

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELC NO. E040 OF 2023

1. ELVIS MWENI
2. ESHA BAKARI MOHAMED
3. JAMES CHITUTO LEWA
4. JAPHET CHOGA CHARERO
5. MONICA SAUMU TAURA
6. MARYANN NGOJI KASHENA
7. RIZIKI KAZUNGU LEWA
8. DAVID KAINGU MWENI
9. MALWA MWENI MURAMBA
10. KANAMBO BEJA NGOJA
11. JESUS STEADFAST CHRISTIAN LIFE MINISTRY
PLAINTIFFS

VERSUS

1. ABDALLA MOHAMED MUSE
2. AHMED NAAMAN MUSE
3. ALI KHAN ALI MUSE
DEFENDANTS

RULING

1. For determination is the Plaintiffs' notice of motion application dated 26/5/2025 and brought under Article 159 (2) of the Constitution, Section 1A, 1B and 3A of the Civil Procedure Act, and Order 1 rule 10 and Order 8 rules 3 & 5 of the Civil Procedure Rules. The Plaintiffs seek the following orders:

- 1) Leave be granted to the Plaintiffs to amend the plaint.**
- 2) The plaintiffs be granted further lease to enjoin parties to this suit:**
 - a) The County Commissioner Kilifi South.**
 - b) The Chairman of the Land Control Board, Kilifi South.**
 - c) The County Government of Kilifi.**
 - d) The Registrar of Titles Mombasa.**
 - e) The Honourable Attorney General of the Republic of Kenya.**
- 3) Costs be provided for.**

2. The Application was premised on the grounds highlighted in the notice of motion and supported by an affidavit sworn by **Elvis Mweni Ndoko**, the 1st Plaintiff, on his own behalf and with the authority of the other Plaintiffs. He deponed that the dispute between the Plaintiffs and the 1st and 2nd Defendants revolves around L.R. No. MN/III/9 Kilifi South, and has persisted for over a decade.
3. He averred that during this period, the proposed parties were involved in one way or another and that there exists a paper trail of their involvement. In support, he annexed an affidavit with annexures previously filed before the Court (annexure EMN1). He further deponed that Abdullah Mohammed Muse, who was the 1st Defendant, is now deceased and annexed a copy of his death certificate (annexure EMN2).
4. The deponent stated that the Plaintiffs seek leave to enjoin the proposed parties so that the Court may effectively and justly determine the dispute. He argued that without their participation, the Plaintiffs' case would be prejudiced as the Court would be denied crucial evidence. He further asserted that the joinder would not occasion any prejudice to the existing parties.
5. He added that the 2nd and 3rd Defendants had disowned the process leading to the preparation of deed plans for issuance of titles to the Plaintiffs and had gone further to cause him and the surveyor to be charged in Court, a move calculated to frustrate the process. He stated

that the proposed parties' joinder had become necessary to curtail such mischief.

6. The deponent maintained that failure to grant the orders sought would result in a miscarriage of justice and possible loss of the suit property. A copy of the proposed amended pleadings was annexed as annexure EMN3.
7. In opposition to the application, **Ali Khan Ali Muses**, the 3rd Defendant, swore a Replying Affidavit on **11/9/2025**, stating that he is a trustee of the wakf which owns the subject property, Plot No. 9/III/MN. And while acknowledging the death of the 1st Defendant, he contended that the Plaintiffs' application amounts to a fishing expedition intended to fill gaps in a weak case and to litigate by instalments. That the proposed amendments are irrelevant, unlikely to affect the final verdict, add murkiness rather than clarity, and are calculated merely to patch up incurable lacunae, thereby prejudicing the Defendants.
8. The Defendant added that in any event, the application does not satisfy the principles for amendment of pleadings and offends the overriding objective under Sections 1A and 1B of the Civil Procedure Act, urging the Court to dismiss it as misconceived, meritless, bad in law and an abuse of the court process.
9. The application was canvassed by way of written submissions. As at the time of writing this ruling, only the Plaintiffs had filed their submissions. The Defendants, despite being duly granted time to do so, failed to file

any submissions, and the Court therefore did not have the benefit of considering their arguments on the issues raised.

10. In their submissions dated 1/10/2025, the Plaintiffs reiterated the contents of the supporting affidavit by Elvis Ndoko Mweni and urged the Court to allow the application. They argued that the proposed amendments and joinder of additional parties, including various public offices, are necessary for the just and complete determination of the dispute over L.R. No. MN/III/9 Kilifi South. The Plaintiffs maintained that the proposed parties played critical roles in the issuance of the impugned title documents and their participation will clarify the authenticity of the documents alleged by the Defendants to be fraudulent. Relying on *Joseph Njau Kingori v Robert Maina Chege & 3 Others* [2002] eKLR and *Deported Asians Custodian Board v Jaffer Brothers Ltd* [1999] 1 EA 55, they submitted that the joinder and amendment are sought in good faith and are necessary to enable the Court to effectually and completely determine all questions in controversy.

ANALYSIS AND DETERMINATION

11. **Order 1 rule 10** of the **Civil Procedure Rules** provides for substitution and addition of parties to suits. Under **rule 2** thereof, the court may at any stage of proceedings either upon or without the application of either party and on such terms that 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 adjudicate upon and settle all questions involved in the suit to be added. **Rule 4** further provides for the manner in which the plaint is to be amended where a defendant has been added to the suit.

12. The Court of Appeal sitting at Mombasa in **Civicon Limited -v- Kivuwatt Limited & 2 others [2015] eKLR (Civil Appeal No. 45 of 2014)** identified 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.”

13. Further, in **Meme -v- Republic [2004] KLR 637** it was held 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.”


14. The Plaintiffs seek to have the Kilifi County Commissioner, the Chairman of the Land Control Board Kilifi, the County Government of Kilifi, the Registrar of Titles Mombasa, and the Honourable Attorney General joined as parties to this suit.
15. I have carefully considered the grounds advanced and perused the draft Amended Plaintiff together with the reliefs sought therein. In my view, the only parties whose joinder is necessary for the effectual and complete determination of the issues in controversy are the Registrar of Titles, against whom a substantive relief is sought, and the Honourable Attorney General, in her capacity as the Government’s legal advisor and representative in legal proceedings. I am also satisfied that the substitution of Ahmed Naaman Ali Muse, said to be a Wakf Trustee, in place of the 1st Defendant (now deceased) is proper.
16. As regards the Kilifi County Commissioner and the Chairman of the Land Control Board Kilifi, their roles appear to have been limited to administrative functions in the alleged subdivision process said to have culminated in the impugned documents. I am therefore not persuaded that their participation is necessary within the meaning of Order 1 Rule 10(2) of the Civil Procedure Rules. Similarly, the Plaintiffs have not

demonstrated any cause of action or relief sought against the County Government of Kilifi to justify its joinder as a party to these proceedings.

17. In the result, I find merit only to the extent that the Plaintiffs are granted leave to amend their plaint to join as Defendants the Registrar of Titles, Mombasa, the Attorney General, and Ahmed Naaman Ali Muse in place of the 1st Defendant. The prayer to join the Kilifi County Commissioner, Chairman Land Control Board Kilifi, and Kilifi County Government is declined.

18. The amended plaint shall be filed and served within seven (14) days from the date hereof and the matter shall be mentioned on 28th January 2026 for further directions. Each party shall bear its own costs of the application.

Dated, signed and delivered at Malindi on this 12th day of November, 2025.

A rectangular box containing a handwritten signature in blue ink, which appears to read 'Mwangi Njoroge'.

**MWANGI NJOROGE
JUDGE, ELC, MALINDI.**