



**Nairobi House Limited v Koinange; Koinange (Plaintiff to the Counterclaim);
 Nairobi House Limited & 4 others (Defendant to the Counterclaim);
 Mayfair Towers LLP (Intended Defendant) (Environment and Land Case
 434 of 2017) [2025] KEELC 7644 (KLR) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7644 (KLR)

**REPUBLIC OF KENYA
 IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
 ENVIRONMENT AND LAND CASE 434 OF 2017**

OA ANGOTE, J

NOVEMBER 6, 2025

BETWEEN

NAIROBI HOUSE LIMITED PLAINTIFF

AND

LENAH CATHERINE KOINANGE DEFENDANT

AND

LENAH CATHERINE KOINANGE ... PLAINTIFF TO THE COUNTERCLAIM

AND

NAIROBI HOUSE LIMITED DEFENDANT TO THE COUNTERCLAIM

TRENTON (K) LIMITED DEFENDANT TO THE COUNTERCLAIM

THE HON. ATTORNEY GENERAL . DEFENDANT TO THE COUNTERCLAIM

THE CHAIRMAN NATIONAL LAND COMMISSION DEFENDANT

TO THE COUNTERCLAIM

**DIAMOND TRUST BANK LIMITED DEFENDANT TO THE
 COUNTERCLAIM**

AND

MAYFAIR TOWERS LLP INTENDED DEFENDANT



RULING

Introduction

1. Vide a Notice of Motion application dated 12th June 2025, brought under Sections 1A, 1B, 3 and 3A of the *Civil Procedure Act*, Order 1 Rules (1), (8) and (10) and Order 51 of the Civil Procedure Rules, the Intended Defendant seeks the following orders:
 - a. That this Honourable Court be pleased to and hereby join the Intended Defendant as the 2nd Defendant in this suit.
 - b. That this Honourable Court be pleased to and hereby grant directions in terms of Order 1 Rule 10(4) of the Civil Procedure Rules.
 - c. That upon joinder of the Intended Defendant as per prayer 1, the court direct that the matter begins de novo.
 - d. That the costs of this application be provided for.
2. The application is supported by the Affidavit of Ramji Devji Varsani, a Director of the Intended Defendant, who deponed that the Intended Defendant is the registered proprietor of Land Reference Number 209/21309 (Original No. 209/7577/2), which appears to have been derived from the subdivision of LR No. 209/7577 (Original Part LR No. 6863/75) the property forming the subject of the present suit.
3. He deposed that should the Plaintiff be successful in this suit, the Intended Defendant's title would be directly affected, as it stands to be cancelled, revoked, or nullified.
4. The deponent contended that at the time of filing this suit, neither the Plaintiff nor the Defendant notified the Intended Defendant of its existence, despite being aware that LR No. 209/21309 may have resulted from the subdivision of LR No. 209/7577, the validity of which may be impacted by the Plaintiff's alleged claim to LR No. 6863/75.
5. It was further stated that the Plaintiff, being dominus litis, and having knowledge that its claim could affect existing privately-owned subdivisions, ought to have notified the Intended Defendant of the pendency of this matter. A simple search, it was averred, would have revealed that several parcels, including the Intended Defendant's property, were already privately owned.
6. The deponent stated that on or about 29th April 2015, the Defendant, as vendor, entered into a sale agreement with the Applicant for the sale of LR No. 209/21309 for a consideration of Kshs. 200,000,000 and that prior to the sale, an official search dated 20th April 2015 confirmed the Defendant's ownership of the said parcel.
7. It was deponed that the Applicant duly paid the full consideration and the Defendant executed a transfer in its favour; that by a Deed of Transfer dated 13th May 2015, the Defendant transferred its interest in LR No. 209/21309 to the Intended Defendant; that the transfer was registered at the Land Titles Registry, Nairobi, as IR 158676/2 on 18th May 2015, and that the Intended Defendant thereafter took possession and has since enjoyed quiet occupation.
8. The deponent stated that it has now come to the Applicant's attention that there is an ongoing suit whose determination may impeach its title and that the Intended Defendant therefore approaches this



Court to be joined as a necessary party, having in its possession documents evidencing the root of its indefeasible title as protected under Sections 24 and 26 of the *Land Registration Act*.

