



Omar & another v Kulei & 4 others; Okumu (Proposed Defendant) (Environment and Land Case E033 of 2023) [2025] KEELC 5744 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5744 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE E033 OF 2023**

**A OMBWAYO, J
JULY 31, 2025**

BETWEEN

OMAR MOHAMMED OMAR 1ST PLAINTIFF

PATRICK MAINA WAKANDA 2ND PLAINTIFF

AND

JOSHUA KULEI 1ST DEFENDANT

CHIEF LAND REGISTRAR 2ND DEFENDANT

THE HON. ATTORNEY GENERAL 3RD DEFENDANT

SIAN ENTERPRISES LIMITED 4TH DEFENDANT

AGRICULTURAL DEVELOPMENT CORPORATION 5TH DEFENDANT

AND

JUMA OKUMU PROPOSED DEFENDANT

RULING

1. By application dated 12th March 2025, Juma Okumu, (hereinafter referred to as the applicant) seeks orders that be allowed to join this suit as the 6th Defendant. The application is based on grounds that the suit parcel of land is public land namely LR No.13287/99 that is purportedly registered in the names of the plaintiff and the 4th Defendant. That the land is illegally acquired by the above purported owners. He is desirous of filing a counter claim. The application is supported by his affidavit sworn on the 12th March 2025. The gist of this affidavit is that the suit land is a public land and therefore he should be enjoined in the matter. The applicant’s case is that general guiding principle for joinder of



parties is found in the case of Central Kenva Ltd. V. Trust Bank & 4 Others Cap.No. 222 Of 1998, where the Court of Appeal held thus:-

all amendments should be freely allowed and at any stage of the proceedings provided that the amendment or joinder as the case may be. Will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs.”

2. The applicants further refer to the case of JMK v MWM & another [2015] KECA 524 UR), the Court of Appeal on applications for joinder similar to the instant application held thus: -

Order 1 rule (10) (2) of the Civil Procedure Rules empowers the court, at any stage of the proceedings, upon application by either part-v or suo motu, to order the name of a person who ought to have been joined or whose presence before the court is necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit to be added as a party,”

3. As to the question of who constitutes a party necessary to enable the Court effectually and completely adjudicate upon and settle all the questions involved in the suit, the applicant refers to the decision of the Court of Appeal in Civicon Limited v Kivuwatt Limited & 2 others 120151 588 (KLR): held thus:-

“Again the power given under the Rules is discretion must of necessity be exercised judicially. The objective of these Rules is to bring on record all the reasons 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 a reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined. 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.”

4. Similarly, in Meme v. Republic 120041 KLR 637 the Court of Appeal held that that joinder of parties will be permissible: -

- (i) Where the presence of the party will result in the complete settlement of all the questions involved in the proceedings;
- ii. Where the joinder will provide protection for the rights of a party who would otherwise be adversely affected in law: and
- iii. Where the joinder will prevent a likely course of proliferated litigation.”

5. The applicant submits that in the instant suit, the Proposed 6 and should be allowed because he has demonstrated sufficient interest in the subject matter of this suit, namely L.R 13287/99, which is public land that is alleged to have been unlawfully alienated from a public entity that has reneged on its responsibility to protect the same, and fraudulently colluded with litigants herein to dispose of the same.

6. The applicant refers to the case of Kenya Anti-Corruption Commission. vs. Deepak Chamanlal Kamni and 4 others 12014] eKLR defined public interest as follows: -

...a matter of public interest must be a matter in which the whole society has a stake, anything affecting the legal rights or liability of the public at large.”



7. In *Dindi Oscar Okumu v Robert Pavel Oimeke & 5 others* [2021] eKLR, the Court found that a matter constituted public interest litigation where the legal action initiated is purely for enforcement of public interest or general interest in which the public or class of community have pecuniary interest or some interest by which their legal rights or liabilities are affected.
8. In the instant case, the Proposed 6th Defendant submits that he seeks to protect a public resource from illegal acquisition. His interest is not only legitimate, but also rooted in the constitutional obligation of every citizen to defend public property and the rule of law. This is because the proceedings that the Proposed 6th Defendant intend to institute through his defence and counterclaim that constitutes Public Interest Litigation, which is intended to vindicate the public interest by preventing loss of public property on account of collusion and fraud on the part of the litigants herein.

