Karanja.

**Dated, signed and delivered virtually in Nairobi this 16<sup>th</sup> day of June, 2025.**

**O. A. Angote**

**Judge**

**In the presence of;**

Mr. Malanga for Administrators of the 1<sup>st</sup> Defendant

Mr. Kituma for the Intended Party/Applicant

Mr. Wahome for Ambeni for Plaintiff/Respondent

Court Assistant: Tracy

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**ELC NO. 1013 OF 2014**

**RULING**

