

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT ELDORET
ELC CASE NO. E046 OF 2024

ETHICS & ANTI-CORRUPTION COMMISSION.....PLAINTIFF/RESPONDENT

-VERSUS-

RAHILA CHERUTOHELANGA.....1ST PLAINTIFF/RESPONDENT

SHAMIRA CHEPKEMEI CHELANGA.....2ND PLAINTIFF/RESPONDENT

IBRAHIM KIPKORIR CHELANGA.....3RD PLAINTIFF/RESPONDENT

WILSON GACANJA.....4TH PLAINTIFF

AND

MASTERMIND TOWERS LIMITED.....INTERESTED PARTY/APPLICANT

RULING

1. The Interested Party (hereinafter referred to as **“the Applicant”**) did file a Notice of Motion Application dated 22.05.2025 (hereinafter referred to as **“the present Application”**) seeking the following Orders; -
 - a) **THAT the Interested Party be enjoined into the suit as a Defendant.**
 - b) **THAT costs of the Application be in the cause.**

2. The prayers sought hereinabove are premised on the following facts; -
 - i) The Applicant herein is a purchaser for value of the property known as LR.NO.ELDORET MUNICIPALITY BLOCK 7/209 (hereinafter referred to as **“the suit property”**)

- ii) The Applicant is in possession and use of the suit property herein.
 - iii) The Applicant stands to be highly prejudiced by the Orders that are being sought by the Plaintiff.
 - iv) It is important that the Applicant be joined as a Defendant so that it may be in a position to seek the appropriate remedies from any other party in the litigation.
 - v) The none of the parties will suffer any prejudice by the prayers sought as the matter has just started.
 - vi) The Application was filed in good faith and in the interest of justice.
3. The present Application was duly served on the Plaintiff and the 1st to 3rd Defendants herein.
4. The Plaintiff herein did oppose the present Application by filing a Replying Affidavit dated 30.07.2025.
5. The Plaintiff stated as follows in the Response to the present Application; -
- i) The Plaintiff did state that it is a public commission with powers to investigate and recover public property that had been acquired illegally by private persons and/or entities.
 - ii) In the course of its investigation, it established that the suit property herein had been illegally and unlawfully alienated to the 1st to 3rd Defendants.
 - iii) Consequently, the Plaintiff did file the present suit seeking to cancel the registration of the 1st to 3rd Defendants.

- iv) The Plaintiff did plead that the Applicant herein was joined as an Interested party but is now seeking to be joined as a substantive Defendant.
 - v) The Plaintiff was of the view that the Joinder of the Applicant as a Defendant was purely to enable it file a Counter-Claim against the 1st to 3rd Defendant.
 - vi) According to the Plaintiff, the provision of Order 7 Rule 3 of the Civil Procedure Rules, 2010 expressly prohibited the raising of a Counter-Claim against Defendants.
 - vii) In addition to the above, the Plaintiff was of the view that the joinder of the Defendant would convert the cause of action from being recovery of public land to a private litigation.
 - viii) Consequently, the Plaintiff stated that the present Application was to delay and derail the hearing of the main suit which had already began and should be dismissed.
 - ix) The Plaintiff further did plead that the Applicant was at liberty to file a different and separate suit against the 1st to 3rd Defendants in the event the present suit was determined in its favour.
 - x) Lastly, the Plaintiff was of the view that the Applicant did not have any *locus standi* to file the present suit and therefore the same should be dismissed forthwith.
6. The 1st to 3rd Defendants did file some grounds of opposition in the submissions dated 28.10.2025 and filed in Court on the 30.10.2025.
7. The Court did direct that the present application be canvassed by way of written submissions.

8. The Applicant proceeded to file their submissions dated 14.08.2025, Plaintiff did file their submissions dated 01.09.2025 while the 1st to 3rd Defendants did file their submissions dated 28.10.2025.
9. The Court has duly perused through the present Application, the Replying Affidavit of the Plaintiff and the Grounds of Opposition raised by the 1st to 3rd Defendants and identifies the issue for determination as follows; -

ISSUE NO.1- WHETHER OR NOT THE APPLICANT IS ENTITLED TO BE A DEFENDANT IN THIS MATTER?

ISSUE NO. 2- WHETHER THE PRESENT APPLICATION IS MERITED?

ISSUE NO. 3- WHO BEARS THE COSTS OF THE PRESENT APPLICATION?

10. The Court having identified the above-mentioned issues for determination, the same will be discussed below.

ISSUE NO.1- WHETHER OR NOT THE APPLICANT IS ENTITLED TO BE A DEFENDANT IN THIS MATTER?

