



REPUBLIC OF KENYA



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**NCBA Bank of Kenya Limited v Kirui (Environment and Land Appeal
E042 of 2023) [2025] KEELC 6498 (KLR) (1 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6498 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND APPEAL E042 OF 2023
MAO ODENY, J
OCTOBER 1, 2025**

BETWEEN

NCBA BANK OF KENYA LIMITED APPELLANT

AND

NELLY CHEPKEMOI KIRUI RESPONDENT

RULING

1. This ruling is in respect of a Notice of Motion dated 14th May, 2025 by the Respondent/Applicant seeking the following orders:
 1. Spent
 2. That this Honourable court be similarly be pleased to join Richard Koech in this proceedings as an interested party and the supporting affidavit filed in support of his motion be deemed to be the reply in respect to the appeal herein. (sic)
 3. That the this Honourable court be pleased to admit the following new documents in respect to this appeal to wit:
 - a. Letter to NIC Bank dated 10/04/17
 - b. Reply letter by NIC Bank dated 26/04/17
 - c. Letter to NCBA Bank dated 22/06/23
 - d. Affidavit by Directors Rich-Ko Motors Bazaar dated 8/04/25
 - e. Letter to NCBA Bank dated 8/04/25
 4. That conscious to the above this Honourable Court be pleased to strike out the entirety of the appeal herein as it has been filed in furtherance of an abuse of court process.



5. That further to the above this Honourable Court be pleased to strike out the entirety of the appeal herein as it has been filed in furtherance of fraudulent action.
6. That Cost of this Application be met by the Appellant.
2. The application is supported by the annexed affidavit of Nelly Chepkemoi Kirui, the Respondent herein, sworn on 14th May, 2025, where she deponed that the new documents which she seeks to be admitted for the appeal are crucial and they were not available to her as they were correspondence between the Appellant and Richard Koech. It was further her deposition that the joinder of the intended interested party to this suit will allow the court to adjudicate all questions involved in the appeal.
3. Stephen Atenya, the Appellant's Principal Legal Counsel, filed a Replying Affidavit sworn on 11th June, 2025, and, deponed that the subject matter on appeal strictly relates to the trial court's finding. It was his deposition that the allegations of fraud and forgery now being introduced by the Respondent were not pleaded or adjudicated in the trial court and therefore fall outside the scope of this appeal.
4. The Appellant's Principal Legal Counsel, further deponed that reliance on an affidavit sworn by Richard Koech, a person who was not a party to the original suit or appeal, without seeking leave of court to have him joined as an interested party, and renders the said affidavit inadmissible.
5. Nelly Chepkemoi Kirui filed a Further Affidavit sworn on 14th July, 2025, and deponed that all the legal requirements relating to joinder and leave of admitting documents at the appeal stage have been achieved in this case.

Respondent's Submissions

6. Mr. Koome, counsel for the Respondent, filed submissions dated 23rd May, 2025, and submitted that individuals can be introduced at any stage as long as the ends of justice are met. Counsel relied on Rule 7 (1) of the Legal Notice No 117 (*The Constitution* of Kenya (Protection) of Rights and Fundamental Freedoms Practice and Procedure Rules, 2013).
7. Counsel further submitted that sufficient cause has been established to warrant the issuance of leave to file new documents on appeal, and relied on the cases of *Wanje vs Saikwa* [1984] KLR 275, *Kenya Commercial Bank Ltd vs Thomas Ondiek* [1992] eKLR and *Uhuru Highway Development vs Central Bank of Kenya & 2 others* [1996] eKLR. Counsel urged the court to allow the application with costs and the appeal be struck out.

Appellant's Submissions

8. Mr. Ayisi, counsel for the Appellant, filed submissions dated 5th June, 2025 and identified the following issues for determination:
 - a. Whether a party can be joined at an appeal stage?
 - b. Whether fresh evidence can be introduced at an appeal stage?
9. On the first issue, counsel submitted that the general appellate practice principles in civil matters is that new parties cannot be joined at the appellate stage of a matter if they were not participants at the lower court. Counsel submitted that the only exception is that there must be exceptional circumstances for a party to be joined at an appellant level. Counsel submitted that the Respondent ought to have demonstrated what stake they have in the matter, which Richard Koech has not demonstrated.



10. Counsel relied on Rule 7 (1) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 and the Supreme Court case of Trusted Society of Human Rights Alliance vs Mumo Matemu [2014] eKLR.
11. On the second issue, Mr. Ayisi opposed the introduction of five sets of letters as the said communication was between Mr. Richard Koech and the Appellant and in no way did it touch on the Respondent.
12. Counsel relied on Article 50 of *the Constitution* of Kenya and the cases of Ladd vs Marshall [1954] 3 All ER 745, Wanje vs Saikwa [1984] KLR 275, David Tarus vs Emmanuel Kipnegtich CACA 40 of 2019 and The Delphis Bank Limited vs Caneland Limited CACA 282 of 2002. Counsel submitted that the instant appeal should be considered based on the record from the lower court and urged the court to dismiss the application with costs.

