



Njoroge & 2 others (Suing as the Trustees of Pcea Thindigua Church) v Thuo (Environment and Land Case E159 of 2022) [2025] KEELC 7765 (KLR) (11 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7765 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE E159 OF 2022
JA MOGENI, J
NOVEMBER 11, 2025**

BETWEEN

**JOSEPH NDUNGU NJOROGE 1ST PLAINTIFF
FAITH MUTHONI CHURU 2ND PLAINTIFF
LUCY WAMBUI WAWERU 3RD PLAINTIFF
SUING AS THE TRUSTEES OF PCEA THINDIGUA CHURCH**

AND

GRACE MUTHONI THUO DEFENDANT

RULING

1. This Ruling is in respect of two Notice of Motion Applications; the first one is dated 22/10/2024 brought under Sections 1A, 1B, 3, 3A and Section 6 of the *Civil Procedure Act*, Order 50 Rule 1 of the Civil Procedure Rules, Article 159(2)(d) of *the Constitution* of Kenya, 2010 and all other enabling laws seeking orders for stay of proceedings (generally) in this Suit pending the hearing of the application for eviction filed in the Environment and Land Court ELC No. 93 of 2015 at Milimani between the same parties. The Applicant also sought any other orders the Court may deem fit and just to grant in the circumstances.
2. The second application is dated 23/10/2024 brought under Sections 1A, 1B, 3, 3A of the *Civil Procedure Act*, Order 1 Rule 10(2) of the Civil Procedure Rules and all other Enabling Provisions of the law seeking joinder of the 1st, 2nd, 3rd, 4th, 5th and 6th Intended Interested Party to be enjoined as Defendants in the case.
3. On 7/04/2025 when all the parties were in Court they were directed to file their submissions and the Defendant/Respondents were granted leave to file a Supplementary Affidavit.
4. Parties filed their submissions which I have considered.



Analysis and Determination

5. The issues for determination are as to whether the two applications are merited.
6. Section 6 of the *Civil Procedure Act* provides:-

“No Court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other Court having jurisdiction in Kenya to grant the relief claimed.”
7. This doctrine is to prevent parties from filing similar cases involving same parties and subject matters in Courts with competent jurisdiction. Parties are not supposed to litigate by instalments and further that they should not be allowed to forum shop for Courts. That is why the doctrine prevents Courts from proceeding with the trial of any suit in which the matter in issue is directly and substantially the same with the previously instituted suit between the same parties pending before same or another Court with jurisdiction to determine it. The rationale behind sub-judice rule is to prevent situations of having conflicting orders emanating from different Courts over the same subject matter. This can cause embarrassment to the Court.
8. In the case of Kenya National Commission On Human Rights – Vs – Attorney General, I.E.B.C., & 16 Others [2020]eKLR, the Supreme Court of Kenya stated as follows: -

“... A party that seeks to invoke the doctrine of res sub-judice must therefore establish that: there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before Courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives ...”
9. Similarly, the Court in the case of Republic v Paul Kihara Kariuki, Attorney General & 2 Others Ex parte Law Society of Kenya [2020] eKLR held that a litigant has no right to pursue pari passu two processes, which will have the same effect in two Courts at the same time with a view of obtaining victory in one of the process or in both.
10. The Counsel for the Defendant/Applicant stated that the suit herein seeks a permanent injunction and an eviction against the Defendant. At the same time the Plaintiffs filed an Ex parte Application dated 16/01/2024 which was granted by the Court in ELC No. 93 of 2015. However ex parte application dated 15/11/2021 where exparte orders of eviction were issued was set aside vide the decree issued by Justice Omenge on 23/05/2024, the decree set aside the Ex parte Order issued on 30/11/2021 and eviction order issued on 3/05/2022.
11. By the time Justice Omenge was issuing this order, the Court of Appeal had issued a stay of execution order following the filing of a Notice of Appeal by the Applicant herein and a stay of execution order was issued on 22/07/2021.
12. I note that the Plaintiff/Respondents have filed the present suit approximately seven years from the date the Defendant/Applicant had filed the previous matter which is ELC Milimani No. 93 of 2015 (O.S) and exactly one year since the filing of the Appeal Civil Application E449 of 2021 [2022] KECA 914 (KLR).
13. Counsel for the Applicant urged the Court to find that this suit is an abuse of Court process and stand it over generally a term that is not used in Environment and Land Court. For the simple



reason that Section 1A and 1B of the Civil Procedure Act implores Courts to ensure just, expeditious, proportionate and affordable resolution of civil disputes.

