



**Kageche & another (Suing as the Administrators Ad Litem of the Estate of Evans Kageche Boro) v Njoki & 2 others (Sued as the Administrators and the Legal Representatives of the Estate of Simon Njoroge) (Environment and Land Case 002 of 2024) [2025] KEELC 6544 (KLR) (Environment and Land) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6544 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA  
ENVIRONMENT AND LAND  
ENVIRONMENT AND LAND CASE 002 OF 2024  
MC OUNDO, J  
OCTOBER 2, 2025**

**BETWEEN**

**NANCY NYOKABI KAGECHE ..... 1<sup>ST</sup> PLAINTIFF  
ESTHER WANJA KAGECHE ..... 2<sup>ND</sup> PLAINTIFF  
SUING AS THE ADMINISTRATORS AD LITEM OF THE ESTATE OF EVANS  
KAGECHE BORO**

**AND**

**ROSEMARY NJOKI ..... 1<sup>ST</sup> DEFENDANT  
GRACE WAMBUI KAMAU ..... 2<sup>ND</sup> DEFENDANT  
ANTHONY NJOROGE KAMAU ..... 3<sup>RD</sup> DEFENDANT  
SUED AS THE ADMINISTRATORS AND THE LEGAL REPRESENTATIVES OF  
THE ESTATE OF SIMON NJOROGE**

**RULING**

1. Coming up for determination is a Notice of Motion dated 12<sup>th</sup> June, 2024 brought pursuant to the provisions of Sections 1A, 1B, and 3A of the *Civil Procedure Act*, Order 1 Rule 10(2), Order 51 Rule 1 of the Civil Procedure Rules, 2010 as amended in 2020, (Cap 21 of the Laws of Kenya) where the Defendants seek that Kenya Shoe Company Limited be joined in the proceedings as a third party so as to be bound by all orders issued herein. They also seek for costs of the Application.
2. The Application was supported by the grounds therein and a Supporting Affidavit sworn on 26<sup>th</sup> May, 2025 by Anthony Njoroge Kamau one of the administrators of the estate of the late Simon Njoroge



Kamau who deponed that his late father Simon Kamau Njoroge had leased the suit property L.R No. 1144/0887 (suit land) from Kenya Shoe Company Limited where he was running the business of vehicle garage and had been in occupation of the same since the year 1980. That even after termination of the lease in 1985, he had continued to occupy the property, wherein he had put up some structures, until his eventual demise.

3. That sometimes in the year 2005, the deceased Plaintiff lay claim to the suit property wherein in the year 2021, the 1<sup>st</sup> Defendant (sic) had ambushed his deceased father claiming to have purchased the suit land from Kenya Shoe Company Limited and even presented him with forged transfer documents in an attempt to evict him from the suit property.
4. That a search on the suit land revealed that Kenya Shoe Company Limited was still the proprietor of the suit land and at no time had the same been transferred to the deceased Plaintiff as had been purported.
5. That joinder and participation of Kenya Shoe Company Limited in the proceedings herein would substantively and effectually aid the Court in coming up with a well-informed decision in the circumstances of the matter herein for which he argued the Court to allow their application in the wider interest of justice and for eventual determination of the substantive rights as regards the ownership and interests in the suit land.
6. In response and in opposition to the Defendant's Application herein, the Plaintiffs via their Replying Affidavit dated 16<sup>th</sup> June, 2025 sworn by Nancy Nyokabi Kageche, the 1<sup>st</sup> Plaintiff herein deponed that the Defendant's Application lacked merit and ought to be dismissed with costs.
7. That it was needless for the Kenya Shoe Company to be joined in the instant matter as no valid reason had been brought for the for such joinder. That the suit land herein belonged to the deceased Plaintiff as evidenced in the documents herein annexed as ANK3 which is a transfer in respect of the suit property in the name of the deceased, Evans Kageche.
8. That further, the Plaintiff filed a list of witnesses and witness statements and would be calling two (2) directors of Kenya Shoe Company as their witnesses hence it was needless for Kenya Shoe Company to be joined as a party in the proceedings herein keeping in mind also that the company had not raised any issue regarding the suit land.
9. That the Defendant would have an opportunity to cross-examine the Plaintiffs' witnesses from Kenya Shoe Company. That further, the Defendant, in their Statement of Defence and Counter-claim had no claim against Kenya Shoe Company thus it was unnecessary to have the Company joined to the proceedings and if the Defendants had any claim against Kenya Shoe Company, they ought to file a suit against it and or file documents of ownership to the suit land in court so as to cross-examine the Plaintiff's witnesses, in particular, the Directors of Kenya Shoe Company on the same.
10. Directions were taken for the disposal of the application by way of written submissions wherein the Defendant/Applicant vide their submissions dated 24<sup>th</sup> June, 2025 summarized the factual background of the matter stating that the response by the Plaintiffs to their application had raised more questions than answers. That the key issue at the Centre of the dispute herein was the ownership of the suit land thus it begged the question as to why the Plaintiff would be opposed to the joinder of Kenya Shoe Company from whom they had alleged to have purchased the suit land. That justice would dictate that every matter should be heard based on its full merits and not on make-up facts yet the Plaintiffs seemed to be hell bent on having the matter heard without involvement of Kenya Shoe Company.
11. That it was their case that they had been in occupation of the suit land for more than 12 years wherein they wished to file a counterclaim against the registered proprietor, Kenya Shoe Company Limited.