11. The first issue for determination is whether the Applicant should be joined in this suit as a Defendant.
12. According to the Applicant, there is a valid Agreement For Sale between the 1st to 3rd Defendants and itself.
13. Based on the Agreement For Sale mentioned hereinabove, the Applicant took possession and use of the suit property herein.

14. According to the Applicant, the present suit instituted by the Plaintiff herein is seeking to nullify the validity of the suit property which was the subject of the Agreement For Sale between the 1st to 3rd Defendant and itself.
15. In essence, the Plaintiffs suit will adversely affect the validity of the suit property and render the Agreement For Sale between the 1st to 3rd Defendant with the Applicant annulity.
16. As such, it is the Applicant that will suffer immense loss if not irreparable loss as the suit property is lawfully its property having purchased the same from the 1st to 3rd Defendants for value as an innocent purchaser.
17. It is therefore important that the Applicant be joined as a Defendant so that it may Defence the reliefs sought by the Plaintiff and if necessary seek appropriate remedies from any of the other parties including the 1st to 3rd Defendant herein by way of a Counter-Claim.
18. The Plaintiff did oppose the present Application first on the basis that this was a public litigation seeking to reclaim a public property that was unlawfully alienated to the 1st to 3rd Defendants.
19. The Plaintiff was of the considered view that the only necessary parties is the 1st to 3rd Defendants who are the registered owners of the suit property.
20. The Plaintiff recognised that the Applicant herein was in possession and use of the suit property having purchased the same from the 1st to 3rd Defendants.
21. However, the Applicant herein would still have a cause of action against the 1st to 3rd Defendant if the registration of the suit property in their names would be nullified by the Court.

22. Consequently, the Plaintiff did plead and submit that the Applicant's request to be joined in this suit so that it may file a Counter-Claim against the 1st to 3rd Defendants was pre-mature and not justified.
23. The Plaintiff did further plead and submit that the provisions of Order 7 Rule 3 of the Civil Procedure Rules, 2010 only permitted the institution of a Counter-Claim between a Defendant and a Plaintiff and not a Defendant and a Defendant.
24. In essence, the Plaintiff did plead and submit that the present application was an abuse of the Court process geared towards delaying the hearing of the present suit.
25. The 1st to 3rd Defendants in the submissions dated 28.10.2025 also did oppose the joinder of the Applicant as a Defendant.
26. The 1st to 3rd Defendant did submit that the Applicant herein had already been joined as an Interested Party in the present suit.
27. In essence therefore, the Applicant had been given an opportunity to participate in the present suit on the basis that the determination of this Court will affect it either directly and/or indirectly.
28. Based on the fact that the Applicant is already a party in this suit, the 1st to 3rd Defendants were of the view that the present Application and prayer is simply to delay the proceedings keeping in mind that the first witness had already began testifying.
29. The 1st to 3rd Defendants were of the view that the joinder of the Applicant as a Defendant would delay the expeditious and timely conclusion of the present suit and the Court should exercise its discretion and not allow the same.

30. Lastly, the 1st to 3rd Defendant pleaded and submitted that the Applicant's intention to introduce a Counter-Claim in the matter would lead to the re-opening of the present Case, necessitate the recalling of any witnesses and therefore contravene the provisions of Article 50 of the Constitution which guarantees the timely resolution of disputes between parties.
31. The 1st to 3rd Defendants therefore sought this Court to dismiss the present application forthwith.
32. To resolve this issue, it is important to understand who should be a Defendant in any proceeding for determination.
33. The provisions of Order 1 Rule 3 of the Civil Procedure Rules, 2010 describes a Defendant as follows; -

“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 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.”

34. In this provision, there are various ingredients that should be interrogated by a Court in deciding whether any persons or entities seeking to be joined as a Defendant have demonstrated.
35. The first ingredient is whether or not there is any relief that has been sought and can likely be issued by the Court in favour of the Plaintiff against the person or entity seeking to be joined as a Defendant.
36. In the present suit, the Plaintiffs herein are seeking to nullify the alienation and registration of the suit property to the 1st to 3rd Defendants.

37. It is not disputed that the suit property which is registered in the name of the 1st to 3rd Defendants was sold to the Applicant.
38. It is similarly confirmed that the Applicant herein is the person in occupation and use of the suit property.
39. In the Plaint dated 25.07.2024, the Plaintiff herein is seeking for vacant possession and/or eviction orders against the 1st to 4th Defendants on the suit property in Prayer No. F.
40. However, it is clear that none of the 1st to 4th Defendants herein are in occupation and use of the suit property.
41. Consequently therefore, this prayer sought by the Plaintiff in their Plaint will not just affect the Applicant but must be pronounced against them as the entity that is in occupation of the suit property.
42. The Applicant in the Court's view needs to be given an opportunity to defend any prayer for vacant possession and/or eviction that might be issued at the determination of the present suit.
43. The second ingredient is whether or not the transaction in issue arise from the same act or transaction.
44. The main transaction that the Plaintiff herein is seeking to challenge and obtain the various reliefs in the present suit is the alienation, transfer and ownership of the suit property.
45. While the alienation and transfer of the suit property from public land to private land registered in the name of the Late Ishmael Kiplangat Chelanga and thereafter transmitted to the 1st to 3rd Defendants herein is rather straight forward, the issue of the ownership between the 1st to 3rd Defendants and the Applicant has to also be considered keeping in mind that

the 1st to 3rd Defendants alienated their ownership rights to the Applicant herein.