9. It was contended that failure to join the Applicant will deprive it of the opportunity to be heard on a matter directly touching on the ownership of its property. Such exclusion, it was argued, would be unconstitutional and contrary to the rules of natural justice, given that the prayers sought by the Plaintiff have the potential of extinguishing the Applicant's proprietary rights.
10. The Applicant averred that having purchased the property for valuable consideration, it is only just that it be joined to this suit to protect its interests. Being in possession and occupation of LR No. 209/21309, the Applicant maintains that it is a proper and necessary party whose joinder will ensure a just, expeditious and comprehensive determination of the issues in dispute, while conserving judicial time and resources. Reliance was placed on the case of *Alton Homes vs Davis & others* [2019] eKLR.
11. While acknowledging that the matter has been partly heard, the Applicant urged that the balance of convenience tilts in favour of the matter commencing de novo so as to afford it an opportunity to ventilate its case, given that it had no prior notice of these proceedings despite the parties being aware that the outcome would affect its registrable interest.
12. It was further deponed that this application has been made without undue delay and that granting the orders sought would serve the interests of justice and the constitutional principles of fair hearing and access to justice.
13. The Plaintiff opposed the application through a Replying Affidavit sworn on 18th July 2025 by Javed Iqbal Abdul Rahman, its Director, who deponed that the application is misconceived, misplaced, vexatious and an abuse of the court process.
14. It was averred that the Plaintiff instituted this suit by way of a Plaint dated 28th June 2017 seeking, inter alia, orders of eviction and a permanent injunction against the Defendant, Lennah Catherine Koinange, together with general damages for trespass.
15. The Plaintiff maintained that no relief or prayer has been sought against the Intended Defendant in the Plaint, nor is there any claim flowing between the Plaintiff and the Applicant. Accordingly, it was deposed, the suit as presently framed is strictly between the Plaintiff and the Defendant, and the joinder sought is unwarranted and without any legal basis.
16. It was further averred that the sanctity of the Plaintiff's title was conclusively determined in Nairobi HCCC No. 1531 of 2005: *Nairobi House Limited v Commissioner of Lands & Attorney General*, where a decree was issued on 13th December 2007. The decree remains in force, unchallenged and unreviewed. Consequently, the Plaintiff contends that its title is not in issue in the present suit, which is confined to the eviction of the Defendant.
17. The Plaintiff asserted that the reliefs sought in this suit can be effectively and conclusively adjudicated upon without the participation of the Intended Defendant.
18. It was further argued that the Applicant does not meet the legal threshold for joinder as a defendant in this suit, as there is no cause of action pleaded against it, and that its participation is unnecessary for the effectual determination of the issues in dispute.
19. The Plaintiff maintained that being dominus litis, it retains the discretion to determine whom to sue, and it is not open to the Applicant to impose itself as a Defendant where no cause of action lies against it.



20. The Plaintiff argued that joining a party against whom no claim is made would prejudice the expeditious disposal of this matter, which has been pending for long, and would occasion unnecessary delay.
21. It was deponed that the suit has been ongoing for approximately eight years since its institution on 28th June 2017, during which time substantial judicial and party resources have been expended. The Applicant, it was argued, has offered no reasonable explanation for its inordinate delay in seeking joinder.
22. The Plaintiff contended that ordering the matter to commence de novo would occasion grave prejudice through additional costs, delay, and the logistical burden of recalling witnesses and revisiting voluminous records. Such a course, it was submitted, would undermine the overriding objective of this Court under Section 3 of the [Environment and Land Court Act](#), Sections 1A and 1B of the [Civil Procedure Act](#), and Article 159 of [the Constitution](#).

Submissions

23. Counsel for the Intended Defendant submitted that the Applicant ought to be joined in this suit in the interest of justice, as failure to do so would directly prejudice its proprietary rights. He argued that the reliefs sought in the Plaint, particularly the eviction order, directly touch on land forming part of LR No. 6863/75 from which the Applicant's parcel was subdivided.
24. Reliance was placed on Order 1 Rule 10(2) of the Civil Procedure Rules 2010 and the authorities of *Civicon Limited vs Kivuwatt Limited & 2 others* [2015] eKLR, *Joseph Njau King'ori vs Robert Maina Chege & 3 others* [2002] eKLR and *Meme vs Republic* [2004] KLR 637.
25. Counsel submitted that the Applicant's title would be jeopardized if the Plaintiff succeeded, and that justice demands its inclusion. Reference was made to *Kenya Medical Laboratory Technicians and Technologists Board & 6 others vs Attorney General & 4 others* [2017] eKLR and *Communications Commission of Kenya & 3 others vs Royal Media Services Ltd & 7 others; Nature Foundation Ltd (Proposed Interested Party)* [2014] eKLR.
26. Counsel further argued that the Plaintiff was aware of the subdivision but failed to notify the Applicant of the existence of these proceedings. It was urged that although the matter has partly been heard, the interests of justice require that the matter be heard de novo to enable the Applicant to be heard on its proprietary claim. Reliance was placed on *Karanja & 6 others vs County Government of Nakuru: Chomba (Interested Party) (Suing in a representative capacity as a trader and on behalf of 117 other Traders)* [2024] KEHC 378 (KLR) and *Apollo Hotels Limited vs Mbuggus & 6 others; Kangogo & 3 others (Applicant)* [2022] KEELC 15447 (KLR).
27. Counsel emphasized that excluding the Applicant from these proceedings would amount to a denial of the right to a fair hearing and contravene the principles of natural justice.
28. Conversely, counsel for the Plaintiff submitted that the guiding principles for joinder were enunciated in *Youth Limited vs Kihiko & another; Kenya Railways Corporation (Intended Defendant)* [2024] eKLR.
29. Counsel reiterated that the Plaintiff's suit is strictly between itself and the Defendant and that the Applicant's joinder would reopen a dispute conclusively settled in Nairobi HCCC No. 1531 of 2005 and that the Applicant seeks to introduce an extraneous cause of action, thereby complicating an otherwise straightforward eviction claim.



