



REPUBLIC OF KENYA



**Kalu v Estate of Kipodo Mkamba Mwango (Environment and Land Appeal E001 of 2024) [2025] KEELC 8007 (KLR) (19 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8007 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND APPEAL E001 OF 2024  
FM NJOROGE, J  
NOVEMBER 19, 2025**

**BETWEEN**

**SAMUEL JEFWA KALU ..... PLAINTIFF**

**AND**

**ESTATE OF KIPODO MKAMBA MWANGO ..... DEFENDANT**

**RULING**

1. In a Notice of Motion application dated 19/5/2025 premised under the provisions of Sections 1A, 1B, 3 and 3A of the *Civil Procedure Act* and Order 1 of the Civil Procedure Rules, the applicant seeks an order that the interested party be joined as a substantive party, as a defendant in this case.
2. I have considered the opposition raised by the plaintiff to the application vide the replying affidavit of Samuel Jefwa Kalu sworn in response to the motion dated 19<sup>th</sup> May 2025. The gist of that replying affidavit is that ever since being joined to the suit, the interested party has fully participated in these proceedings and has filed several documents, and it is now not clear why it wants to be joined as a substantive defendant; that the present application is meant to delay the finalization of the suit; that the plaintiff's claim herein is against the defendants who subdivided the suit land of a deceased person without undertaking the process of succession, and the interested party is not a member of the family of the deceased owner Mkamba Mwango; that there is now proof of any agreement signed between the interested party and the deponent or with the other plaintiffs; that even the exhibit labeled DWO3 in the application is an unsigned agreement signed by persons other than the plaintiffs. The deponent states that neither the beneficiaries of nor the purpose for the payment of the sum of Kenya Shillings 24,000,000/- alleged to have been paid through the law firm of Minyazi and Associates Advocates has been identified in the application, and that in any event the money was not paid to the plaintiffs.



3. The Applicant strongly urged its application through the firm of Kibunja & Associates Advocates and relied on Francis Karioko Muruatetu & Another v Republic & 5 others [2016] eKLR the Supreme Court and quoted the case as follows:

“(41) ... We are of the opinion that any party seeking to join proceedings in any capacity, must come to terms with the fact that the overriding interest or stake in any matter is that of the primary/principal parties before the Court. The determination of any matter will always have a direct effect on the primary/principal parties. Third parties admitted as interested parties may only be remotely or indirectly affected, but the primary impact is on the parties that first moved the Court.”

4. I have considered the provisions of Order 1 Rule 10(2) of the Civil Procedure Rules. It provides 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 and settle all questions involved in the suit, be added.”

5. Civicon Limited -v- Kivuwatt Limited & 2 others [2015] eKLR (Civil Appeal No. 45 of 2014) held that the provisions of Order 1 of the Civil Procedure Rules call for the exercise of discretion and stated as follows: -

“Again, the power given under the Rules is discretionary which discretion must of necessity 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.”

6. It is this court’s view that joinder will be allowed where the presence of the party will result in the complete settlement of all the questions involved in the proceedings, or where the joinder will provide protection for the rights of a party who would otherwise be adversely affected in law and where the joinder will prevent a likely multiplicity of litigation.
7. The Appellant is already been described as an Interested Party in the suit. it has already filed some documents. The Applicant claims purchase from the defendants. In law, a valid sale involves a clear



warranty to title on the vendor's part and when disputes occur after a sale agreement and the vendor's title is threatened, whatever remedy is available as against any of the parties to the suit, the buyer is entitled to be joined to an existing suit to prevent multiplicity of suits. In the present suit, if the issues regarding the sale agreements mentioned by the applicant arise, they can be dealt with between the parties affected by them.

8. This court upon a wholistic consideration of the case, is of the view that the Interested Party's joinder as a Defendant is necessary, and it therefore allows the application dated 19/5/2025 in terms of prayer No. 1 thereof. For the avoidance of doubt as to the events that should take place after this application I issue the following orders:
  - a. The Interested Party henceforth ceases being referred to as an Interested Party and is instead joined as the 30<sup>th</sup> Defendant in this suit.
  - b. The 30<sup>th</sup> Defendant shall await the amendment of the plaint to reflect the averments it has made in the documents it has previously served on the Plaintiff before filing any defence in the matter.
  - c. The Plaintiff shall amend the plaint within 21 days of this order and serve it on all parties.
  - d. The 30<sup>th</sup> defendant shall respond to the amended plaint within 15 days of service and any other party wishing to respond to the amended plaint shall do so within the same period accorded the 30<sup>th</sup> Defendant.
9. This court notes that this litigation has progressed very sluggishly. For that reason, it hereby orders that all parties shall ensure that they have complied with the Civil Procedure Rules without fail before the next mention date. This matter shall be mentioned on 10/2/2026 for further directions as to hearing.
10. Costs of the application shall be in the cause.

**DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 19<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI.**