Analysis And Determination

13. The issues for determination are whether Richard Koech should be joined as an interested party at the appellate stage and whether the Respondent can introduce new evidence at the appellate stage.
14. Order 1 Rule 10(1) specifically allows the court, either on its own motion or on application of either party, to join to the suit any party whose presence may be necessary to enable it effectually and completely to adjudicate upon and settle all questions involved in the suit. This can be done at any stage of the proceedings.
15. In the case of JMK vs MWM & Another (2015) eKLR, the Court of Appeal held that:

“We would however agree with the respondent that Order 1 Rule (10) (2) contemplates an application for amendment or joinder of parties where proceedings are still pending before the Court. Sarkar’s Code, (supra) quoting as authority, decisions of Indian Courts on the provision, expresses the view that an application for joinder of parties can be filed only in pending proceedings. In the same vein, the Court of Appeal of Tanzania, while considering the equivalent of Order 1 Rule 10(2) of our Civil Procedure Rules, in Tang Gas Distributors Ltd V. Said & Others [2014] EA 448, stated that the power of the court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before, or during the trial; that it can be done even after judgment where damages are yet to be assessed; that it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable; and that a party can even be added at the appellate stage.”
16. The term ‘interested party’ is defined in Black’s Law Dictionary, 9th Edition, at pg. 1232 as: -

“A party who has a recognizable stake (and therefore standing) in a matter”.
17. The term is also defined in Rule 2 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, but not by the *Civil Procedure Act* and Rules made thereunder. The Court of Appeal Rules, 2022, define an interested party as:

“a person or entity that has an identifiable stake, legal interest or duty in the proceedings before the Court but is not a party to the proceedings or may not be directly involved in the litigation but has been allowed by the Court upon application, to appear as an interested party to address it in respect of a matter of law or fact.”



18. An interested party must be a person who has an identifiable stake or legal interest in the proceedings before the court, whose presence will help in settling the issues in the case. This is to avoid multiplicity of suits or litigation by instalments.

19. In the Supreme Court of Kenya in the case of Attorney General v David Ndi & 73 Others (Petition 12 (EO16) of 2020) [2021] KESC 17 (KLR), the court enumerated the applicable principles in an application of joinder by an interested party as follows:

“An Applicant to be enjoined as an Interested Party has to satisfy this Court that it has met the legal requirements for joinder.

This court has laid down the guiding principles applicable in determining an application to be enjoined as an interested party in *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others SC Petition (Application) No. 12 of 2013*. The principles were affirmed in the case of *Francis Kariuki Muruatetu & another v Republic & 5 others (supra)* where the court stated:

“... One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the court; hence, sufficient grounds must be laid before the court, on the basis of the following elements:

- (i) The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
- (ii) The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
- (iii) Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the court” (Emphasis Added).

20. This application is in respect of joinder post judgment and at an appellate stage. The proposed interested party was not a party in the lower court. It should be noted from the Record of Appeal and the Pleadings at the Lower court that the said Richard Cheruyiot Koech was mentioned in the statement of Defence and other supporting documents. At all material times, the parties were aware of the existence of the proposed interested party and did not bother to join him in the original suit.

21. What new interest has the Respondent seen in bringing in the proposed interested party at this appellate stage? The alleged communication between Richard Koech and the Appellant could have been produced if he had been joined in the original suit. This is a tactic to convolute the hearing of this Appeal. The Respondent could have been diligent to ensure that the pleadings cover all the issues at stake and include all the relevant parties. This was never done.

22. An Applicant for joinder of an interested party post judgment, and especially at an appellate stage, must demonstrate to the satisfaction of the court that non-joinder will cause prejudice to such a party. There is no evidence to demonstrate such prejudice.



23. In the case of Bellevue Development Company Limited vs Vinayak Builders Limited & another (2014) KEHC 5507 (KLR), the court explained that:

“Joinder of parties is possible after judgment. I will give some example where such joinder of parties is permitted; 1) in cases of representative suits; or 2) substitution of one or more parties, for instance, in case of death, or incapacity of a party or change of status of a party; or 3) in execution process. In the broader sense, it is deemed to be a kind of joinder of parties where a contemnor was not a party in the suit where judgment has already been entered and for which he is being cited for contempt of court. Equally, it is a joinder of parties where an objector raises objection to execution under Order 22 rule 51 of the CPR. However, any joinder of parties post-judgment will have to surmount any possible constitutional objections on the front of rules of natural justice and the principle of finality of litigation.”

24. The Application by the Respondent/Applicant is contradictory of confusing as to what the Applicant really wants. The Applicant seeks joinder of an interested party and in the same breathe seeks the striking out of the appeal in its entirety. If the Appeal is struck out, then, where will the joinder of the interested party be anchored?
25. I have considered the application, the submissions by counsel, and find that the Applicant has not met the threshold for joinder of an interested party at this stage. No identifiable or legal stake has been demonstrated to warrant the court to exercise its discretion in the Applicant’s favour. The application is therefore dismissed with costs to the Appellant/ Respondent. Parties to fast-track the appeal for a hearing and determination.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 1ST DAY OF OCTOBER 2025.

M. A. ODENY

JUDGE