The applicant contends that in a bid to water down the issue of public interest litigation, the 1st and 4th Defendants claim that the property is not public property, having been already been alienated to the Plaintiffs and or the 1st and 4th Defendants. However, this claim is watered down by the Application dated 20th March, 2025 by one Geoffrey Lelei, another proposed Defendant who claims to have been allocated interest in the suit property by the 5th Defendant, which interest is about to be defeated on account of the illegal and unlawful dealings by the 5th Defendant.
9. From these proceedings, it is clear that there are a plethora of issues concerning the illegal and irregular purported acquisition of the suit property from the 5th Defendant. The same being irregular, it can neither be said that the public does not have interest in how its property is being alienated, nor can it be said that the 5th Defendant is able to defend its own interests as evident in the numerous claims over the property. The actions of the 5th Defendant who has reneged on this responsibility thus warrant the intervention by the Proposed Defendant through public interest litigation in order to seek the enforcement of public interest in the suit property in which the people have both constitutional, pecuniary, and legal interests.
10. The Proposed 6th Defendant's presence is a necessary party to enable this Court to completely adjudicate upon and settle all the issues in dispute in this matter, particularly that of whether the Plaintiffs and the 4th Defendant acquired any valid interest from the 5th Defendant which is the custodian of public land and obligated to manage, secure and safeguard the same in furtherance of general public interest.
11. This is because the Proposed 6th Defendant's inclusion will result in the complete adjudication of all the issues herein, as he is the only party who is willing and ready to adduce evidence and file a formal counterclaim seeking cancellation of the impugned titles in the public interest, a relief not sought by any of the current Defendants including the 5th Defendant who is not only aware that the parties herein are illegally claiming the suit property, but has further abandoned its responsibility to manage and safeguard.
12. The 5th Defendant shall also in the absence of a counterclaim to safeguard public property at this stage of the proceedings shall indisputably be barred from instituting any separate proceedings to recover the same going by settled jurisprudence that parties to a suit must litigate with finality and should seek all appropriate reliefs. See the Supreme Court decision in *John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others* [2021] KESC 39 (KLR).
13. According to the applicant, the courts have pronounced that a litigant can only benefit from the reliefs sought in their pleadings as the Court lacks jurisdiction to grant substantive reliefs not sought and or prayed for by a party to a litigation. See the Court of Appeal decision in *Lamba v National Social Secure Fund & another* (Civil Appeal E168 of 2(2)21) [2023] KECA 124 (ION). And, as held by the



Court of Appeal in *Civicon Limited v Kinmwatt Limited & 2 others* (supra), any person reasonably affected by pending litigation is a proper party to be enjoined, even if their interest does not guarantee success. The Applicant's proposed counterclaim goes to the heart of the dispute and is therefore not peripheral as alleged by the other parties.

14. Lastly, the joinder of the Proposed 6th Defendant will prevent proliferated litigation, as it will ensure that all questions concerning ownership, legality of allocation, and the constitutionality of the purported acquisition are settled once and for all in these proceedings, instead of in multiple suits. From the foregoing, it is clear that the Proposed 6th Defendant is not a busybody or a meddlesome interloper, but a public-spirited Kenyan citizen who is lawfully exercising the right under *the Constitution* to institute proceedings for the protection of *the Constitution* and enforcement of public accountability. His joinder would ensure that the constitutional principles of good governance, transparency, and protection of public land are upheld. The application for his joinder dated 12th March 2025 should thus be allowed.
15. The 1st and 4th defendants submit that the Applicant has not anchored his Application on any provisions of the law, as the same is nothing but conjecture. This notwithstanding, Order 1 Rule 10(2) of the Civil Procedure Rules provides for the joining of a person as a Defendant in ongoing suit in the following terms;
16. 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."
17. The Court of Appeal in *Civicon Limited v. Kivuwatt Limited and 2 Others* [2015] eKLR provided further clarity on the joinder of a party to a suit by stating;
18. 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."
19. Furthermore, the court in *Joseph Njau Kingori v Robert Maina Chege & 3 Others* [2002] eKLR outlined the requirements that a party must meet to be enjoined as;
 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."
20. Finally, a necessary party was defined in *Departed Asians Property Custodian Board v Jaffer Brothers Ltd* [1999] 1 EA 55 quoted with approval by the Court of Appeal in *Civicon Limited (Supra)* as follows

A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involve in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party's presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involve in the cause or matter...For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the Court in that suit. Alternatively, a person qualifies, (on an application of a Defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person."

