



REPUBLIC OF KENYA



**Gachuhi v Kamonjoh & another; Thambiri & 4 others (Interested Parties) (Land Case E179 of 2021) [2025] KEELC 7309 (KLR) (28 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7309 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
LAND CASE E179 OF 2021  
JG KEMEI, J  
OCTOBER 28, 2025**

**BETWEEN**

**JAMES GACHIENGU MACHARIA GACHUHI ..... PLAINTIFF**

**AND**

**EPHRAIM MATHENGE KAMONJOH ..... 1<sup>ST</sup> DEFENDANT**

**CAROLINE WAIHERA KAMONJOH ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**JOHNSON THAMBIRI ..... INTERESTED PARTY**

**CATHERINE NDUKU MWANGI ..... INTERESTED PARTY**

**THE CHIEF LAND REGISTRAR ..... INTERESTED PARTY**

**THE NATIONAL LAND COMMISSION ..... INTERESTED PARTY**

**EQUITY BANK (K) LIMITED ..... INTERESTED PARTY**

*(In respect of the Plaintiff's application dated 16/5/25  
and the 2nd Defendant's application dated 23/6/25)*

**RULING**

1. On 16/5/25, the Plaintiff moved the court through the notice of motion dated 16/5/25 seeking orders that Equity Bank Kenya Limited be joined to the suit as the 5<sup>th</sup> Interested party.
2. The application is based on the face of it and the supporting affidavit of Bizimana Alex, sworn on 16/5/25. He stated that LR No 1490/90 and LR No 1490/96, which are the subject of this case, are both charged to the intended interested party. The intended interested party has a direct interest in the



subject properties. It therefore needs to join this case as an interested party, as the outcome of the case is likely to affect its interest in the suit lands.

3. The application is opposed by the replying affidavit of Caroline Waithera Kamonjoh, sworn on 29/5/25. She argued that the application is frivolous because the exhibit marked as BA-1 (land search) is defective for lacking a seal and a commissioner for oaths' marking, and she urged the court to find it incompetent and valueless, seeking to strike out the said annexures. That upon being struck out, the application be struck out in its entirety.
4. Furthermore, she stated that the suit land alleged to be charged to the intended interested party is LR No 14970, which is different and distinct from the suit lands, the subject of this case. That in light of this, the applicant has failed to prove a common question of fact or law that would arise between the existing party and the intended party, and the court was urged to dismiss the application.
5. The 2nd Defendant's application dated 23/6/25 seeks orders as follows;-
  - a. The suit be struck out for being incompetent and fatally defective
  - b. The suit be dismissed as the Plaintiff is in non-compliance with directions of 23/4/24.
6. The application is based on the face of it and the supporting affidavit of Caroline Waithera Kamonjoh, sworn on the same date. She deposes that the person whom the Plaintiff swore the verifying affidavit, John Kioni Kibira, is not an advocate nor a commissioner for oaths. She has attached a letter from the Law Society of Kenya confirming her averments. Therefore, the verifying affidavit is invalid and liable to be struck out. In the absence of a verifying affidavit, the plaint remains incompetent and ought to be struck out. Additionally, four years later, the plaintiff has yet to file a witness statement and a bundle of documents, contrary to the court's directions issued on 23/4/24 to do so within 14 days, making it impossible for her to respond to the suit. This has caused an undue delay in prosecuting the case. Furthermore, on numerous occasions, the Plaintiff has failed to attend court when the matter was listed, a clear indication that the Plaintiff has lost interest in the matter. Lastly, her right to a fair trial has been prejudiced every time the Plaintiff's suit remains unprosecuted.
7. The application is opposed through the replying affidavit of James Gachiengu Macharia Gachihi sworn on 30/6/25. In it, the deponent states that, having been brought to his attention by his counsel, the verifying affidavit to the plaint was incorrectly written on the stamp. That he has sworn another verifying affidavit before a different commissioner for oaths marked as exhibit JM-1, annexed to his affidavit. He also added that he has filed all the necessary pleadings in this case, unlike the 2nd Defendant, who has yet to file any. He asserts that he stands to be prejudiced if the case is dismissed before it is heard. He urged the court to dismiss the 2<sup>nd</sup> Defendant's case with costs.
8. On 16/5/25, parties were directed to file their written submissions by the close of business on 28/7/25. The 2<sup>nd</sup> Defendant filed written submissions, while the Plaintiff did not file any.
9. Having considered the applications, the supporting affidavits, the rival replies and the written submissions, the issues for determination are;
  - a. Whether the suit should be struck out for being incompetent
  - b. Whether the suit should be dismissed for non-compliance of the directions of the court issued on 23/4/25
  - c. Whether the Plaintiff is entitled to orders of joinder of the intended interested party



