



REPUBLIC OF KENYA



Mungai & 2 others v Kanyotu; Ndungu (Proposed Interested Party) (Environment and Land Case E002 of 2025) [2025] KEELC 6587 (KLR) (29 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6587 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE E002 OF 2025
JM ONYANGO, J
SEPTEMBER 29, 2025**

BETWEEN

JOHNSON MAINA MUNGAI 1ST PLAINTIFF

PETER KINGANGA MUTUGU 2ND PLAINTIFF

SIMON SHAURI MBUGUA 3RD PLAINTIFF

AND

WILLY KIHARA KANYOTU DEFENDANT

AND

PATRICK MAINA NDUNGU PROPOSED INTERESTED PARTY

RULING

1. By Notice of Motion dated 24th February, 2025, the Proposed Interested Party/Applicant sought the following orders: -
 - a. Spent.
 - b. That the Applicant herein be enjoined in this suit as a party.
 - c. That upon joinder, the Applicant be allowed to participate in the proceedings as an Interested Party.
 - d. That the costs be provided for.
2. The Application is based on the four grounds set out on the face of the Notice of Motion and on the Applicant's Supporting Affidavit sworn on even date. The Applicant depones that he is the registered proprietor of the property known as Title No. L.R. 11261/53 (I.R. 90518) pursuant to Survey Plan No. 240827.



3. He avers that he purchased the said property from Kangaita Coffee Estate Limited. He contends that he has learned from the Plaintiffs that the Defendant/Respondent has listed his property, L.R. No. 11261/53, among those alleged to belong to the Defendant/Respondent, at paragraph 12 of his Replying Affidavit.
4. It is his contention that, given the Defendant/Respondent's claim of ownership over his property, it is necessary that he be allowed to participate in the proceedings as an Interested Party. He adds that the Plaintiffs' properties are within the same estate, and that all parties, including himself, purchased their respective properties from Kangaita Coffee Estate Limited.
5. The Defendant/Respondent opposes the Application through a Replying Affidavit sworn by him on 12th March 2025. It is his position that the Application offends the sub judice rule and ought to be struck out. He asserts that the Application constitutes an abuse of the court process, is vexatious, and is frivolous.
6. He admits that he is the Defendant/Respondent in this suit filed by the Plaintiffs. He denies, however, that he has made any claims in this matter. The Defendant/Respondent emphasizes that he has not claimed anything in the present suit but is only defending himself. He explains that he filed a response to the Plaintiffs' application dated 9th January 2025, in which he merely referred to various properties but did not lay any claim to them.
7. He points out that the Applicant has already instituted a separate suit against him before this Honourable Court, namely ELC No. 088 of 2024, in which the Applicant's alleged property L.R No. 11261/53 is the central subject.
8. He further depones that in the aforementioned suit (ELC No. 088 of 2024), there is a pending Application dated 30th May 2024 seeking injunctive orders. He notes that the ruling on the said Application was scheduled for 26th March 2025.
9. It is his contention, therefore, that the Applicant's interest and concerns regarding property L.R No. 11261/53 are already being adequately addressed in a separate, competent suit before this Court. He asserts that the Applicant can fully ventilate his issues in that suit without the need to be joined to the present proceedings. He confirms that he has already raised a preliminary objection concerning the Plaintiffs' filing, which combines two different causes of action into a single suit.
10. The Plaintiffs did not oppose the Application. The Application was canvassed by way of written submissions. Both the Applicant and the Defendant/Respondent filed their submissions.

Applicant's Submissions

11. Counsel for the Applicant identified one issue for determination: Whether the Respondent would be prejudiced if the Application is granted. Counsel for the Applicant noted that the Defendant/Respondent did not deny including parcel No. 11261/53 and claiming it as part of his alleged assets in his Replying Affidavit. Counsel argued that the purpose of including parcel No. 11261/53 in the list was to be an attempt to use it as evidence of ownership.
12. Counsel submitted that no prejudice would be suffered by the Defendant/Respondent if the Applicant were joined in the proceedings to protect his interest. He added that, on the contrary, the Applicant stood to suffer significant prejudice if not joined.
13. It was further submitted that the Plaintiffs were not opposed to the Application, and that the Defendant/Respondent had not advanced any valid reasons against the joinder. Counsel contended that the joinder of the Applicant would not delay the ongoing case nor complicate the process.