- That subsequently, it was only fair that the said Kenya Shoe Company Limited be joined as a party to the suit herein to enable them shed more light into the circumstances leading to the transfer of the suit property in the Plaintiffs name and also defend the claims against them.
12. Reliance was placed on the provisions of Order 1 Rule 10(2) of the Civil Procedure Rules to submit that the court has unfettered discretion to order joinder of a party where it considers that party necessary for the complete and effectual determination of the issues arising in the matter.
  13. That although the Plaintiffs allege to have bought the suit land from Kenya Shoe Company Limited, the transfer form that had been submitted in court in support of said allegation was not only incomplete, but its authenticity was also questionable, that further, the certificate of official search had indicated that the suit land was still registered to Kenya Shoe Company's name and therefore the Company was clearly a necessary party for effectual determination of the issue of ownership of the suit land herein, without which it would be impossible for the court to decide on the aforementioned issues.
  14. That in any case, the joinder of the intended third party would avoid multiplicity of suits as the Defendant had intended to file a counterclaim against the same.
  15. It was thus their submission that the intended third party had a legal and factual nexus to the issues that had been raised in the instant matter and if not joined in the proceedings herein, the court risked rendering a judgment that would not affect or bind all parties with an interest in the dispute thus undermining the integrity and the finality of the judgment. That the joinder of the interested party would not occasion any injustice to the intended third party but would rather facilitate the just and efficient determination of the instant dispute with some degree of finality. They placed reliance in the Court of Appeal's decision in the case of Civicon Limited v Kivuwatt Limited & 2 Others [2015] eKLR, and the decided case of Patrick Kiruja Kithinji v Victor Mugambi & Another [2015] eKLR, to submit that the application for joinder of Kenya Shoe Company Limited was meritorious, and had satisfied the legal threshold for joinder of parties as per the provisions of Order 1 Rule 10(2) of the Civil Procedure Rules, for which they sought for the application to be allowed.
  16. The Plaintiffs/Respondents vide their submissions dated 2<sup>nd</sup> July, 2025 submitted that the Application lacked merit, that joining the company was a waste of time and was not needed for the case to proceed. That the Defendants had failed to provide a valid reason why Kenya Shoe Company should be made a party to the proceedings. They asserted that the lawsuit was about land that belonged to a deceased Evans Kageche as per the documents provided. That they planned to call two Directors of Kenya Shoe Company as their witnesses which made it unnecessary to join the Company as a party.
  17. That the Company had not raised any issues or claims regarding the land, and the fact that its Directors were willing to testify for the Plaintiffs suggested that the transaction with the deceased was legitimate. That the Defendants would have the opportunity to cross-examine the company's Directors when they appear as witnesses which would in turn address their concerns.
  18. That the Defendants had not made any claim against Kenya Shoe Company and if indeed they had any such claim, then they were free to file a separate lawsuit. That in essence, the case could be fully resolved without involving Kenya Shoe Company as a formal party.

#### **Determination.**

19. I have considered the Defendants/Applicants' Application, the response by the Plaintiffs / Respondents, the Parties written submissions, the law and the authorities herein cited.
20. The Applicant's application seeks to have the Kenya Shoe Company joined to the proceedings for reason that it being the registered proprietor of the suit property No. L.R No. 1144/0887 herein, and



having leased out the same to the deceased Njoroge who ran the business of vehicle garage and had been in occupation of the same since the year 1980 even after termination of the lease in 1985, up to his demise, wherein he had put up some structures, that they sought to file a counterclaim against the Plaintiffs who were also claiming ownership of the land. That joinder of the Shoe Company would help the Court to make a final and effectual determination of the issues arising in the suit herein.