21. The question the Applicant must therefore answer is whether the orders sought by the Plaintiffs in the present suit shall legally affect his interests and that it would be desirable to join him for avoidance of multiplicity of suits. The Applicant's Application does not reveal answers to ether of the two questions.
22. On the contrary, the reliefs sought by the Plaintiffs in their Plaint and the 1st and 2nd Defendants in the Counterclaim have no bearing whatsoever on the Applicant they each claim ownership of private property and this Honorable Court is expected to determine whose title is superior to the other.
23. The Applicant's assertion that it intends to take the place of the 5th Defendant to "defend" public interest assumes two things, one, that the land in question is public land when in fact it is private property, and two, that the 5th Defendant is not capable of defending its own interests where It claims compensation, when In fact, it is a body corporate capable of suing and being sued in its own name.
24. The Applicant has not sufficiently demonstrated that his involvement shall shed any light as to the acquisition of the suit property from the 5th Defendant, such as to term him a necessary party.
25. The 1st and 4th respondents submit that the exercise of judicial discretion is a balancing act between parties' interests. This Honorable Court must weigh the time and resources expended by the Plaintiffs and Defendants in hearing the suit, judicial time and resources dedicated to the said hearings, the fact that the hearing was already concluded and parties have been awaiting Judgement and the prejudice that shall be suffered by the Applicant.
26. That slapping the term "public interest" on an application is not sufficient proof of likely prejudice to be suffered by party, even if it's the public. That public interest rests in favor of preserving and prudent utilizing precious judicial resources. Commencing the hearing de novo is unwarranted, unmerited and will only amount to a waste of time and resources that neither the judiciary nor the parties are willing to lose.
27. The 5TH respondent's filed a replying to the affidavit to the application dated 12th march 2025 stating that the proposed 6th Defendant has absolutely no locus standi and no reasonable or justifiable cause to



be enjoined in the present matter, as none of the issues for determination herein involve or concern him in any manner whatsoever. That it is both legally and procedurally improper to seek joinder in a suit merely on the basis of dissatisfaction with a ruling delivered in a completely separate matter, specifically Nakuru ELC Petition Number E011 of 2024, which is entirely distinct from the present suit.

28. That the suit parcels in dispute in Nakuru ELC Petition Number E011 of 2024 are completely different and separate from those in Nakuru ELC Case Number E033 of 2023, and as such, there exists no legal or factual nexus between the two cases that would warrant the proposed 6th Defendant's participation in this suit. The attempt by the proposed 6th Defendant to be enjoined in this matter is not only legally unsound but is also a clear indication of bad faith and an attempt to convolute and derail the expeditious determination of this matter.
29. The application dated 12th March 2025 is, therefore, not only unmerited but also vexatious, calculated to waste this Honorable Court's time and should be dismissed with costs to the Defendants.
30. That in view of the foregoing, the 5th defendant urges this Honorable Court to dismiss the said application in its entirety with costs for being an abuse of the judicial process.
31. The 5th Defendant submits that the application is misconceived, legally untenable, and an abuse of the court process. The proposed 6th Defendant lacks locus standi in this matter, and his application should be dismissed with costs. The 5th Defendant submits that the proposed 6th Defendant has no reasonable cause to be enjoined in the present suit. None of the issues for determination in ELC Case No. E033 of 2023 concern him, nor does he have any identifiable legal interest in the matter. It is a well-established principle that a party seeking joinder must demonstrate a legal or equitable interest in the subject matter of the suit. In the case of *Trusted Society of Human Rights Alliance v. Mumo Matemu & 5 Others* [2014] eKLR, the Court of Appeal held that a party must establish a real interest in the matter before being enjoined. The proposed 6th Defendant fails to meet this threshold.

Analysis And Determination

32. The court in *Joseph Njau Kingori v Robert Maina Chege & 3 Others* [2002] eKLR outlined the requirements that a party must meet to be enjoined as;
 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."
33. The court defined a necessary party in *Departed Asians Property Custodian Board v Jaffer Brothers Ltd* [1999] 1 EA 55 as follows

A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involve in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party's presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involve in the cause or matter...For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete



settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the Court in that suit.

Alternatively, a person qualifies, on an application of a Defendant to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person."

34. I agree with the respondents that the question the applicant must therefore answer is whether the orders sought by the Plaintiffs in the present suit shall legally affect his interests and that it would be desirable to join him for avoidance of multiplicity of suits. The Applicant's Application does not reveal answers to either of the two questions. The reliefs sought by the Plaintiffs in their Complaint and the 1st and 2nd Defendants in the Counterclaim have no bearing whatsoever on the Applicant they each claim ownership of private property and this Honorable Court is expected to determine whose title is superior to the other. The Applicant's assertion that it intends to take the place of the 5th Defendant to "defend" public interest does not hold any water as the Attorney General who is the defender of public interest is a party.
35. The Applicant has not sufficiently demonstrated that his involvement shall shed any light as to the acquisition of the suit property from the 5th Defendant, such as to term him a necessary party. This court exercises its judicial discretion by dismissing the application.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 31ST DAY OF JULY 2025.

A.O.OMBWAYO

JUDGE

