



REPUBLIC OF KENYA



Njuguna v Chieko Housing Limited & 2 others (Environmental and Land Originating Summons E044 of 2024) [2025] KEELC 4419 (KLR) (12 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4419 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E044 OF 2024**

CG MBOGO, J

JUNE 12, 2025

BETWEEN

BEATRICE WAMBUI NJUGUNA APPLICANT

AND

CHIEKO HOUSING LIMITED 1ST RESPONDENT

PATRICIA WANJIKU MWAURA (IN HER OWN CAPACITY AND THE PERSONAL REPRESENTATIVE/ADMINISTRATOR OF THE ESTATE OF THE LATE PAUL MWAURA THUO) 2ND RESPONDENT

RT REV DAVID KAMAU 3RD RESPONDENT

RULING

1. Before me is the notice of motion dated 17th March, 2025 filed by the proposed 3rd respondent/applicant, and it is expressed to be brought under Order 1 Rule 10(2) of the Civil Procedure Rules and Sections 1A and 1B of the *Civil Procedure Act* seeking the following orders: -
 1. Spent.
 2. The proposed 3rd respondent/applicant herein be joined in the instant suit as the 3rd respondent.
 3. This honourable court be pleased to grant stay of all proceedings, arrest Judgment set to be delivered on 27th March 2025 before Hon. Justice Charles G. Mbogo, set aside all proceedings of and direct that the matter begins de novo.
 4. The costs of this application be provided for.
2. The application is premised on the grounds on its face, and is further supported by the affidavit of the proposed 3rd respondent. In her affidavit, the proposed 3rd respondent deposed that she became aware



of these proceedings through the office of the 1st respondent who shared a mention notice, and on or about 20th February 2025, she obtained pleadings in this matter. Further, she deposed that none of the respondents entered appearance in the matter, as she is the sole beneficiary and personal representative of the estate of the late Annabel Wambui Mwaura vide Succession Cause No. 287 of 2010.

3. The proposed 3rd respondent deposed that besides the Succession Cause, the applicant/respondent filed another suit ELC Case No. 201 of 2017 which was dismissed vide a judgment delivered on 22nd April, 2024. She deposed that it is in the interest of justice that she be joined in these proceedings in order to ventilate her case.
4. The applicant/respondent filed her replying affidavit sworn on 7th April, 2025 in opposition to the application. The applicant/respondent deposed that the proposed 3rd respondent has no legal or beneficial interest in the suit property, has never occupied the suit property at all, and that the succession issues being raised by the respondent do not affect the claim for adverse possession. She deposed that in ELC Case No. 201 of 2017, the case was not heard on merit for the reason that the suit property had not been registered as no title deed was produced in court. She deposed that she realized that she had omitted the 1st respondent from the suit necessitating the need to file the current suit. She deposed that the ownership of the suit property was not considered on merit as it has been alleged.
5. The application was canvassed by way of written submissions. The proposed 3rd respondent filed her written submissions dated 26th May, 2025. The proposed 3rd respondent submitted that it has not been explained why the respondent amended her pleadings to remove the 2nd respondent, who held the share certificate and who sold the suit property to her deceased father. She submitted that the filing of this suit when there is a pending appeal against Nairobi ELC 201 of 2017 is not only res judicata but an abuse of court process. In conclusion, the proposed 3rd respondent submitted that she deserves her day in court, and prayed that the orders are granted as prayed.
6. The applicant/respondent filed her written submissions dated 26th May, 2025 where she raised two issues for determination as follows:-
 1. Whether the proposed 3rd respondent/applicant is a necessary and proper party to the ongoing proceedings to warrant joinder; and
 2. Whether the matter is res judicata.
7. On the first issue, the applicant/respondent submitted that the proposed 3rd respondent does not satisfy the requirement of a necessary party as she holds no demonstrable interest in the suit property. While relying on the case of *Kingori v Chege & 3 Others* [2002] 2 KLR 243, the applicant/respondent submitted that the certificate of confirmation of grant is of no consequence in these proceedings, and that one cannot pass a better title than they had. That in determining whether a party ought to be joined in these proceedings, the proposed 3rd respondent has failed to show that the orders sought would legally affect that person's interest and that their presence is required to avoid a multiplicity of suits. The applicant/respondent further relied on the case of *Departed Asians Property Custodian Board v Jaffer Brothers Ltd* [1999] 1 EA 55.
8. On the second issue, the applicant/respondent submitted that the court in ELC No. 201 of 2017 did not make a final determination on the suit property, and thus res judicata does not apply. Further reliance was placed in the cases of *Uhuru Highway Development Limited v Central Bank of Kenya & 2 Others* [1996] eKLR, *KCB v Benjoh Amalgamated Ltd* [2017] eKLR, and *Independent Electoral and Boundaries Commission v Maina Kiai & 5 others* [2017] eKLR.