14. It is not disputed that there are two suits where the Plaintiff/Respondents have sued the Defendant/Applicant in respect of the same subject matter and the Plaintiff/Respondent has also admitted that she filed an Appeal where she has obtained orders to stay the Judgment issued by Justice Komingo on 23/09/2021 ELC Milimani No 93 of 2015 which involves the same subject matter, same parties.
15. There is also the instant suit ELC E159 of 2022 which involves the same suit property and same parties save for those applying to be enjoined as Interested Parties. The suit which was filed in 2015 was concluded and is now on appeal but the instant suit was instituted in 2022.
16. In the Application dated 23/10/2025 there are six Interested Parties seeking joinder. The grant or refusal of an application for joinder involves the exercise of a discretion. However, such discretion must be exercised judicially and upon reason, rather than arbitrarily or capriciously. The term 'Interested Party' is defined in Black's Law Dictionary, 9th Edition, at pg. 1232 as: -

“A party who has a recognizable stake (and therefore standing) in a matter.”

17. The term is also defined in Rule 2 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 but not by the Civil Procedure Act and Rules made thereunder. The Court of Appeal Rules, 2022 define an Interested Party as:

“A person or entity that has an identifiable stake, legal interest or duty in the proceedings before the Court but is not a party to the proceedings or may not be directly involved in the litigation but has been allowed by the Court upon application, to appear as an Interested Party to address it in respect of a matter of law or fact.”

18. The above echoing the definition by the Supreme Court of Kenya in the case of Attorney General v David Ndii & 73 Others (Petition 12 (EO16) of 2020) [2021] KESC 17 (KLR), which decision offered guidance on the applicable principles in an application of joinder by an Interested Party. Reiterating its earlier decisions touching on the question, the Court stated that: -

“An Applicant to be enjoined as an Interested Party has to satisfy this Court that it has met the legal requirements for joinder

This Court has laid down the guiding principles applicable in determining an application to be enjoined as an Interested Party in *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others SC Petition (Application) No. 12 of 2013*. The principles were affirmed in the case of *Francis Kariuki Muruatetu & another v Republic & 5 others (supra)* where the Court stated:

“... One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

- i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
- ii. The prejudice to be suffered by the Intended Interested Party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.



- iii. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court” (Emphasis Added).
19. Applying the foregoing principles to the second Motion now before the Court, the chief contention by the Intended Interested Parties is that they are adult children of the Defendant and that they have built their houses on the suit property and they live on the said suit land and have lived there for over 30 years.
20. That the Intended Interested Parties have never been given notice under Section 152 E of the Land Act as required by law to vacate the suit premises. That further the Interested Parties are pursuing cases to revoke the Grants of Letters of Administration that were issued and assisted the Plaintiffs to get a fraudulent title as per annexure ‘JNT 5’.
21. A relevant provision addressing the joinder of parties, but not Interested Parties expressly, is Order 1, Rule 10(2) of the Civil Procedure Rules which 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.”
22. The Court of Appeal in *JMK v MWM & aAnother* [2015] eKLR when it succinctly stated the following:
- “Order 1 Rule (10) (2) of the Civil Procedure Rules empowers the Court, at any stage of the proceedings, upon application by either party 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. Commenting on this provision, the learned authors of Sarkar’s Code of Civil Procedure (11th Ed. Reprint, 2011, Vol. 1 P. 887), state that:
- “The section should be interpreted liberally and widely and should not be restricted merely to the parties involved in the suit, but all persons necessary for a complete adjudication should be made parties.”
- This Court adopted the same approach in *Central Kenya Ltd. V. Trust Bank & 4 Others*, CA No. 222 OF 1998, when it affirmed that the guiding principle in amendment of pleadings and joinder of parties is that:
- “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.”
- We would however agree with the Respondent that Order 1 Rule (10)(2) contemplates an application for amendment or joinder of parties where proceedings are still pending before the Court. Sarkar’s Code, (supra) quoting as authority, decisions of Indian Courts on the provision, expresses the view that an application for joinder of parties can be filed only in



pending proceedings. In the same vein, the Court of Appeal of Tanzania, while considering the equivalent of Order 1 Rule 10(2) of our Civil Procedure Rules, in *Tang Gas Distributors Ltd v Said & Others*[2014] EA 448, stated that the power of the Court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before, or during the trial; that it can be done even after Judgment where damages are yet to be assessed; that it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable; and that a party can even be added at the appellate stage.”