30. Counsel contended that the proceedings have been pending for eight years, and granting the orders sought would only protract litigation and prejudice both the Plaintiff and the Court. It was submitted that the Plaintiff has not sought any relief against the Applicant, who remains a stranger to these proceedings, and that joinder would offend the Plaintiff's prerogative as dominus litis.
31. Reliance was placed on the cases of Peter Nganga Muiruri vs Housing Finance Co. of Kenya Ltd & 2 others [2016] KECA 373 (KLR), Nahashon Wambua Mwangangi & 4 others vs Leonard Munyao Wambua; Edward Mulinge Makole & 4 others (Intended Defendant/Applicant) [2021] KEHC 4929 (KLR); Joseph Leboo & 2 others vs Director Kenya Forest Services & another [2013] KEELC 41 (KLR) and Wainaina vs Nyangi [2023] KEELC 16609 (KLR).
32. Counsel underscored that the Applicant has been indolent and has failed to explain its delay. It was further submitted that reopening the matter would occasion prejudice and contravene the constitutional imperative of expeditious justice, as held in Joseph Lekamario & 24 others vs African Wildlife Foundation & 4 others [2016] eKLR.
33. It was Counsel's submission that the Applicant has failed to demonstrate any cause of action or establish that its participation is necessary for the fair determination of the present dispute.

Analysis and Determination

34. This Court has carefully considered the Notice of Motion dated 12th June 2025, the affidavits on record, the submissions by learned counsel, and the authorities cited. From the totality of the pleadings and arguments, the singular issue that commends itself for determination is whether the Intended Defendant has established sufficient grounds to warrant its joinder as a party to this suit, and if so, whether such joinder necessitates that the matter be heard de novo.
35. The Applicant seeks to be joined as a Defendant in this matter. The application is anchored on Order 1 Rule 10 (2) of the Civil Procedure Rules which provides:
 - “(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.”
36. On the joinder of Defendants, Order 1 Rule 3 of the Civil Procedure Rules is equally instructive. It provides that:
 - “All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.”
37. The guiding principles on joinder of parties were succinctly stated in Joseph Njau Kingori vs Robert Maina Chege & 3 Others [2002] eKLR, where the Court held that a party seeking joinder must satisfy the following conditions:
 - “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.”

38. The Court of Appeal, in *Pravin Bowry vs John Ward & Another* [2015] eKLR, while restating the principles applicable to applications for joinder, cited with approval the Ugandan Supreme Court decision in *Deported Asians Custodian Board vs Jaffer Brothers Ltd* [1999] 1 E.A. 55 (SCU) where it was observed that:

“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 involved in the suit. A party may be joined in a suit because the party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved 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 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.”

39. Similarly, the Court of Appeal in *Civicon Limited vs Kivu Watt Limited & 2 Others* [2015] eKLR reiterated that the power to join a party under Order 1 Rule 10 is discretionary, but must be exercised judicially and with the overriding objective of ensuring that all necessary parties to a dispute are before the court. The Court observed:

“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.”

40. The Court in *Civicon Limited*(supra) further relied on its earlier decision in *Meme vs Republic* [2004] KLR 637, where it was held that joinder is permissible:

- a. Where the presence of the party will result in the complete settlement of all the question involved in the proceedings;
- b. Where the joinder will provide protection for the rights of a party who would otherwise be adversely affected in law: and