14. In conclusion, the Applicant's counsel submitted that the Defendant/Respondent had advanced no valid reasons for opposing the Application, and that the Defendant/Respondent would suffer no prejudice if the Application were allowed.

Defendant/Respondent Submissions

15. Counsel for the Defendant/Respondent submitted that the Application was opposed on two main grounds: (i) The Application offends the sub judice rule and should be struck out; and (ii) The Defendant/Respondent would be embarrassed in presenting his defence against both the Plaintiffs and the Proposed Interested Party/Applicant.
16. On the first ground, counsel invoked Section 6 of the *Civil Procedure Act*, which prohibits courts from proceeding with a suit if the matter in issue is directly and substantially in issue in a previously instituted suit between the same parties. Reference was made to Republic vs Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya [2020] KEHC 10142 (KLR) and Kenya National Commission on Human Rights vs Attorney General; Independent Electoral & Boundaries Commission & 16 others [2020] KESC 54 (KLR), which outline the following elements for invoking the sub judice rule:
- i. There must be more than one suit over the same subject matter;
 - ii. One suit was instituted before the other;
 - iii. Both suits are pending before courts of competent jurisdiction;
 - iv. The suits are between the same parties or their representatives.
17. Counsel emphasized that ELC Case No. 088 of 2024, involving the same parties and the same property (L.R. No. 11261/53), was already pending before the court and that a ruling on an application in that suit was delivered on 3rd April 2025, and the matter is scheduled for a pre-trial conference on 29th May 2025. It was submitted that the Applicant's interests are already being addressed in that suit, and that joining the current suit would violate the sub judice rule and constitute an abuse of court process.
18. On whether the Defendant/Respondent would be embarrassed, counsel contended that the Plaintiffs had improperly filed a single suit based on two different causes of action, which the Defendant/Respondent had already objected to. He added that the suit properties L.R. No. 11261/13 and L.R. No. 11261/14 involved different transactions, different acquisition dates, and different Plaintiffs, thereby lacking common questions of law or fact. He submitted that the misjoinder offended Order 1 Rule 1 of the Civil Procedure Rules.
19. Reference was made to the case of Erdemann Property Limited vs Co-operative Bank (K) Limited; Lake Basin Development Authority (Intended Interested Party) [2024] KEHC 10187 (KLR), where the court held that joinder may be declined if the cause of action or relief sought is incompatible with the existing suit.
20. Counsel argued that the Defendant/Respondent would be further embarrassed in defending against the Plaintiffs' already improperly joined claims if the Applicant is allowed to join in support of the Plaintiffs' case.
21. In conclusion, counsel urged this court to strike out this Application with costs for being sub judice and an abuse of court process.



