

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ELCLC No. E013 OF 2024

JOSEPHINE BOCHABERI MOCHONI

(Suing as the Legal Administrator of the estate of

Mochoni Monyenye (deceased)
..... PLAINTIFF

VERSUS

ERICK
NYASAE **1ST**
DEFENDANT

CYRUS MOMANYI
2ND DEFENDANT

CHIEF LAND REGISTRAR
3RD DEFENDANT

ATTORNEY GENERAL
4TH DEFENDANT

RULING

1. The Plaintiff moved the Court through Plaintiff dated 4th January 2024 wherein she averred that she was the administrator of the estate of Mochoni Monyenye (deceased) vide Limited Grant of Letters of Administration *Ad Litem* issued on 29th March 2023. That the deceased was the registered proprietor of the parcel of land known as Kisii/Bokeria 1/428, hereinafter the “suit property.”

2. The Plaintiff further averred that she had been in occupation of the suit property to the date of the Complaint and that on 5th January 2023, the first Defendant's agents descended on the suit property with documents claiming they had been granted permission to invade the property with a view of dispossessing the Plaintiff and her family.
3. Consequently, the Plaintiff prayed for judgment against the Defendants jointly and severally for:

- a) *A permanent Injunction do issue restraining the 1st and 2nd Defendants by themselves, servants, agents, employees or any other person howsoever from trespassing, cultivating, demolishing, developing, encroaching onto, remaining on and or in any other way whatsoever interfering all that parcel of land known as Kisii/Bokeira 1/428 measuring approximately 0.46Ha and situate at Nyamira County, all belonging to the Plaintiff.*
- b) *Cancellation if any title deed or any title document issued in favour of the 1st and 2nd Defendants or any other party other than the Plaintiff herein in respect of all that parcel of land known as Kisii/Bokeira 1/428 measuring approximately 0.46Ha and situate at Nyamira County, all belonging to the Plaintiff.*
- c) *Cost of the suit to be borne by the defendants.*
- d) *Any other relief that this court may deem just and fit to grant.*

4. The Defendants filed their respective Statements of Defence, the matter went through pre-trial after which it was scheduled for hearing of the main suit with the participation of all parties. Hearing of the Plaintiff's case commenced on 22nd January 2025 and was concluded on 27th March 2025.
5. DW1 testified on 28th May 2025 and at the conclusion of his testimony, Counsel for the Plaintiff sought an adjournment to enable him call one more witness who was not present in Court on the said day. The matter was then scheduled for further defence hearing on 17th September 2025.
6. On 16th September 2025, the 1st and 2nd Defendants filed Notice of Motion dated 16th September 2025, which is the subject of this ruling. The following orders are sought in the application:

1. *Spent*

2. *That an order do issue staying the proceedings in this suit pending the hearing and determination of this Application interparties.*

3. *That this court grant leave to the 1st and 2nd Defendants/Applicants to issue a third-party notice to one RICHARD MAKORI the party which sold the suit parcel of land to the 1st and 2nd Defendants.*

4. *That due to the nature and contents of this application this court orders that this application be heard and*

determined prior to the hearing and determination of the main suit.

5. That upon the grant of prayers above the court fix the time within which to serve such third-party notice.

6. That the cost of this application be in the cause.

7. The application is supported by an affidavit sworn by the first Defendant, and is based on the following grounds:

a) THAT the 1st and 2nd Defendants/Applicants purchased the suit parcel of land known as Kisii/Bokeira 1/428 measuring approximately 0.46Ha vide sale agreements dated and executed on 7th January 2017.

b) THAT the Plaintiff has brought the suit against the 1st and 2nd Defendants /Applicants seeking injunctive orders and cancellation of title deed in regards to the suit parcel of land Kisii/Bokeira 1/428.

c) THAT the 1st and 2nd Defendants/Applicants bought the suit parcel of land from one RICHARD MAKORI the intended 3rd party who was the registered owner of the suit parcel of land.

d) It is in the interest of justice that leave be granted to the 1st and 2nd Defendants/Applicants to issue a third-party notice to RICHARD MAKORI.

e) The Plaintiff has fixed the matter for hearing of the main suit seeking injunctive orders against the 1st and 2nd

Defendants/Applicants and the same is scheduled for hearing on 17th September 2025.

f) Unless the 1st and 2nd Defendants/Applicants are granted leave to enjoin the intended third party herein then this honourable court will not be able to get a clear picture on how the suit parcel of land was transferred to the 1st and 2nd Defendants/Applicants.

g) If the instant application is not heard on priority basis and the prayers sought herein granted, the 1st and 2nd Defendants/Applicants will suffer prejudice by being compelled to defend themselves in a suit that ought to be determined between the Plaintiff and intended third party.

h) The Application is brought in good faith and as such it is in the interest of justice that it is allowed.

8. The First Defendant deposed in the affidavit that the second defendant and himself were the registered owners of the suit property and were occupying and utilizing it having purchased it from Richard Makori, the intended third party, a sale agreement dated 7th January 2017. That the issues that the Plaintiff is raising could be determined between her and the intended third party since the 1st and 2nd Defendants were the fourth buyers of the suit property.