## Whether the suit should be struck out for being incompetent

10. Order 4 rule 1-6 of the Civil Procedure Rules, 2010 provides as follows;
1. (1) The plaint shall contain the following particulars—
    - (a) the name of the court in which the suit is brought;
    - (b) the name, description and place of residence of the plaintiff, and an address for service;
    - (c) the name, description and place of residence of the defendant, so far as they can be ascertained;
    - (d) the place where the cause of action arose;
    - (e) where the plaintiff or defendant is a minor or person of unsound mind, a statement to that effect; and
    - (f) an averment that there is no other suit pending, and that there have been no previous proceedings, in any court between the plaintiff and the defendant over the same subject matter and that the cause of action relates to the plaintiff named in the plaint.
  - (2) The plaint shall be accompanied by an affidavit sworn by the plaintiff verifying the correctness of the averments contained in rule 1(1) (f) above.
  - (3) Where there are several plaintiffs, one of them, with written authority filed with the verifying affidavit, may swear the verifying affidavit on behalf of the others. (4) Where the plaintiff is a corporation, the verifying affidavit shall be sworn by an officer of the company duly authorized under the seal of the company to do so. (5) The provisions of sub-rule (3) and (4) shall apply mutatis mutandis to counterclaims.
  - (6) The court may of its own motion or on the application by the plaintiff or the defendant order to be struck out any plaint or counterclaim which does not comply with sub-rule (2) (3), (4) and (5) of this rule.
11. As rightly submitted on behalf of the 2nd defendant under Order 4 rules (2), (3), and (4) of the Civil Procedure Rules, 2010, a verifying affidavit must accompany the plaint to verify its correctness. Where there are several plaintiffs, one of them should provide a written verification. By swearing a verifying affidavit, the deponent attests to the truthfulness of the facts in the pleadings; therefore, filing a duly sworn and proper affidavit is essential.
12. Section 2 of the *Oaths and Statutory Declarations Act* Cap. 15 stipulates the manner in which Commissioners for Oaths are appointed as follows:
- “The Chief Justice may, by commission signed by him, appoint persons being practising advocates to be commissioners for oaths, and may revoke any such appointment.”
13. This suit was filed on 14/12/2020 by way of a plaint. The said plaint is accompanied by the verifying affidavit of the same date, sworn by James Gachiengu Macharia Gachuhi before a commissioner of oaths, namely John Kioni Kibra.
14. The 2nd Defendant presented to the court a letter from the Law Society of Kenya indicating that the said John Kioni Kibra is not registered as an advocate, but one Kibira John Kioni P105/7216/08 is. It



is the 2nd Defendant's contention that the verifying affidavits were sworn by an unqualified person, which is against the rules of procedure.

