

**REPUBLIC OF KENYA**



**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC O.S. NO. E025 OF 2023**

**EPHANTUS GACHOKA KANYI .....**

**PLAINTIFF**

**=VERSUS=**

**ISEKA LIMITED ..... DEFENDANT**

**SUSAN WANJIRU GACHOKA .... APPLICANT/INTENDED 2<sup>ND</sup>**

**PLAINTIFF**

**RULING**

1. Before me for determination is a Notice of Motion dated 26<sup>th</sup> May 2025 brought under Article 159 of the Constitution, Sections 1A, 1B, 3A of the Civil Procedure Act, and Order 1 Rule 1 & 10, Order 51 of the Civil Procedure Rules, in which the Applicant seeks the following orders:

***a) Spent.***

***b) The Court be pleased to enjoin the Applicant, Susan Wanjiru Gachoka, in this matter as co-plaintiff.***

***c) Costs be in the cause.***

2. The application is based on the grounds appearing on its face together with the supporting affidavit of Susan Wanjiru Gachoka sworn on even date.

### **THE APPLICANT'S CASE**

3. The Applicant averred that she has been living on L.R. No. 209/3752 (hereinafter 'the suit property') since 1976 and has therefore acquired the suit property through adverse possession. She further claimed that the Defendant acquired the suit property in 1999 to prevent its sale by the bank after her parents defaulted on a loan. She stated that the Defendant offered the family the option to buy back the property and made instalment payments to the Defendant.
4. She further stated that, together with the Plaintiff, she has been managing the suit property, paying utility bills, and operating a juice business. She asserted that she would be

adversely affected if she is not included in the court proceedings.

### **THE PLAINTIFF'S CASE**

5. The Plaintiff filed a replying affidavit dated 4<sup>th</sup> July 2025, in opposition to the application. He stated that he purchased the suit property in 1976, and it was registered in his name and that of his late wife. He further stated that he renovated one of the houses on the suit property and built another.
6. He stated that the Applicant is his daughter and resides on the suit property due to their relationship, and therefore, she could not have acquired it through adverse possession. He also noted that the Applicant was not a party to the Novation of Contract dated 7<sup>th</sup> September 2000, and has never made payments under that contract. In conclusion, he stated that the application was filed in bad faith and should be dismissed.
7. The application was canvassed by way of written submissions.

### **THE APPLICANT'S SUBMISSIONS**

8. The Applicant filed her submissions dated 26<sup>th</sup> August 2025.

9. On her behalf, Counsel submitted that both the Applicant and the Plaintiff have acquired the suit property through adverse possession. It was further submitted that the Plaintiff acknowledged that the Applicant has been residing on the suit property and her claim for adverse possession is therefore not far-fetched. To support his submissions, reliance was placed on **Order 1, Rules 1 and 2 of the Civil Procedure Rules** and the cases of **Charles Ondieki Onchwati & 3 Others v Nakuru County Government & another [2019] KEELC 2044 (KLR)** and **Nyangwara & 29 others v Thande (Sued in her capacity as an administrator of the Estate of Solomon Kiragu Thande) & another; Otieno & another (Intended Applicant) [2022] KEELC 13632 (KLR)**.
10. As at the time of writing this ruling, the Respondent had not filed his submissions as directed.

### **ANALYSIS AND DETERMINATION**

11. Having considered the application, the respective affidavit, and the submissions by the Applicant, the only issue that

arises for determination is whether the Applicant should be included as a co-plaintiff in the Instant Suit

12. Order 1 Rule 1 of the Civil Procedure Rules provides that:-  
***All persons may be joined in one suit as Plaintiffs in 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, such persons brought separate suits, any common question of law or fact would arise.***
13. Order 10(2) of the said 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 to enable the court to effectually and completely to adjudicate upon or settle all questions involved in the suit, be added.”***
14. The Applicant argued that she has acquired the suit property through adverse possession in the same manner as the Plaintiff and should therefore be included as a co-

plaintiff. She claimed that she has occupied the suit property since 1976 and runs a juicing business there. The Plaintiff maintained that her presence on the suit property is due to the father-daughter relationship, a claim the Applicant has not contested

15. In the case of **Civicon Limited vs Kivuwatt Limited & 2 others (205) eKLR, the Court of Appeal referred to O’Hare & Hill Civil Litigation 7<sup>th</sup> Edition**, where the authors stated as follows:-

***“One cannot be added as a Plaintiff unless one gives consent in writing.”***

16. It is not in dispute that the Applicant is claiming ownership of the suit property through adverse possession. In my considered view, the Applicant should have filed a suit against the Defendant to assert her ownership claim.

17. In view of the foregoing, I find that the application is devoid of merit and the same is hereby dismissed with no orders as to costs.

**RULING SIGNED, DATED, AND DELIVERED VIA  
MICROSOFT TEAMS THIS 31<sup>ST</sup> DAY OF OCTOBER, 2025.**

.....  
**HON. T. MURIGI**  
**JUDGE**

**IN THE PRESENCE OF: -**

Suna for the Interested Party

Ahmed - Court Assistant

ORIGINAL