



**Konosi v Bosire (Environment and Land Case 60 of 2019)
[2025] KEELC 7617 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7617 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE 60 OF 2019
A OMBWAYO, J
OCTOBER 3, 2025**

BETWEEN

WILFRED KONOSI PLAINTIFF

AND

KENEDY NYABWARI BOSIRE DEFENDANT

*(Originating from Sexual offence Criminal Case NO.76 of 2020 of the
CM'S Court at Mombasa & HCCR Appeal NO.E051 of 2021 at Mombasa)*

RULING

Brief Facts

1. This is a ruling in respect the application dated 3rd October, 2025 filed by the intended Plaintiff seeking the following orders: -
 - a. Spent.
 - b. That Samuel Sagini Maandi be enjoined in this suit as the 2nd Plaintiff.
 - c. The Court do make such orders and issue such directions as may be necessary for a fair and just hearing of this suit.
 - d. Costs of this application be provided for.
2. The Application was based on grounds set out and supported by the Affidavit of SAMWEL SAGINI MAANDI the 2nd intended Plaintiff sworn on 3rd October, 2025. He stated that he has been in occupation of the guest quarters house while the 1st Plaintiff occupied the main house on the suit parcel. He further stated that he had entered into a mutual agreement with Moneke Commercial Agencies who gave him occupation to the suit parcel. He stated that he has been in continuous and uninterrupted possession of the suit property since 2004 and up to date on payment of his water bills.



He added that he learnt of the present suit when the 1st Plaintiff requested him the water bills which he was to use as evidence in court.

3. He stated that he has never met the registered owner of the suit parcel in this case the 1st Defendant. He went on to state that he had acquired the right to the suit land through adverse possession similar to that of the 1st Plaintiff as against the 1st Defendant. He urged the court that it would be in the interest of justice that he be added to the suit as a 2nd Plaintiff.

Response

4. The 1st Plaintiff filed his Replying Affidavit sworn on 15th October, 2025 where he averred that he had allowed the 2nd intended Plaintiff to occupy the guest house in the suit property. He further averred that since the 2nd intended Plaintiff did not pay the rent, they had agreed that he was to pay the electricity bills while the 2nd intended Plaintiff paid the water bills. He averred that the water
5. bills were addressed to him and not the 2nd intended Plaintiff. He averred that the 2nd intended Plaintiff has been aware of the present suit. He also averred that the 2nd intended Plaintiff's claim of adverse possession was untenable in law since he claimed that he had not seen the 1st Defendant.
6. He added that the 2nd intended Plaintiff cannot be enjoined in the suit since the court had already consolidated four suits and ordered that the present suit be the lead file. He averred that the 2nd intended Plaintiff ought to instead file a separate suit to demonstrate his interest on the suit parcel. The 3rd Defendant also filed a Replying Affidavit sworn on 13th October, 2025 where she averred that the 2nd intended Plaintiff occupied the suit land with the 1st Plaintiff's consent. She averred that the adverse possession claim by the 2nd intended Plaintiff could not suffice. She averred that the 2nd intended Plaintiff failed to demonstrate that he has a valid interest in the suit land. She added that he failed to establish that he was a necessary party to this suit. She urged the court to dismiss the application with costs.
7. The 2nd Defendant filed his Replying Affidavit sworn on 21st October, 2024 where he averred that the application was incompetent as it sought to improperly enjoin a cause of action that as unrelated to the existing Plaintiff's pleadings. He averred that he purchased a subdivision of the suit parcel from Mwongela Munyoki. He averred that he had been in rightful possession of NAKURU/ MUNICIPALITY BLOCK 11/680 and that in 2007, he received his certificate of lease and has since developed it.
8. He further averred that the in line with Order 1 Rule 1 of the Civil Procedure Rules, the court can only allow joinder of a Plaintiff where the right to relief arises from the same act or transaction. He averred that the 2nd intended Plaintiff failed to demonstrate the nexus with the 1st Plaintiff's claim. He added that the intended joinder would introduce new claims and legal issues that are foreign to the existing pleadings thus prejudicing the Defendants. He averred that the 2nd intended Plaintiff has not demonstrated that his presence is necessary or that his claim cannot stand separately.
9. He averred that the 2nd intended Plaintiff may not claim adverse possession as her alleged occupation of the land was not hostile considering the alleged agency representing the 1st Defendant was aware of his occupation on the land. He also averred that the 2nd intended Plaintiff's affidavit and annexures do not disclose any triable issues that can be properly determined within the current proceedings. He urged the court to dismiss the application with costs.



