



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAKURU

COUNTY COURT NAME: NAKURU ENVIRONMENT AND LAND COURT

CASE NUMBER: ELCLC/E044/2025

JEREMIAH ONG'AYO OKENYE AND ANN KWAMBOKA AND 7 OTHERS VS ERICK KOECH

### RULING

Pekiwa Investments Company Ltd (hereinafter referred to as the applicant) has filed an application dated 24th September 2025 seeking orders under certificate of urgency that the she be enjoined as 2nd Defendant in these proceedings and that upon her joinder as the 2nd Defendant, leave be granted to file and serve her defence and counter-claim as per the attached draft witness statement as well as bundle of documents within 14 days of the order. The applicant prays that further to the above, leave be granted to all parties to this suit to amend their pleadings to bring in the applicant as a Defendant in the suit and that the costs of this application abide the outcome of the suit.

The application seeks orders based on grounds that the applicant herein is the lawful and registered owner of the suit property known as LR No. 13287/45 (IR No. 50175) measuring approximately 10.47 Hectares. The applicant has been in continuous and peaceful use of the suit property for over 33 years, having purchased the same for value from the late Laban Kiptui (deceased) in the year 1992. The applicant being the rightful owner of the suit property has learnt that fraudsters who are the Plaintiffs in these proceedings purport to lay claim on the suit property on the strength of forged land ownership documents. In perpetuation of their fraud, they have instituted these proceedings against its agent, the 1st Defendant herein while they are fully aware that they do not hold a valid title to the land-

The applicant alleges that being the registered owners of the suit property that is now in dispute, she has an identifiable stake and/or legal interest over the subject matter of these proceedings to warrant its joinder as a Defendant in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit with finality. The applicant believes that her joinder shall not in any way prejudice the parties herein but will enable the court to determine the real questions or issues raised by the parties with certainty.

According to the applicant, it is in the interest of justice that the application be allowed as prayed. The applications is supported by the affidavit of John Andanje Shiundu who states that the applicant is a duly registered company with capacity to own and have property registered in its name. He states that applicant is the lawful and registered owner of the suit property known as



LRN0.13287/45 (IR No. 50175)

The Applicant claims that he has been in continuous and peaceful use of the suit property for over 33 years, having purchased the same at a consideration from the late Laban Kiptui in the year 1992. The applicant believes that the Plaintiffs, who filed this suit, are strangers who have never been registered as the owner of the suit property and neither have been in possession of the same. The Applicant is desirous of filing a defence and counter-claim and evidence to show that it is the registered owner of the suit property whilst the Plaintiffs are not entitled to the reliefs they are seeking before this court as their documents filed herein are forgeries and deceptive. Being the registered owner of the suit property that is now under dispute the Applicant has an identifiable stake and legal interest over the subject matter of these proceedings to warrant its formal joinder into the suit as a Defendant.

The applicant further believes that her joinder in these proceedings as a Defendant is necessary to enable the court to effectually and completely adjudicate upon and settle all the questions relating to ownership of the suit the property. The joinder of the Applicant as a Defendant shall not in any way prejudice the parties herein but will enable the court to determine the real questions or issues raised by the parties herein with certainty

This matter is set for ruling on the Plaintiff's application for injunction dated 15th April, 2025 on the 9th October, 2025 and the hearing of the main suit on the 6th November, 2025, and the Applicant shall be seriously prejudiced if the matter were to proceed it. It is therefore in the interest of justice that the application herein, be allowed as prayed.

The plaintiffs in reply state that the entire application is based on falsehood and a ploy to delay the quick disposal of the suit and to ensure that the Defendant continue illegally and unlawfully to be in possession of the suit plot(s) after obtaining illegal status quo. That it is strange and shocking that the applicant is not having any claim against the Defendant who is a trespasser in possession of the suit plot(s) a clear indication of collusion and plain conspiracy. Moreover, that the allegations by the defendant/Applicant that it has been in continuous possession are contrary with the report of the Deputy Registrar on record.

The proposed 2nd Defendant has not demonstrated how he acquired the suit plot(s) and has failed to produce transfer documents, stamp duty payments and evidence of payment of purchase price, The Respondents strongly believes that the alleged affidavit sworn by one Mrs. Mary Kiptanui dating back to the year 2021 is manufactured and meant to deceive the Honorable court in the light of the affidavit and pleadings filed by the Defendant who now is apparent as having committed perjury that Mrs. Mary Kiptui" was his employer and an Administrix of the alleged estate of the late Laban Kiptui.

I have considered the application herein and the submissions on record and do find that the applicants have demonstrated that that they have documents that show that they have an interest in the property. However, the allegation that they are in possession cannot be true because this court made a site visit and found that the 1st defendant and 3rd plaintiff were in possession. The 1st defendant claimed to be an employee of the estate of Mr Laban Kiptui and not the proposed 2nd defendant. The fact that the 2nd defendant has annexed documents of purchase and ownership demonstrates that she has an interest in the property.

The joinder of a defendant in Kenya is governed by Order 1, Rule 10(2) of the Civil Procedure Rules, which empowers the court to order the addition of a person who ought to have been joined as a defendant, or whose presence is necessary to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit. This power can be exercised at any stage of the proceedings, either upon application by a party or on the court's own motion, provided the court deems it just.

To be joined, a party must demonstrate a sufficient interest in the matter, which must be



identifiable, proximate, and not merely peripheral or remote. The interest must go beyond being merely affected by the judgment; it must be shown that the party's presence is essential for the full and fair determination of the dispute. This includes situations where the relief sought would legally affect the party's interests, or where the defendant cannot effectively set up a defence without the party's involvement.

The court's decision to allow joinder is discretionary and must be exercised judicially, taking into account the necessity of the party's presence, any potential prejudice to the party, and the practicability of the order. The Supreme Court of Kenya has emphasized that an interested party is one with a stake in the proceedings, even if not a party from the outset. In appellate proceedings, a party may also be allowed to join an appeal if they have a direct and identifiable stake, as demonstrated in the case of Kenya Bankers Association, which was permitted to join a Supreme Court appeal affecting the entire banking sector.

The applicant has demonstrated that she has a document of title to the property and an agreement of sale though not in possession as confirmed by the court during the site visit on 26th June 2025. The procedure for joining a necessary party is underpinned in the Order 1 rule 10 (2) of the Civil Procedure Rules 2010 to be available to either party to move the court, so that a person who is not a party but who seeks to join may, or as done by the applicants in this case, invoke the inherent jurisdiction of the court and the overriding objective of the civil process. The issue therefore becomes whether it is in the interest of justice for the applicants to be joined, whether as necessary parties or as interested parties and whether it is on own motion of the court or on their application. As necessary parties, the provisions of rule 10 Order 1 will apply to require that their involvement to be necessary for the court to 'effectually and completely adjudicate upon and settle all questions involved in the suit'. As interested parties, the applicants need only demonstrate interest in the subject of the suit or in other relevant matter affecting the suit.

The phrase all questions involved in the suit in Order 1 Rule 10 (2) is to be restrictively construed to mean only such questions as are raised by the present parties. I do find merit in the application and do make orders that the applicant to be enjoined in the suit as the second defendant and that the plaint be amended to reflect the applicant as the second defendant. The applicant is hereby allowed to file defence and counter claim within 15 days. The costs of the application will be costs in the cause.

SIGNED BY/FOR:  
HON. JUSTICE ANTONY O. OMBWAYO



THE JUDICIARY OF KENYA. NAKURU  
ENVIRONMENT AND LAND COURT  
ENVIRONMENT AND LAND COURT  
DATE: 2025-11-06 12:09:14

