



**Maloba & 2 others v Mabonga & another; Misiko & another (Proposed Third Parties)
(Environment and Land Case E007 of 2024) [2026] KEELC 166 (KLR) (21 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 166 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND CASE E007 OF 2024**

**A NYUKURI, J
JANUARY 21, 2026**

BETWEEN

**BEATRICE BETSY MALOBA 1ST PLAINTIFF
VINCENT GREGORY MALOBA 2ND PLAINTIFF
ELIZABETH W NASSIUMA 3RD PLAINTIFF**

AND

**ANTHONY WAFULA MABONGA 1ST DEFENDANT
DOREEN ASENJI MABONGA 2ND DEFENDANT**

AND

**PETER KAYUMBA MISIKO PROPOSED THIRD PARTY
BONFACE MUSI PROPOSED THIRD PARTY**

RULING

Introduction

1. Before court is a Notice of Motion dated 4th October, 2024 filed by the defendants herein seeking the following orders;
 - a. That the Defendants/applicants be granted leave to issue and serve Third Party Notice upon Peter Kayumba Misiko and Bonface Musi as per the annexed draft Third Party Notice marked AWM – 1.
 - b. That the costs of this application be provided for.
2. The application is predicated on the supporting affidavit sworn by the 1st defendant on 4th October 2024. The applicants case is that they entered into a land sale agreement with the 1st proposed 3rd party



who sold them 4.3 acres which he had purchased from the 1st plaintiff and that the 2nd proposed 3rd party recorded a statement that he was the 1st plaintiff's personal surveyor and that he acted on the 1st plaintiff's instructions in surveying the suit property to excise 5.3 acres sold to the 1st proposed 3rd party and also excise 4.3 acres in favour of the 2nd defendant who had purchased from the 1st proposed 3rd party. That between 18th August 2022 and 6th March 2023, the 1st defendant deposited Kshs. 7 Million into the 1st proposed 3rd party's account. That the 1st proposed 3rd party recorded a statement on how together with the 1st and 2nd plaintiffs they shared the said amount. That upon investigations by the DCI, it was confirmed that from the consideration paid in regard to the suit property, the 1st proposed 3rd party deposited a sum of Kshs. 1, 200, 000/= into the 1st Plaintiff's personal account No. 010XXXXXXXXX00. That therefore the defendants are within their right to claim indemnity against the proposed 3rd parties as joinder of the latter will assist the court determine all issues in the matter. They attached statement by the area chief one Bonventure Lugado, land sale agreejment dated 30th March 2023, statement of Bonface Musi, bank statement, peter Kayumba's statement, 1st plaintiff's bank statement and draft 3rd party notice.

3. The application was opposed. The plaintiffs filed a notice of preliminary objection dated 7th October 2024 whereof they stated that this court lacks jurisdiction to entertain the application to issue 3rd party notices as the stipulated period of 14 days after close of pleadings provided for in Order 1 Rule 15 (1) of the Civil Procedure Rules has lapsed. They sought orders that the application be struck out.
4. Parties filed submissions in support of their positions, which the court has duly considered.

Analysis and determination

5. The court has carefully considered the application, supporting affidavit and annexures thereto as well as rival submissions. The only issue that arise for the court's determination is whether the defendants deserve to be allowed to issue third party notices to the proposed third party
6. Order 1 Rule 15 of the Civil Procedure Rules provides for issuance of 3rd party notice as follows;
Notice to third and subsequent parties [Order 1, rule 15]
 - (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.
 - (2) A copy of such notice shall be filed and shall be served on the third party according to the rules relating to the service of a summons.



- (3) The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the court, be filed and served within fourteen days of leave, and shall be in or to the effect of Form No. 1 of Appendix A with such variations as circumstances require and a copy of the plaint shall be served therewith.
 - (4) Where a third party makes as against any person not already a party to the action such a claim as is mentioned in subrule (1), the provisions of this Order regulating the rights and procedure as between the defendant and the third party shall apply mutatis mutandis as between the third party and such person, and the court may give leave to such third party to issue a third party notice, and the preceding rules of this Order shall apply mutatis mutandis, and the expressions “third party notice” and “third party” shall respectively apply to and include every notice so issued and every person served with such notice.
 - (5) Where a person served with a notice by a third party under subrule (4) makes such a claim as is mentioned in subrule (1) against another person not already a party to the action, such other person and any subsequent person made a party to the action shall comply mutatis mutandis with the provisions of this rule.
7. Therefore, where a defendant claims against a person not party to a suit, in relation to the subject matter, he or she ought to apply to court for leave to issue a 3rd party notice within 14 days of close of pleadings.
 8. Regarding the preliminary objection herein, the plaintiff argued that the court lacked jurisdiction to entertain the application because the stipulated period of 14 days provided in Order 1 Rule 15 of the Civil Procedure Rules had lapsed. Order 2 Rule 13 of the Civil Procedure Rules provides that pleadings in a suit shall be closed 14 days after service of reply or defence to counterclaim or if neither is served, 14 days after service of defence. Therefore, pleadings are closed 14 days after service of reply to defence. The preliminary objection herein did not state when the defence or reply to defence were served. A question of time is a straight forward matter. The plaintiff was obligated to inform court and demonstrate when the 14 days began to run and when time lapsed. That information is not disclosed in the preliminary objection. Therefore, the preliminary objection is vague. For that reason, I find no merit in the plaintiff’s preliminary objection which I dismiss.
 9. Turning to the application, the defendants have explained that they purchased the suit property from the proposed third parties, who had in turn purchased the same from the 1st plaintiff. They have attached evidence of payment of funds. The veracity of the evidence will be tested at the trial, but at this point I am satisfied that they have established a prima facie claim against the proposed third parties as the relief sought relates to the subject matter herein.
 10. In the premises, I find merit in the application dated 4th October 2024 which I hereby allow as prayed. The defendants are granted leave of 14 days to issue third party to Peter Kayumba Misiko And Bonface Musi. Costs of the application shall abide the determination of the suit.
 11. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA VIRTUALLY THIS 21ST DAY OF JANUARY 2026 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of:



Mr. Mua holding brief for Mr. Mugambi for the plaintiffs

Ms Odek for the defendants

Court Assistant; Delphine