c. Where the joinder will prevent a likely course of proliferated litigation “

41. This Court is mindful of the discretionary nature of the power donated under Order 1 Rule 10(2) of the Civil Procedure Rules. Such discretion must be exercised judicially, guided by the need to achieve substantive justice while safeguarding the efficient and expeditious disposal of cases. Joinder is not to be granted merely because a party claims an interest, but only where such interest is directly and substantially in issue and cannot be adequately protected without the party's participation.
42. From the pleadings and record before this Court, it is not in dispute that the Plaintiff's case is anchored on its claim of proprietorship over Land Reference Number 6863/75, I.R. 31722, delineated on Deed Plan No. 91751. The Plaintiff contends that it is the lawful and registered proprietor of the said parcel and alleges that the Defendant, through acts of fraud and misrepresentation, unlawfully procured a parallel title known as L.R. No. 209/7577 and subsequently evicted the Plaintiff from the suit property.
43. On that basis, the Plaintiff seeks orders of eviction against the Defendant, a permanent injunction restraining her from trespassing, constructing, subdividing, or in any other way dealing with the property, and an award of general damages for trespass.
44. The Intended Defendant, on the other hand, seeks to be joined to this suit on the basis that it purchased a portion allegedly derived from the suit property, namely L.R. No. 209/7577/2, from the Defendant on 29th April 2015 for valuable consideration of KShs. 200,000,000. It contends that it is a bona fide purchaser for value without notice and that its title, having been duly registered, would be imperiled if the Plaintiff were to succeed in this claim.
45. Upon consideration of the application, this court is persuaded that the Applicant's interest is inextricably tied to that of the Defendant. According to the Defendant's own pleadings, her claim to ownership stems from an alleged subdivision of L.R. No. 6863 (I.R. 2832), previously registered in the name of the Catholic Holy Ghost Fathers. It is averred that following the surrender of a portion of land for a road, the Defendant was issued with a new title, L.R. No. 209/7577, based on Deed Plan No. 91752, which she subsequently subdivided into three parcels, namely L.R. Nos. 209/21308, 209/21309 and 209/21310.
46. Notably, the Defendant has not asserted that she sold the suit property that is, L.R. No. 6863/75 to the Applicant, nor has she filed a response opposing the present application. The Applicant's claim, therefore, arises not from any transaction with the Plaintiff but rather from a derivative interest allegedly obtained from the Defendant.
47. From the totality of the pleadings, it is apparent that the Defendant's defence and the Applicant's claim are substantially aligned. The issues raised by the Applicant regarding its title are, in substance, already represented in the Defendant's pleadings. The joinder of the Applicant would, therefore, not introduce any new or distinct question for adjudication but would instead duplicate the Defendant's existing position.
48. In any event, the Applicant does not meet the threshold for joinder as a necessary or proper party. There is no relief flowing from the Applicant to the Plaintiff, nor has the Plaintiff sought any remedy against it. The Plaintiff's cause of action is exclusively against the Defendant, based on alleged fraudulent dealings and trespass upon the suit property. The Applicant's claim, being derivative of the Defendant's title, can only stand or fall with the Defendant's defence.
49. The Plaintiff, being dominus litis, retains the prerogative to determine whom to sue. The Court will not compel a Plaintiff to litigate against a party where no cause of action is disclosed, unless it is



demonstrated that the presence of such a party is indispensable for the complete adjudication of the matter. No such necessity has been demonstrated in the present case.

50. The Applicant has invoked the right to a fair hearing under Article 50 of *the Constitution*. While that right is cardinal, it must be balanced against the equal right of the existing parties to the expeditious determination of their dispute under Article 159(2)(b) of *the Constitution* and Sections 1A and 1B of the *Civil Procedure Act*. To allow joinder at this advanced stage would defeat, rather than promote the overriding objective of justice.
51. Even assuming, for argument's sake, that the Applicant had demonstrated a sufficient interest, the prayer that the matter be heard de novo would not commend itself to this Court. The proceedings have substantially progressed, since hearing commenced on 7th February 2024. The Plaintiff has since closed its case and hearing of the defence is ongoing. At this stage, recalling the witnesses would occasion delay, expense, and prejudice disproportionate to any potential benefit.
52. Finally, no risk of multiplicity of suits has been demonstrated, for the Applicant's proprietary interest, being wholly derivative of the Defendant's, will rise or fall with the outcome of the Defendant's case.
53. Having considered the pleadings, the affidavits, and the rival submissions, this Court is not persuaded that the Intended Defendant has met the threshold for joinder as set out under Order 1 Rule 10(2) of the Civil Procedure Rules.
54. The Applicant has not shown that its participation is necessary or that any relief is sought against it. This court has also found that its interest is purely derivative of the Defendant's title and is already represented in the existing pleadings.
55. In the result, the Court finds no merit in the Notice of Motion dated 12th June 2025. The same is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED IN NAIROBI VIRTUALLY THIS 6TH DAY OF NOVEMBER, 2025.

O. A. ANGOTE

JUDGE

In the presence of;

Ms Oduor for Lutta for Applicant

Mr. Kisinga for 6th Defendant

Ms Masinde for National Land Commission

Mrs Omambia holding brief for Nyachoti for Plaintiff

Mr. Ouma for Defendant

Mr. Allan Kamau for 3rd Defendant

Court Assistant: Tracy