23. Starting with the question of the timing of the second Motion, the Court notes that the proceedings before it though being a fresh suit is similar to ELC Milimani 093 OF 2023 which was terminated, and all issues arising between the primary parties were determined by the Judgment of the Milimani Court which was delivered in 2021. In other words, the issues in this suit which are the issues in ELC Milimani 093 of 2015 are no longer pending adjudication before Court but are now a subject of Appeal. The expressed intentions of the Intended Interested Party in seeking joinder is to acquire “locus standi” to challenge the Judgment of the ELC Milimani 093 of 2015 in the Court on Appeal, with leave. Before this Court there is evidently no existing Appeal or such related proceedings existing. The Intended Interested Party is therefore seeking to take over the concluded matter from the primary parties who, so far as the record shows, have preferred an Appeal, so as to challenge the Judgment of this Court via the already existing Appeal.

24. In the case of *Francis Karioko Muruatetu & Another v Republic & 5 Others* [2016] eKLR the Supreme Court spelt out the respective positions of parties in a suit where an Interested Party had been enjoined or is seeking to be enjoined: -

“(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. This is true, more so, in proceedings that were not commenced as Public Interest Litigation (PIL), like the proceedings now before us.”

25. The Supreme Court further exhorted that the joinder or proposed joinder of an Interested Party should neither involve nor entitle such a party to raise new issues or cause of action not already pleaded by the primary parties in the suit, before proceeding to state that:

“

“(42) ... One of the principles for admission of an Interested Party is that such a party must demonstrate that he/she has a stake in the matter before the Court. That stake cannot take the form of an altogether new issue to be introduced before the Court ...”

(Emphasis added).

26. The Intended Interested Parties being beneficiaries of the suit property as adult children of the Defendant, cannot claim adverse possession separate from the Defendant’s claim. If anything, I do wonder why all this time when the Defendant was litigating they never showed interest until now when



a new suit has been brought which however touches on the same suit property of a matter already litigated and settled.

27. I am not convinced that there is room for joinder in the present suit which in itself is res subjudice. In the circumstances, the prayer for joinder must fail.
28. In the end I find that the Notice of Motion dated 22/10/2025 for stay of proceedings is an abuse of the Court process since it involves the same suit property and the same parties that have litigated to conclusion ELC Milimani 093 of 2015. Further the Court of Appeal already issued an order to stay execution of the Judgment issued in ELC Milimani 093 of 2015. Meaning that the issue of eviction being sought in the suit herein is essentially stayed by the Court of Appeal.
29. Whereas the Defendant/Respondent herein had sought for standing over this suit generally, the Environment and Land Court no longer stays matters ad finitum instead the Court strives to resolve all disputes presented before the Court in the shortest time possible. If anything, this instant suit should have been determined a long time ago by dismissing it for being res subjudice.
30. Consequently, the Application dated 22/10/2024 succeeds in part by getting the instant suit dismissed for being an abuse of the Court process where the parties litigating and the suit property being litigated over is the subject matter in Milimani ELC 093 of 2015.
31. Given the foregoing I issue the following Orders:-
 - a. The Notice of Motion dated 22/10/2024 succeeds in part, the instant suit is not stayed generally but dismissed altogether.
 - b. The Notice of Motion dated 23/10/2024 is unmerited.
 - c. Each party to bear their own costs.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 11TH DAY OF NOVEMBER, 2025.

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MOGENI J

JUDGE

In the presence of:-

Mr. Njenga for Plaintiffs

Mr. Gatitu for Defendant

Mr. Gatitu for the 1st, 2nd, 3rd, 4th, 5th and 6th Interested Parties

Mr. Melita – Court Assistant

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MOGENI J

JUDGE

