



Kangiri & 3 others (Suing on their behalf and on behalf of 480 members of Irwo Welfare Group) v Murathe t/a Ringuti Youth Centre & 5 others (Environmental and Land Originating Summons 18 of 2023) [2025] KEELC 8343 (KLR) (24 November 2025) (Ruling)

Neutral citation: [2025] KEELC 8343 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 18 OF 2023
JM ONYANGO, J
NOVEMBER 24, 2025**

BETWEEN

**ANTONY GITAU KANGIRI 1ST PLAINTIFF
NANCY WAMUGO MUCHENE 2ND PLAINTIFF
BENJAMIN MAINAGA KIIO 3RD PLAINTIFF
DAVID GICHUKI MBUTU 4TH PLAINTIFF
SUING ON THEIR BEHALF AND ON BEHALF OF 480 MEMBERS OF IRWO
WELFARE GROUP**

AND

**FRANCIS NJOMO MURATHE T/A RINGUTI YOUTH
CENTRE 1ST RESPONDENT
RAHAB WANJIRU NJUGUNA T/A STECARDA ENTERPRISES 2ND
RESPONDENT
CHRISTOPHER KANGETHE KIGWE 3RD RESPONDENT
KIGWE LIMITED 4TH RESPONDENT
THE CHIEF LAND REGISTRAR 5TH RESPONDENT
THE HON ATTORNEY GENERAL 6TH RESPONDENT**

RULING

1. The Applicants herein instituted proceedings against the Respondents by way of Originating Summons seeking orders that the Applicants be declared to have become entitled to one hundred (100)



- acres of the land parcel known as L.R NO. 10823/5/2 (Juja /Kalimoni) by way of adverse possession having been in possession thereof for a period of more than 12 years.
2. The Applicants sought to have the Respondents' title extinguished and to be registered as the owner of the suit property.
 3. The Applicants claimed that they had been allocated the suit property by the 1st and 2nd defendants in 2006 on the instructions of the 3rd Defendant and that they had been in open, peaceful and continuous occupation thereof without any interruption or threats of eviction.
 4. The 3rd Respondent filed a Replying affidavit sworn on 23rd June 2023 denying the Applicants' claim. He accused the Applicants of having illegally encroached on the suit property and caused damage thereto after which they have now approached the court with the aim of unjustly depriving the 4th Respondent of its property.
 5. In response to the Originating Summons, the 2nd Respondent filed a Replying Affidavit sworn on 3rd August 2023 in which she stated that the Applicants had occupied the suit property with the permission of the 3rd Respondent and it was agreed that the Applicants contribute some money for purposes of engaging a surveyor to sub-divide the land a process individual titles. She added that the process had not been completed as the 3rd Respondent had failed to surrender the mother title to facilitate the registration of the mutations and transfer of the individual titles.
 6. In addition to her Replying Affidavit, the 2nd Respondent filed a Notice of Claim, Indemnity and Contribution under Order 1 Rule 24 of the Civil Procedure Rules in which she claims 100 acres of land out of L.R No. 10823/5 Juja Kalimoni from the 3rd Respondent to enable her fully settle the people she placed on the suit property through the arrangement with the 3rd Respondent.
 7. Additionally, she seeks indemnity/contribution against the 3rd Respondent for the claims by the Applicants or any other party in relation to the suit property.
 8. On his part the 1st Respondent filed a Replying Affidavit and a Notice of Claim, Indemnity and Contribution dated 23rd November 2023.
 9. Before suit could be set down for hearing the Applicants filed a Notice of Withdrawal of suit dated 5th February 2025 and when the matter came up for mention on 25.3.25 the Applicants' suit against the Respondents was marked as withdrawn. Counsel for the 1st Respondent then indicated that they had filed a Notice of Indemnity against the 3rd and 4th Respondents but they had not been served with any response.
 10. The 3rd and 4th Respondents subsequently filed their response but they were of the view that the since the suit between the Applicants and the Respondents had been withdrawn, it was not necessary to proceed with the suit between the 1st and 2nd Respondents and the 3rd and 4th Respondents.
 11. The court directed that the parties file brief submissions on whether the suit between the 1st and 2nd Respondents and the 3rd and 4th Respondents could proceed after the withdrawal of the main suit between the Applicants and Respondents. Both parties complied by filing their submissions.
 12. In their submissions dated 9th July 2025 learned counsel for the 2nd Respondent submitted that the withdrawal of the suit against the Respondents did not mean that the 2nd Respondent had withdrawn his claim against the 3rd Respondent. They submitted that the 2nd Respondent's claim against the 3rd Respondent arises from the same transaction upon which the Applicants instituted this suit and it is on account of similar events since the 3rd Respondent entered into an agreement with the 2nd Respondent



