

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC SUIT NO. E027 OF 2024

LUCY ADHIAMBO NYALWANGA

**(Suing as the administrator of the
estate of JOAN ATIENO MANGO, deceased).....1ST**

PLAINTIFF

STEPHEN RICHARD MANGO.....2ND

PLAINTIFF

JOYCE ADHIAMBO MANGO.....3RD

PLAINTIFF

VERSUS

ALICE OWUOR.....1ST

DEFENDANT

LAND REGISTRAR, KISUMU.....2ND

DEFENDANT

RULING

The Plaintiffs brought this suit against the Defendants on 17th October 2024, seeking, among others, the following reliefs;

1. A declaration that the estate of Joan Atieno Mango, deceased, is the lawful registered proprietor of all that parcel of land known as Title No. Kisumu Municipality/Block 12/386 (hereinafter referred to as “the suit property”).

2. An order directing the 2nd Defendant to cancel and expunge from the Green Card, parcel file, or any record relating to the suit property all entries reflecting any other person other than Joan Atieno Mango, deceased, as the registered owner of the suit property.
3. An order directing the 2nd Defendant to cancel the purported title issued to the 1st Defendant on 15th November 2012.
4. A permanent injunction restraining the 1st Defendant whether by herself or through her agents and/or employees, personal representative, assigns or anyone claiming to be on the suit property on the 1st Defendant's authority from occupying, being in possession, trespassing on the property and/or interfering in any way with the Plaintiffs' quiet enjoyment, possession, use of the property and/or from offering for sale, selling, transferring, alienating or in any way disposing of the property.
5. A mandatory order of eviction of the 1st Defendant, her agents and/or employees, personal representative, assigns, or anyone claiming to be on the suit property on the 1st

Defendant's authority from the suit property immediately or not later than three months from the date of the order.

6. General damages for trespass.

7. Costs of the suit.

In their plaint dated 17th October 2024, the Plaintiffs averred that the 1st Plaintiff was the administrator of the estate of Joan Atieno Mango, deceased (hereinafter referred to as "the deceased"), while the 2nd and 3rd Plaintiffs were the beneficiaries of the said estate. The Plaintiffs averred that at all material times, the deceased was the registered proprietor of all that parcel of land known as Title No. Kisumu Municipality/Block 12/386 (the suit property). The Plaintiffs averred that the deceased died on 11th March 1998 when the 2nd and 3rd Defendants, who are her son and daughter, were still minors. The Plaintiffs averred that the Grant of Letters of Administration in respect of the deceased's estate was granted to the 1st Plaintiff and Phoebe Akinyi Mango on 14th August 2002. The Plaintiffs averred that Phoebe Akinyi Mango died on 9th September 2006, leaving the 1st Plaintiff as the sole administrator. The Plaintiffs averred that the said Grant of

Letters of Administration was confirmed on 25th September 2023. The Plaintiffs averred that the deceased purchased the suit property from Erick Omuodo Ounga on 8th June 1997.

The Plaintiffs averred that upon conducting a search on the title of the suit property, they learned that it was registered in the name of the 1st Defendant, who allegedly acquired it on 15th November 2012. The Plaintiffs averred that the purported transfer of the suit property to the 1st Defendant was irregular, illegal and without the knowledge of the 1st Plaintiff as the administrator of the estate of the deceased, or the 2nd and 3rd Plaintiffs to whom the ownership of the suit property devolved in equal shares upon the confirmation of Grant of Letters of Administration in respect of the estate of the deceased on 25th September 2023. The Plaintiffs averred that the 1st Defendant had trespassed on the suit property and constructed a residential house thereon.

The 1st Defendant filed a statement of defence on 20th November 2024. The 1st Defendant averred that she was the registered owner of the suit property and denied that she acquired the property irregularly and illegally. The 1st

Defendant averred that she purchased the suit property from one Atul Kumar Motichand Shah, who was registered as the owner of the property on 8th March 2011. The 1st Defendant averred that when she purchased the suit property, she was not aware that the deceased, Joan Atieno Mango from whom Atul Kumar Motichand Shah had purchased the property, died in 1998. The 1st Defendant averred that when the 2nd and 3rd Defendants wrote to her through their advocates on 2nd March 2021 claiming possession of the suit property, she contacted Atul Kumar Motichand Shah, who maintained that he purchased the suit property from the deceased, Joan Atieno Mango. The 1st Defendant averred that she lawfully purchased the suit property from Atul Kumar Motichand Shah, who had acquired the same from the deceased, Joan Atieno Mango.

On 17th December 2024, the 1st Defendant filed a Notice of Motion application of the same date seeking an order that Atul Kumar Motichand Shah be joined in the suit as the 3rd Defendant and the plaint be amended accordingly by the Plaintiffs to effect the joinder. The 1st Defendant sought the joinder of Atul Kumar Motichand Shah to the suit as a

defendant on the ground that he was the one who sold the suit property to her in 2012 and that his joinder to the suit was necessary to enable the court to effectually and completely adjudicate upon and settle all questions relating to the suit property. The Plaintiff opposed the application on the grounds, among others, that the 1st Defendant had no right to add parties to a suit that was not hers.