Submissions

10. Counsel for the Plaintiff filed his submissions dated 21st October, 2025 where he identified two issues for determination. The first issue was whether Samwel Sagini Maandi should be joined as a 2nd Plaintiff in this suit. He relied on Order 1 rule 10 of the Civil Procedure Rules and submits that the power to enjoin a party was discretionary which discretion ought to be exercised judiciously. He submits that the 2nd intended Plaintiff's claim was that of adverse possession which claim for it to succeed, one must show the date he took possession and the nature of his possession. He relied on the case of *Richard Wefwafwa Songoi V Ben Munyifwa Songoi* [2020] KECA 942 (KLR)
11. It was his submission that the 2nd intended Plaintiff came to the suit land in 2004, whereas the Plaintiff took occupation in 2000. He went on to submit that the 2nd intended Plaintiff claimed that Moneke Commercial Agencies Limited placed him on the suit parcel as agents of the 1st Defendant. Counsel argues that there was no evidence that indicated that the agency acted on behalf of the 1st Defendant. He submits that the Plaintiff was in occupation of the suit property since 2000 and that he was the one who permitted the 2nd intended Plaintiff to take possession of the guest quarter. It was his submission that the 2nd intended Plaintiff's averments did not meet the threshold of claiming adverse possession.
12. On the final issue of costs, counsel submits that the application should not have been filed in the first place. He submits that since costs follow the event, he urged the court to order the 2nd intended Plaintiff to pay costs of the suit.

Analysis and Determination

13. This court has considered the application, replying affidavits and submissions and is of the view that the main issue for determination is whether the 2nd intended Plaintiff should be enjoined to the suit. Order 1 Rule 10 of the Civil Procedure Rules states that:
 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."
14. It is this court's view that the above rule permits the court to order a person to be enjoined whether as Plaintiff or Defendant, or allow a person into the suit, whose presence before the court may be necessary in order to enable the court effectually and completely adjudicate the dispute. Notably, this court has the discretion to allow any other person, whose presence is deemed to be necessary in order to determine the dispute.
15. In the instant case, the 2nd intended Plaintiff claims that he was a necessary party to the suit by virtue of being in occupation of the guest quarter in the main house occupied by the 1st Plaintiff. He also claims that he had adversely acquired the suit property as against the 1st Defendant. It is this court's view that the claim of adverse possession by the 2nd intended Plaintiff cannot hold water in the present



claim since the subject properties are distinct and separate. Furthermore, the 2nd intended Plaintiff claims that he had never met the 1st Defendant being the owner of the said parcel. He also claimed that he took occupation of the guest quarters through Moneke Commercial Agencies Limited and not the 1st Defendant. It also came out clear that there was no evidence that the said company was the 1st Defendant's agent.

16. It is also not in dispute that the 1st Plaintiff occupies the main house which is the subject matter of the instant case while the 2nd intended Plaintiff occupies the guest quarters. It is this court's view that one cannot be enjoined as a Plaintiff in an existing suit unless such person has an ascertainable claim, which may be agitated within that suit, against the named defendant. It is my considered view that the 2nd intended Plaintiff has not shown the nexus between his guest quarters and that occupied by the 1st Plaintiff vis a vis the present suit. In addition, the 2nd intended Plaintiff's claim of adverse possession cannot be argued in the instant suit since the 1st Defendant allegedly was not privy to the 2nd intended Plaintiff occupation of the guest quarters. It is not in dispute that the 2nd intended Plaintiff took occupation of the guest quarters four years after the 1st Plaintiff had already taken possession. Consequently, I find that the 2nd intended Plaintiff is not a necessary party to be enjoined in this suit.
17. The upshot of the foregoing is that the application dated 3rd October, 2025 is dismissed with costs. Orders accordingly.

SIGNED BY/FOR:

HON. JUSTICE ANTONY O. OMBWAYO

**THE JUDICIARY OF KENYA. NAKURU ENVIRONMENT AND LAND COURT
ENVIRONMENT AND LAND COURT**

DATE: 2025-11-06 14:40:18