Analysis and Determination

22. This court is of the considered opinion that the main issue for determination is whether the Applicant has met the threshold to warrant the grant of the orders sought;
23. The main issue for determination is whether the Applicant, Patrick Maina Ndungu, has met the legal threshold to be enjoined in this suit as an Interested Party. The Application is premised on the court's inherent power to join parties to a suit to ensure that all matters in dispute are effectually and completely adjudicated upon. 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 be struck out, and that the name of any person who ought to have been joined, 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.”
24. The principles for joinder as an Interested Party are well-established. An Interested Party is a person who has an identifiable legal or practical interest in the outcome of the proceedings. The joinder should not be for a collateral purpose, nor should it be sought in a manner that would embarrass the existing parties, complicate the proceedings, or amount to an abuse of the court process.
25. The Defendant/Respondent raises two primary objections: the sub judice rule and potential embarrassment. The Defendant contends that the Application offends the sub judice rule because a separate suit, ELC No. 088 of 2024, involving the same parties (the Applicant and the Defendant) and the same subject matter (L.R. No. 11261/53), is already pending before this court. He adds that for the sub judice rule to apply, the matter in issue in the subsequent suit must be directly and substantially in issue in the previously instituted suit.
26. Upon careful consideration, this court finds that the rule is not squarely applicable to the present Application for the following reasons: (i) The ELC NO. 088 of 2024 is a substantive suit filed by the Applicant against the Defendant, where the Applicant's ownership of L.R. No. 11261/53 is the central and primary issue. The present suit, ELC NO. E002 of 2025 is a case filed by different Plaintiffs (Johnson Maina Mungai & 2 others) against the Defendant. The Applicant is not currently a party.
27. Secondly, the Applicant does not seek to file a new claim against the Defendant in this suit. Rather, he seeks to be joined as an Interested Party to protect his interest, which he alleges is being indirectly implicated by the Defendant's pleadings in this suit. His role would be defensive and ancillary to the main dispute between the existing parties.
28. Therefore, while the underlying property is the same, the “matter in issue” in the two proceedings is not identical. The Application for joinder is a procedural step within ELC NO. E002 of 2025, not the institution of a new suit that directly and substantially replicates ELC NO. 088 of 2024. Consequently, the objection on the grounds of sub judice fails.
29. The Defendant/Respondent argues that joining the Applicant would embarrass his Defence, particularly because he has already raised a Preliminary Objection that the Plaintiffs have improperly joined two distinct causes of action in one suit.
30. This court takes judicial notice of the ruling delivered on 3rd April 2025 in ELC No. 088 of 2024, which concerned L.R. No.11261/53. The existence of that active, separate suit is a critical factor. The Applicant has a dedicated and appropriate forum to fully vindicate his title to L.R. No. 11261/53



against the Defendant. Joining him to the present suit risks turning it into parallel proceedings on the same issue of ownership, which could lead to confusion, duplication of effort, and potentially conflicting findings.

31. Furthermore, as was held in the case of Erdemann Property Limited vs Co-operative Bank (K) Limited, Lake Basin Development Authority (Intended Interested Party) [2024]eKLR, joinder may be declined if it would introduce incompatible causes of action or complicate the existing suit. Adding the Applicant to a suit that is already contested on the grounds of misjoinder of parties and causes of action would only compound its complexities.
32. The Applicant's interest arises from the Defendant's mention of L.R. No. 11261/53 in his Replying Affidavit. The Applicant fears this could be used as evidence against his ownership. While this concern is noted, it is not sufficient to warrant joinder in this instance.
33. The Defendant has categorically stated that he has not made any claim to the Applicant's property in this suit and is merely defending himself against the Plaintiffs' claims. The core dispute in ELC No. E002 of 2025 is between the three Plaintiffs and the Defendant concerning their respective properties. The Applicant's property is only loosely mentioned. The Applicant's legal rights regarding the property are already being actively litigated in ELC No. 088 of 2024, which is the more direct and appropriate avenue for resolving any ownership dispute with the Defendant.
34. The court finds that the Applicant's presence is not necessary to enable the court to effectually and completely adjudicate the questions involved in this specific suit between the existing parties. The potential prejudice to the Applicant is minimal and is adequately safeguarded by the existence of his own suit. On the other hand, allowing the Application would likely prejudice the Defendant by complicating his defence and conflating two distinct sets of disputes.
35. For the foregoing reasons, the court finds that the Applicant has not demonstrated a sufficient necessity for his joinder to the present proceedings. His interests are already protected in a separate forum. Allowing the Application would risk an abuse of the court process by creating unnecessary complexity and parallel litigation.
36. The court finds that the Notice of Motion Application dated 24th February 2025 lacks merit and is hereby dismissed. Each party shall bear its own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 29TH DAY OF SEPTEMBER 2025.

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J. M ONYANGO

JUDGE

In the presence of:

1. Mr Ruiru for the 1st Respondent
2. Mr Gatumita for the Proposed Interested Party
3. Mr Opundo for the Plaintiff

Court Assistant: Hinga