15. The Plaintiff stated that he had submitted a corrected verifying affidavit, namely EXHIBIT No JM-1, but unfortunately, this document was not uploaded to the CTS, and therefore the court cannot comment on it.
16. To this extent, it is clearly evident that the verifying affidavit fell short of the procedural requirements as set out by the provisions of Order 4 Rule 2 above. The only question remaining is what the effect of this non-compliance is. In the case of Kenya Commercial Bank Limited, & Another v Kenya Hotels Ltd, No. Nbi 40 OF 2004 (UR 24/2004), the Court held that being a practising advocate is a condition precedent to being appointed a Commissioner of Oaths; this position is linked to the practice of law and cannot exist independently. Suppose the condition precedent is no longer met. In that case, the verifying affidavit sworn by an unqualified person remains just a mere statement and is null and void, as it has been commissioned by a person not authorised by law to do so.
17. Having established that a qualified person did not commission the verifying affidavit, the court must consider whether the plaint should be struck out on this ground.
18. It therefore follows that the Verifying Affidavit that accompanied the Plaint was fatally defective as the same contravenes all the legal requirements for the making of an affidavit. It has no legal value in the matter before the court. To this end, I am guided by the Supreme Court decision in the case of National Bank of Kenya Limited –vs- Anaj Warehousing Limited [2015] e KLR held that;

“The facts of this case, and its clear merits, lead us to a finding and the proper direction in law, that, no instrument or document of conveyance becomes invalid under Section 34(1)(a) of the *Advocates Act*, only by dint of its having been prepared by an advocate who at the time was not holding a current practising certificate. The contrary effect is that documents prepared by other categories of unqualified persons, such as non-advocates, or advocates whose names have been struck off the roll of advocates, shall be void for all purposes.” (emphasis is mine)

19. In the case of Microsoft Corporation Vs Mitsumi Computer Garage Ltd & another, [2001] KLR 470 at page 481 stated:

“... Rules of procedure are hand maidens and not mistresses of justice. They should not be elevated to a fetish. Theirs is to facilitate the administration of justice in a fair orderly and predictable manner, not to fetter or choke it. In my opinion, where it is evident that the plaintiff has attempted to comply with the rule requiring verification of a plaint but he has fallen short of the prescribed standards, it would be to elevate form and procedure to a fetish to strike out the suit. Deviations from or lapses in form and procedure which do not go to the jurisdiction of the Court or prejudice the adverse party in any fundamental respect ought not be treated as nullifying the legal instruments thus affected. In those instances the Court should rise to its higher calling to do justice by saving the proceedings in issue. ... That purpose may be attained by rejecting a defective affidavit and ordering that a fresh and complying one be made and filed on record.”



20. Similarly in the case of Pastificio Lucio Garofalo Spa Vs Security & Fire Equipment Co & Another, [2001] KLR 483, the court stated that;

“After striking out a verifying affidavit, the Court has a discretion whether to strike out the suit or not. In exercising the discretion, the Court should be alive to the principles of justice that procedural lapses, omissions and irregularities, unless they go to the jurisdiction of the Court or prejudice the adversary in a fundamental respect which cannot be atoned for by an award of costs, are not to be taken as nullifying the proceedings affected.”

21. Madan JA in D.T. Dobie & Company (Kenya) Limited vs Joseph Mbaria Muchina & another [1980] eKLR in this regard noted thus:

“A court of justice should aim at sustaining a suit rather than terminating it by summary dismissal. Normally a law suit is for pursuing it. No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.”

22. Finally, Art 50 of *the constitution* decrees that every person has the right to have any dispute that the application of law can resolve decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

23. From the above decisions, in the interest of justice, I am guided to make the following orders;

- a. The verifying affidavit accompanying the Plaintiff dated the 14/12/2020 is struck out. I exercise discretion not to strike out the plaintiff but I hereby order the Plaintiff to file a verifying affidavit in compliance with order 4 rule 1(2) of the Civil procedure Rules.
- b. In default the plaintiff dated the 14/12/2020 shall stand struck out on the 8<sup>th</sup> day following this Ruling.
- c. The 2<sup>nd</sup> Defendant shall have the costs of the application on a higher scale.

