



REPUBLIC OF KENYA



**KENYA LAW**  
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**Otieno v Chemeli Sugar Company Ltd (Cause E013 of 2023)  
[2025] KEELRC 3534 (KLR) (11 December 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3534 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE E013 OF 2023  
JK GAKERI, J  
DECEMBER 11, 2025**

**BETWEEN**

**FRANCIS ODUOR OTIENO ..... CLAIMANT**

**AND**

**CHEMELI SUGAR COMPANY LTD ..... RESPONDENT**

**RULING**

1. Before the court for determination is the Applicant's Notice of Motion dated 18<sup>th</sup> September 2025 filed under Certificate of Urgency seeking orders that: -
  1. Spent.
  2. The Honourable Attorney General be joined in this suit as a defendant representing the Principal Secretary, Ministry of Agriculture and Livestock Development.
  3. Costs of this application be provided for.
2. The Notice of Motion is expressed under Order I Rule 3 of the Civil Procedure Rules and is based on the grounds set out on its face and the Supporting Affidavit of the applicant who deposes that early this year, he came across a notice inviting bids for an international tender for the leasing out of the 1<sup>st</sup> respondent and M/s Kibos Sugar Company was the successful bidder and sought counsel's assistance on security of costs and having read the Replying Affidavit dated 25<sup>th</sup> May 2025 in response to an earlier application and as explained by his counsel or record, the permanent Secretary Ministry of Agriculture and Livestock Development had appointed a Leasing Transitional Committee to oversee and facilitate lawful, smooth and transparent hand over of assets, liabilities and workforce to the lessee and was in the circumstances requesting the court to enjoin Attorney General to represent the 2<sup>nd</sup> respondent in these proceeds.



3. The application was unopposed notwithstanding the fact that the Attorney General's office had filed a Memorandum of Appearance on 3<sup>rd</sup> September 2025.

### **Applicant's submissions**

4. Counsel submitted that under Order I Rule 10(2) of the Civil Procedure Rules, the court had discretion to join a party at any stage of the proceedings if their presence was necessary for complete and effectual adjudication of the issues.
5. Reliance was placed on the decisions in *Martin Kirima Baithambu V Jeremiah Miriti* [2017] eKLR, *Pravin Bowry V John Ward & another* [2015] eKLR, *Kingori V Chege & 3 others* [2002] 2 KLR 243 and *Civicon Ltd V Kivu watt Ltd & 2 others* [2015] eKLR, to urge the parameters on which the court exercises its discretion.
6. Reliance was also placed on the provisions of Article 48 of the *Constitution* of Kenya on the right of access to justice and Order 22 Rule 6 of the Civil Procedure Rules on enforcement of decrees against persons who had assumed liability for satisfying judgment even if they were not party to the suit originally, to urge that since the Transitional Steering Committee of the Ministry of Agriculture had taken over the responsibility of settlement of employee related liabilities of the respondent, inclusion of the Principal Secretary Ministry of Agriculture and Livestock Development was necessary for purpose of relief.

### **Analysis and determination**

7. The only issue for determination is whether the Permanent Secretary Ministry of Agriculture and Livestock Development should be joined as a respondent in this case.
8. As correctly submitted by counsel for the applicant the law confer upon the court discretion to join or strike out the name of a party improperly included on its own motion or on application.
9. Order I Rule 2 of the Civil Procedure Rules provides:

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”.

10. Clearly, the power given under the Rule is discretionary and ought to be exercised judicially as held by the Court of Appeal in *Civicon Ltd V Kivu watt Ltd & 2 others* (supra) where the court stated  

.. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined”.
11. In *Meme V Republic* [2004] KLR 637, the Court of Appeal held that joinder of parties was permissible.
  - i. Where the presence of the party will result in the complete settlement of all questions involved in the proceedings.
  - ii. Where the joinder will provide protection for the rights of a party who would otherwise be adversely affected in law; and



- iii. Where the joinder will prevent a likely course of proliferated litigations”.
12. Finally, in *Central Kenya Ltd V Trust Bank Ltd(s) others C. A No. 222 of 1998*, the Court of Appeal held:
- The paramount consideration is whether the party concerned is necessary for the effectual and complete adjudication of all the questions involved in the suit”.
13. The court is guided accordingly.
14. From the letter from the Principal Secretary Ministry of Agriculture and Livestock Development dated 28<sup>th</sup> April 2025 addressed to appointees to the Leasing Transitional Committee (LTC) with clear terms of reference on assets, liabilities and workforce transition, it is discernible that the Ministry of Agriculture and Livestock Development, the lessor, is an integral party in the leasing arrangement and ensuring a smooth transfer of the business and thus indispensable in the resolution of all pending issues germane to the sugar companies involved and ought to be a party to any on-going litigation affecting any of the leased sugar companies.
15. In the court’s view and as correctly contended by the applicant’s counsel, the Principal Secretary of the Ministry of Agriculture and Livestock Development is necessary for the effectual and complete resolution of the claimant’s case.
16. Consequently, the Order that commends itself is that the Permanent Secretary, Ministry of Agriculture and Livestock Development be and is hereby joined as a Respondent in this suit.
17. There shall be no Orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 11<sup>TH</sup> DAY OF DECEMBER 2025.**

**DR. JACOB GAKERI**

**JUDGE**

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the [Constitution](#) which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the [Constitution](#) and the provisions of Section 1B of the [Civil Procedure Act](#) (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**DR. JACOB GAKERI**

**JUDGE**