- which saw the 2nd Respondent settle the applicants on 100 acres and in return a 3rd party was paid for every plot a person was settled on.
13. He submitted that the 2nd Respondent was sued as the person who settled the Applicants on the suit property and the 2nd Respondent's claims seeks to ensure that the persons who were settled on the suit property including the Applicants are given their titles after sub-division.
 14. Counsel submitted that the 2nd Respondent's claim should be treated as a stand alone claim and it should not be considered as one which is parasitic on the Applicant meaning that the withdrawal of the Applicant's claim should not affect it.
 15. In her submissions dated 14th July, 2025 Miss Radol, learned counsel for the 3rd and 4th Respondents submitted that the 1st and 2nd Respondents' Notices of Claim , Indemnity and Contribution are premised on Order 1 Rule 24 of the Civil Procedure Rules which allows a defendant in a suit to make a claim against another person who is already a party to the same suit , without seeking the court's permission beforehand.
 16. She contended that this applies in situations where the defendant believes that the other party (co-defendant) should contribute or indemnify them for any liability that may arise from the plaintiff's claim, or where the defendant seeks the remedy or relief against the co-defendant that is connected to the plaintiff's original claim and substantially similar to what the plaintiff is asking for.
 17. It also applies where there is a question or issue connected to the subject matter of the Plaintiff's claim which affects not just the Plaintiff and Defendant, but also involves the co-defendant, and which the Defendant believes should be determined comprehensively among all the parties.
 18. In such circumstance, the defendants may serve a notice on the co-defendant, setting out their claim or identifying the question or issue to be resolved so that the court can decide all related matters in a single proceeding and avoid multiple proceedings.
 19. She further submitted that in the instant suit while the 1st and 2nd Respondents rely on Order 1 Rule 24 , none of the aforementioned provisions apply to the present case for the reasons that the claim was withdrawn in its entirety on 25th March 2025 and no judgment, award or adverse finding was made against the 1st Respondent to trigger a right to contribution or indemnity.
 20. Secondly, the Respondent's alleged claim to 35 acres for himself and 100 acres allocated to other persons is not substantially the same as the relief sought by the Applicant in the main suit as the Applicant was seeking adverse possession as opposed to allocation. The Respondent is therefore trying to introduce an independent claim for ownership through this notice.
 21. Thirdly, the 2nd Respondent's alleged claim against the 3rd Respondent for 100 acres purportedly allocated to her vide an alleged arrangement with the 3rd Respondent is not the same as the relief sought by the Applicant in the main suit. The Applicants having withdrawn their case against all the Respondents, the 2nd Respondent has no legal standing.
 22. Fourthly, with the withdrawal of the main suit , there are no longer any questions arising between the Applicants and any of the Respondents that would require the court to determine liability between all parties or between the 1st and 2nd Respondents or between the 3rd and 4th Respondents.
 23. It was counsel's further submission that the 2nd Respondent did not seek directions as provided under Order 1 Rule 22 for the court to satisfy itself that there is a proper question to be tried and therefore their claim remains inconsequential and incomplete.



24. Having considered the provisions of Order 1 Rule 24 and the submissions by both I am constrained to agree with counsel for the Applicants that a claim for indemnity cannot survive absent the main suit as it is pegged on any liability that may arise from the plaintiff's claim, hence it arises where the defendant seeks the remedy or relief against the co-defendant that is connected to the plaintiff's original claim and is substantially similar to what the plaintiff is asking for.
25. Therefore, since no judgment, award or adverse finding was made against the 3rd Respondent there would no need for the third party claim to be set in motion. As has correctly been submitted by counsel for the 2nd Respondent, the claim by the 1st and 2nd Respondents against the 3rd Respondent can proceed as a stand-alone claim since the Applicant's claim has been withdrawn.
26. Consequently, the Notice of claim for contribution and indemnity by the 1st Respondent against the 3rd and 4th Respondents has no basis and the same is hereby dismissed with costs to the 3rd and 4th Respondents.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24TH DAY OF NOVEMBER 2025.

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J. M ONYANGO

JUDGE

In the presence of:

Miss Radol for the 3rd and 4th Respondents

No appearance for the 1st and 2nd Respondents.

Court Assistant: Hinga