**Whether the suit should be dismissed for non-compliance of the directions of the court issued on 23/4/25**

24. As stated earlier in this Ruling this suit was filed on 14/12/2020 and to date the hearing is yet to commence. I have perused the record and agree with the 2<sup>nd</sup> Defendant that the Plaintiff is yet to comply with the provisions of Order 3 rule two which state as follows;

“All suits filed under rule 10) including suits against the government, except small claims, shall be accompanied by —

- (a) the affidavit referred to under Order 4 rule 1 (2);
- (b) a list of witnesses to be called at the trial;
- (c) written statements signed by the witnesses excluding expert witnesses; and



- (d) copies of documents to be relied on at the trial including a demand letter before action: Provided that statement under sub rule (c) may with leave of court be furnished at least fifteen days prior to the trial conference under Order 11.
25. Although the Plaintiff has filed a document styled as Plaintiffs' bundles on the CTS, a perusal of the same does not indicate any compliance with the provisions of Order 3, Rule 2 of the Civil Procedure Rules. The only documents filed by the Plaintiff are the Plaintiff's and the impugned verifying affidavit.
26. It is the 2<sup>nd</sup> Defendant's case that the suit ought to be dismissed for failure to comply with the above provisions despite being ordered to do so by this court in has been on 23/4/24.
27. Having spared the suit as I have in the preceding paragraphs, I maintain that this prayer is declined for the reasons above.

### **Whether the Plaintiff is entitled to orders of joinder of the intended interested party**

28. Order 1 Rule 10(2) of the Civil Procedure Rules states as follows: -

“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 or settle all questions involved in the suit, be added.”

29. Black's Law Dictionary defines an Interested Party as;

“a party who has a recognizable stake (and therefore standing) in the matter.”

30. The Supreme Court of Kenya in Communications Commission of Kenya and 4 Others –vs- Royal Media Services Limited & 7 (2014) EKLR shed light on this subject when it held as follows:

“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. Similarly, in the case of Meme v. Republic, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- i. Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;
- ii. Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- iii. Joinder to prevent a likely course of proliferated litigation.

We ask ourselves the following questions: a) what is the intended party's state and relevance in the proceedings and b) will the intended interested party suffer any prejudice if denied joinder.?”

31. In this case, the Plaintiff seeks to join Equity Bank Limited on the grounds that LR No 14970/90 is charged to it and that it is likely to be prejudiced by the outcome of the case unless it is joined to the suit.



The Plaintiff has attached an undated, computer-generated search in support of the application. I have reviewed the Plaintiff's application and the suit lands; the subject of this suit is described as LR No 1490/90 and LR No 149/96. I agree with the 2nd Defendant that LR No 14970/90 is different and distinct from the suit lands. That said, I note that the title attached, although bears LR No 14970/90, is registered in the names of the parties herein. Parties are bound by their pleadings. It was incumbent upon the Plaintiff to present to the court the correct documents to establish the connection between the intended interested party and the suit lands, the subject of the suit.

32. For the aforesaid, I find that the application dated the 16/5/25 is unmerited. It is struck out with costs.
33. Final orders for disposal

In conclusion, I therefore make the following orders;

With respect to the 2<sup>nd</sup> defendant's Notice of Motion dated 23/6/2025;

- a. The verifying affidavit accompanying the Plaintiff's application dated 14/12/2020 is struck out. I exercise discretion not to strike out the Plaintiff's application, except to order the Plaintiff hereby to file a verifying affidavit in compliance with Order 4 Rule 1(2) of the Civil Procedure Rules within 14 days from the date of this Ruling.
- b. In default, the Plaintiff's application dated 14/12/2020 shall stand struck out on the 15th day following this ruling.
- c. The 2<sup>nd</sup> Defendant's notice of motion is hereby dismissed.
- d. Each party to bear their own costs

With respect to the Plaintiff's notice of motion dated 16/5/25;

- a. The application is devoid of merit
- b. It is struck out
- c. Each party to bear their own costs

34. Orders accordingly

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 28<sup>TH</sup> DAY OF OCTOBER 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI**

**JUDGE**

Delivered Online in the presence of:

Bizimana for the Plaintiff

N/S for the 1<sup>st</sup> and the Interested Parties

Ms Mwaniki HB for Mr Mbogo for the 2<sup>nd</sup> Defendant

CA- Ms Vvette Njoroge