9. The Plaintiff opposed the application through a replying which she swore on 23rd September 2025. She deposed that the

application is an afterthought meant to cause further delay in this matter and that no reasons had been offered for the delay in lodging the application. She added that she had closed her case and that it would be highly prejudicial to her if the matter were reopened and a third party introduced at this stage.

10. The 3rd and 4th Defendants did not oppose the application.
11. The application was canvassed through written submissions. The Applicants filed submissions dated 23rd September 2025 while the Plaintiff filed submissions dated 6th October 2025.
12. Counsel for the Applicants relied on the provisions of **Order 1 Rule 15** of the **Civil Procedure Rules 2010** and submitted that the Applicants had established a nexus between the Plaintiff, 1st and 2nd Defendants and the intended third party through the sale agreement dated 17th January 2017 which necessitates the court to hear from all the parties.
13. Counsel further submitted that the Plaintiff would not suffer any prejudice and relied on the cases of **Gacheru v Ready Consultancy Company Limited & 2 Others; Babbess & 3 others (intended third parties) Environment and Land Court Case No. 218 of 2021 [2025] KEELC 56 (KLR); Oceanfreight (EA) Limited v Technomatic Limited & Another [2010] eKLR; Kenya Commercial Bank v Suntra Investment Bank Limited [2015] eKLR and Central Kenya Ltd v Trust Bank Ltd & 5 others [2000] KECA 367**

(KLR). The Applicants therefore urged the Court to allow the application.

14. In response, the Plaintiff's Counsel submitted that the matter was certified ready for hearing and pleadings closed on 24th July 2024 hence the application had been brought after over one year late. That the delay was inordinate and had not been explained. Counsel relied on the case of **Ethics and Anti-Corruption Commission v Hartland Enterprises Limited & 5 others [2024] KEHC 4731(KLR)** in support of those submissions and added that the Applicants had not stated with specificity the issue to be determined as between themselves and the proposed third party.

15. Counsel further submitted that the Applicants deliberately filed the application on 16th September 2025 to scuttle the hearing scheduled for the following day and that the application was an attempt to delay the case and inconvenience the Plaintiff.

16. I have carefully considered the application, the affidavits and the submissions. The sole issue for determination is whether leave should be granted for the 1st and 2nd Defendants to issue a third-party notice to the intended third party.

17. The Applicants are seeking leave to issue a third party notice. In that regard, **Order 1 rule 15 (1)** of the **Civil Procedure Rules** provides:

(1) Where a defendant claims as against any other person not already a party to the suit (hereinafter called the third party)—

(a) that he is entitled to contribution or indemnity; or

(b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or

(c) that any question or issue relating to or connected with the said subject-matter is substantially the same question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party or between any or either of them,

he shall apply to the Court within fourteen days after the close of pleadings for leave of the Court to issue a notice (hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers ex parte supported by affidavit. [Emphasis supplied]

18. Closure of pleadings is governed by **Order 2 rule 13** of the **Civil Procedure Rules** which provides:

The pleadings in a suit shall be closed fourteen days after service of the reply or defence to counterclaim, or, if neither is served, fourteen days after service of the defence, notwithstanding that any order or request for particulars has been made but not complied with.

19. The present application was filed on 16th September 2025. As I noted earlier in this ruling, the Defendants filed their respective defences and hearing of the Plaintiff's case was concluded on 27th March 2025. The 1st Defendant who has sworn the affidavit in support of the present application testified as DW1 and concluded his testimony on 28th May 2025.

20. The record shows that the Applicants filed their defence on 9th July 2024 while the 3rd and 4th Defendants filed theirs on 23rd July 2024. There was no reply to defence filed. Consequently, pleadings closed on 6th August 2024.

21. The Applicants have not offered any explanation for the delay in filing the present application. Given the circumstances of this case where the Plaintiff's case had been closed and DW1 had testified by the time the application was filed, and considering the failure to file the application within the timelines given by **Order 1 rule 15 (1)**, I agree with the

Plaintiff that it would be prejudicial to her if the application is allowed at this point.

22.It has to be born in mind that the purpose of third party proceedings is to enable related disputes between the Defendant and some other person from whom the Defendant seeks indemnity or contribution to be resolved in one suit. If the Defendants, as has happened in this case, have sat back and gone through the trial, they cannot reset the clock at the last minute by seeking to introduce a late third party. If that were allowed, there would be injustice to both the Plaintiff and the third party who is made to join after part of the trial has taken place.

23.The Applicants are not left without recourse. If they are persuaded that they have a claim worth pursuing against Richard Makori, they may consider doing so through separate proceeding. As for the ship in this case, it sailed long ago when the Applicants failed to seek leave to commence third party proceedings within the permitted timelines.

24.I find no merit in Notice of Motion dated 16th September 2025. I dismiss it with costs to the Plaintiff.

Dated, signed, and delivered at Nyamira, this 26th day of November 2025.

D. O. OHUNGO
JUDGE

Delivered in the presence of:

Mr Bundi for the Plaintiff

Ms Sala for the 1st and 2nd Defendants

Mr Rana for the 3rd and 4th Defendants

Court Assistant: B Kerubo