While that application was pending hearing, the 1st Defendant filed another Notice of Motion application dated 28th March 2025 seeking leave to amend her earlier application dated 17th December 2024 by deleting the name of Atul Kumar Motichand Shah and replacing it with Jyoti Atul Kumar Shah as the proposed 3rd Defendant. The application was brought on the ground that when the application dated 17th December 2024 for the joinder of Atul Kumar Motichand Shah to the suit was filed, the 1st Defendant was not aware that he was deceased. The 1st Defendant averred that it was upon making attempts to serve the application upon Atul Kumar Motichand Shah that she got to learn of his death on 8th July 2024. The 1st Defendant averred

that Jyoti Atul Kumar Shah was the spouse of Atul Kumar Motichand Shah and his legal representative.

The application was opposed by the Plaintiffs through grounds of opposition dated 1st July 2025. The Plaintiffs contended that the 1st Defendant lacked the *locus standi* to join another party to the suit as a defendant. The Plaintiffs averred that there was no basis for joining the proposed 3rd Defendant to the suit since the Plaintiffs had not sought any relief against her. The Plaintiffs averred that the 1st Defendant had not demonstrated that she had the authority of the proposed 3rd Defendant to make the joinder application on her behalf. The Plaintiffs averred further that the 1st Defendant had not placed any evidence before the court showing that Jyoti Atul Kumar Shah was indeed the appointed legal representative of Atul Kumar Motichand Shah. The Plaintiffs averred further that there were no enabling provisions of the law for amending applications.

The application was argued orally on 24th September 2025, when Ms. Ngina appeared for the 1st Defendant/Applicant, while there was no appearance for the Plaintiffs.

Analysis and Determination

I have considered the 1st Defendant's application together with the supporting affidavit. I have also considered the grounds of opposition filed by the Plaintiffs in opposition to the application. Finally, I have considered the submissions by the advocate for the 1st Defendant. The joinder application was brought under Order 1 Rule 10 (2) of the Civil Procedure Rules.

Order 1 Rule 3 of the Civil Procedure Rules provides as follows:

“All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.”

Order 1 Rule 10 (1) to (4) of the Civil Procedure Rules, on the other hand, provides as follows:

(1 Where a suit has been instituted in the name of the) wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as

plaintiff upon such terms as the court thinks fit.

- (2) 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.**
- (3) No person shall be added as a plaintiff suing without) a next friend or as the next friend of a plaintiff under any disability without his consent in writing thereto.**
- (4) Where a defendant is added or substituted, the plaint) shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants.**

Order 1 Rule 3 of the Civil Procedure Rules provides for persons who may be joined as defendants in a suit, and Order 1 Rule 10 of the Civil Procedure Rules empowers the court to substitute and add parties to an existing suit, as in the present case. In

my view, under Order 1 rule 10(2) of the Civil Procedure Rules, the court can only join a person as defendant to an existing suit in two instances, first, where such person ought to have been joined as a defendant under Order 1 rule 3 of the Civil Procedure Rules aforesaid and was not so joined and secondly, where the presence of such person before the court may be necessary to enable the court to adjudicate and settle all questions involved in the suit. The court will, at the hearing of the joinder application, determine if the person sought to be joined as a defendant in this suit should have been joined as a party to the suit when the suit was filed or whether his/her presence before the court is necessary to enable the court to adjudicate and settle all questions involved in the suit.

What is before me is an application for leave to amend the joinder application. The 1st Defendant/Applicant has contended that Atul Kumar Motichand Shah, whom she sought to join to the suit as the 3rd Defendant, is deceased. The 1st Defendant has sought to replace him in the joinder application with Jyoti Atul Kumar Shah. I do not agree with the Plaintiffs that the lack of express provision in the Civil Procedure Act and the rules

made thereunder for the amendment of applications deprives the court of jurisdiction to order an amendment of applications in appropriate cases. Section 3A of the Civil Procedure Rules saves the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. In the case before me, I am of the view that it will save time for the parties and the court if the 1st Defendant amends her joinder application instead of filing a fresh application. That said, the 1st Defendant has to satisfy the court that the leave sought to amend the application should be granted.

I have carefully considered the 1st Defendant's application. The application is based solely on what the process server, James Otieno Okudo, was told on 20th February 2025 when he went to serve the joinder application upon Atul Kumar Motichand Shah. According to the process server, he was told that Atul Kumar Motichand Shah was deceased. There is no evidence before the court of the death of Atul Kumar Motichand Shah. There is also no evidence that Jyoti Atul Kumar Shah is the legal representative of Atul Kumar Motichand Shah. The court cannot

grant leave to the 1st Defendant to substitute Atul Kumar Motichand Shah with Jyoti Atul Kumar Shah without evidence of the death of Atul Kumar Motichand Shah and of the appointment of Jyoti Atul Kumar Shah as his legal representative.

Conclusion

For the foregoing reasons, I find no merit in the application dated 28th March 2025. The application is dismissed with costs to the Plaintiffs. The 1st Defendant is at liberty to withdraw the joinder application dated 17th December 2024 and file a fresh application for joinder backed by evidence of the death of Atul Kumar Motichand Shah and appointment of Jyoti Atul Kumar Shah as the personal representative of his estate.

Delivered and signed at Kisumu on this 9th day of October 2025

**S. OKONG'O
JUDGE**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of;

Mr. Obok for the Plaintiffs

Ms. Ngina h/b for Ms. Katasi for the 1st Defendant

N/A for the 2nd Defendant
Ms. J. Omondi-Court Assistant

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