21. The Application was opposed by the Plaintiffs /Respondents for the reason that the joinder of Kenya Shoe Company was an irrelevant and unnecessary procedural move. They contend that the Company's involvement was not central to the dispute, that its role could adequately be addressed through witness testimony of the two Directors from the Company that it intended to call. That the Applicants existing pleadings did not even make any claim against the proposed Company.
22. Having summarized what is before me, I find the issue that gives rise for determination being as follows:
  - i. Whether the Kenya Shoe Company should be joined to the instant proceedings as a third party.
23. The Legislative framework on the issue of joinder of third parties to a suit is spelt out in Order 1 Rule 15 of the Civil Procedures Rules which provides as follows;

“ Where a defendant claims as against any other person not already a party to the suit (hereinafter called the third party)—

  - (a) that he is entitled to contribution or indemnity; or
  - (b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or
  - (c) that any question or issue relating to or connected with the said subject-matter is substantially the same question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party or between any or either of them, he shall apply to the Court within fourteen days after the close of pleadings for leave of the Court to issue a notice (hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers ex parte supported by affidavit.”
24. The provisions of Order 1, Rule 10(2) of the Civil Procedures Rules on the other hand is a general provision that allows the court, either on its own motion or on application, to add or strike out a party to a suit. This is typically used when a party is deemed necessary for the just and complete determination of the dispute. It provides as follows;

“The court may at any stage of 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 the name of any person who ought to have been joined either as plaintiff or defendant or whose presence before the court may be necessary to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit to be added.( my emphasis)”
25. Noting that there had been no objection raised that the application before court was incompetent by virtue of it having been made under the wrong rule and further noting that the court has the discretion to overlook the technical error, particularly if the application's substance is valid there having been an intention to join a party for a just resolution wherein no prejudice would be occasioned to either party,



I find that pursuant to the overriding objective of the Civil Procedure Act under Sections 1A and 1B, that the misapplication of the rule was a minor procedural defect.

26. In the case of *Central Kenya Ltd vs Trust Bank Ltd & 5 others* [2000] eKLR, the Court of Appeal held that;

“The paramount consideration is whether the party concerned is necessary for the effectual and complete adjudication of all the questions involved in the suit.”

27. Having considered all the circumstances in the present case, I find that a party cannot be added to a suit to introduce a new cause of action or to alter the nature of the suit, but must be a party or parties who are necessary to the constitution of the suit without whom no decree can be passed. It should be a party or parties against whom a right or some relief is sought or who, although no relief may be claimed against, but whose presence would be necessary to enable the Court effectively and completely adjudicate upon and settle all the questions involved in the suit. In the case before me, it is clear that whereas the Plaintiffs allege ownership of the suit parcel of land, the Respondents herein have denied such ownership on the basis that the same is still registered to the Kenya Shoe Company.

28. Article 50 (1) of the Constitution of Kenya, states that:

‘Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body’.

29. The courts of this land have been consistent on the importance of observing the rules of natural justice and in particular hearing a person who is likely to be adversely affected by a decision before the decision is made.

30. In the case of *Mbaki & Others vs. Macharia & Another* (2005) 2 EA 206, at page 210, the Court of Appeal held as follows:

“The right to be heard is a valued right. It would offend all notions of justice if the rights of a party were to be prejudiced or affected without the party being afforded an opportunity to be heard.”

31. From the affidavit and the submission by the Applicants, the decided authorities herein, and further, based on the fact that this court hesitates to place unnecessary hurdles on the access to justice and by extent access to the court. I find that the Applicants have persuaded me to exercise the court’s discretion under the provisions of Order 1 Rule 15 of the Civil Procedure Rules to join the Kenya Shoe Company to these proceedings as third party so that they may be afforded an opportunity to be heard.

32. I do hereby direct as follows;

- i. The Plaintiff shall amend its Plaint and effect service of the same upon then Defendants within 14 days.
- ii. Upon receipt of the amended Plaint, the Defendants shall also amend their statement of defense and counterclaim to include their claim against the third party and within 14 days, effect service of the Third party Notice alongside their amended pleadings upon all parties.
- iii. Upon receipt of service, the Third Party (and the Plaintiffs if need be) shall file and serve their respective responses within 14 days.

33. I make no orders as to costs.



**DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 2<sup>ND</sup> DAY OF OCTOBER 2025.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