46. As such, the 1st to 3rd Defendants in the strict sense of it are still the registered owners of the suit property pending registration of the Applicant who even has occupation and possession of the same.
47. This being the scenario, the transaction that is being litigated by the Plaintiff herein did not just stop with the 1st to 3rd Defendants but also extends to the Applicant who is a bone fide purchaser for value and is in occupation and use of the said suit property.
48. In essence, the Applicant is in the core of the transaction being litigated and should be allowed to participate in the proceedings as a substantive party for the Court to be able to deal with all issues emanating from the said transaction and give reliefs that can be enforced any individual party and/or parties in the proceeding.
49. The last ingredient is where separate suits were to be brought against such persons, any common question of law and fact can arise.
50. The Plaintiff and the 1st to 3rd Defendants did plead and submit that the Applicant herein had a right to institute a separate suit against any of them for any relief it seeks to claim through the intended Counter-Claim.
51. The question that arises is whether the suit to be instituted by the Applicant against either the Plaintiff and/or the 1st to 3rd Defendants would have any common question of law and fact as in the present suit.
52. The answer to the above question in the Court's view is to the positive.

53. The fundamental question of law and fact that runs across the present suit and any other suit that will be filed by the Applicant against the 1st to 3rd Defendants is the legality of the suit property herein.
54. As such, for avoidance of multiplicity of proceedings and having all issues of law and fact in relation to the suit property being heard and determined once and for all, it would be good order and procedural that the Applicant herein participates in this present suit as a substantive party.
55. The Plaintiff and 1st to 3rd Defendants lastly did raise the issue that joinder of the Applicant as a Defendant would delay the hearing of the present suit.
56. The submissions by the Plaintiff and the 1st to 3rd Defendant were that the joinder of the Applicant would mean that the pleadings would have to be re-opened, fresh documents filed and the matter begins afresh.
57. It could be true that all these procedural occurrences might happen, but Article 47 of the Constitution should be read in line with Article 50 therein.

ISSUE NO. 2- WHETHER THE PRESENT APPLICATION IS MERITED?

58. Based on the Court's finding on Issue No. 1 hereinabove, this Court is of the considered view that the present Application is merited and should be granted.

ISSUE NO. 3- WHO BEARS THE COSTS OF THE PRESENT APPLICATION?

59. The last issue is who bears the costs of the present Application.
60. The Court is of the considered view that the costs of the present Application should abide the outcome of the main suit.

CONCLUSION

61. In conclusion therefore, the Court hereby makes the following Orders relating to the present application; -

- A. THE APPLICATION DATED 22.05.2025 IS MERITED.**
- B. THE ENTITY KNOWN AS MASTERMIND TOWERS LIMITED BE AND IS HEREBY JOINED AS THE 5TH DEFENDANT.**
- C. THE PLAINTIFF IS DIRECTED IS DIRECTED TO AMEND THE PLAINT HEREIN WITHIN 21 DAYS FROM TODAY'S DATE TO INCLUDE THE 5TH DEFENDANT HEREIN.**
- D. THE 5TH DEFENDANT SHALL HAVE LEAVE OF 21 DAYS UPON SERVICE OF THE AMENDED PLAINT TO PREPARE, FILE AND SERVE THEIR STATEMENT OF DEFENCE.**
- E. THE PLAINTIFF SHALL HAVE LEAVE OF 14 DAYS FROM THE DATE OF SERVICE OF THE STATEMENT OF DEFENCE TO PREPARE, FILE AND SERVE ANY REPLY TO DEFENCE IF SO NEEDED.**
- F. THE COSTS OF THIS APPLICATION SHALL ABIDE THE OUTCOME OF THE MAIN SUIT.**

DATED, SIGNED & DELIVERED Virtually at ELDORET ELC this 11TH DAY OF DECEMBER 2025.

**EMMANUEL.M. WASHE
JUDGE**

IN THE PRESENCE OF:

Court Assistant: Brian

Counsel for the Applicants: Ms. Baithula

Counsel for the Respondents: Ms. Talam holding brief for Mr. Kimutai
Mr. Okiro for the 1st to 3rd Respondent