9. In conclusion, the applicant/respondent submitted that the application is misguided, premised on unsubstantiated allegations, and fails to meet the threshold under Order 1 Rule 10 (2) of the Civil Procedure Rules.
10. I have considered the application, the reply thereto and the written submissions filed by the respective parties. I am of the view that the issue for determination is whether the proposed 3rd respondent ought to be joined in these proceedings.
11. 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, 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.”
12. The relevant tests for determination whether or not to join a party in proceedings were restated by Nambuye, J (as she then was) in the case of Kingori versus Chege & 3 Others [2002] 2 KLR 243 where the learned Judge stated that the guiding principles when an intending party is to be joined are as follows:
 1. He must be a necessary party.
 2. He must be a proper party.
 3. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.
 4. The ultimate order or decree cannot be enforced without his presence in the matter.
 5. His presence is necessary to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit.
13. In, Civicon Limited versus Kivuwatt Limited and 2 Others [2015] eKLR the court observed as follows:

“Again the power given under the rules is discretionary which discretion must be exercised judicially. The objective of these rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”
14. Let me also add that, joinder of parties is permitted by law and it can be done at any stage of the proceedings. But, joinder of a party may be refused where such joinder: will lead into practical problems



of handling the existing cause of action together with the one party being joined; is unnecessary; or will just occasion unnecessary delay or costs on the parties in the suit. In other words, joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible to or totally different from existing cause of action or the relief. The determining factor in joinder of parties is that a common question of fact or law would arise between the existing and the intended parties.

15. In the matter before me, the proposed 3rd respondent contended that the applicant/respondent deliberately omitted to sue her knowing very well that she is the sole administrator of the estate of her late father, Paul Mwaura Thuo. She also argued that the suit is res judicata since the issue of the suit property in this matter was in issue in Nairobi ELC 201 of 2017. In support thereof, the proposed 3rd respondent supplied documents including pleadings touching on the succession and the judgment delivered on 22nd April, 2024. I have perused the pleadings herein and I note that the suit property was among the properties listed seeking determination of the questions in the amended originating summons dated 24th July, 2019 filed by the applicant/respondent against the proposed 3rd respondent in ELC Case No. 201 of 2017. More importantly, paragraph 82 of the judgment was clear that it would only consider the properties which had titles. From this, the question as to ownership of the suit property was not dealt with finality, and thus a claim of res judicata cannot arise in the circumstance.
16. However, going by the authorities I have cited above, I am persuaded that the joinder of the proposed 3rd respondent in these proceedings would be necessary. This would enable the court to deal with all the issues once and for all. The proposed 3rd respondent was a party to ELC No. 201 of 2017, and it would only be fair that she is given a chance to defend/or make a claim in the instant proceedings.
17. From the above, the notice of motion dated 17th March, 2025 is merited, and it is hereby allowed in the following terms: -
 - i. The proposed 3rd respondent/applicant is hereby joined in the instant suit as the 3rd respondent.
 - ii. The proceedings in this case are hereby set aside pending further directions on the disposal of the case as a result of joinder by the 3rd respondent.
 - iii. Costs in the cause.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 12TH DAY OF JUNE, 2025.

HON. MBOGO C.G.

JUDGE

12/06/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Sylvester Mbithi for the proposed 3rd Respondent/Applicant

Mr. Griffins Timbe for the Applicant

