



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC CASE NO. E067 OF 2022

JUSTUS MUTHUI MULWA
PLAINTIFF

VERSUS

PETER METI NDUNDA.....**1ST**
DEFENDANT MACHAKOS LAND REGISTRAR
.....**2ND DEFENDANT**
THE ATTORNEY GENERAL**3RD**
DEFENDANT

RULING

1. This is a ruling regarding the notice of motion dated 21/08/2023, filed by the plaintiff, expressed to have been brought pursuant to **Sections 1A** and **3A** of the **Civil Procedure Act, Order 1 Rule 10 (2), (4)** and **25** of the **Civil Procedure Rules**, and all other enabling provisions of the law. The plaintiff prays for the following orders:

a. THAT Nicholas Muchene Njau be joined herein as the fourth defendant in this suit.

b. THAT this honourable court make any other orders as it deems fit.

c. THAT the costs of this application be provided.

2. The motion is founded on the grounds listed in the face thereof and the supporting affidavit sworn by the plaintiff on 15/03/2023. Primarily, in seeking joinder, he states that the reasons for this action are his discovery of multiple sets of deed plans fraudulently registered in the name of the intended fourth defendant, which he used to register and obtain title documents for the land in question. According to him, such joinder would allow all issues concerning the aforementioned parcel of land to be clearly articulated and litigated simultaneously.

3. Only the first defendant objected to the motion by filing grounds of opposition dated 15/12/2023, where he lays the following grounds: -

a. The application is incompetent and fatally defective as it does not contain any sufficient cause or comprehensible evidence to show that the intended fourth defendant holds any title to the suit property.

b. The documents annexed to the application are illegible and not capable of being read, and

therefore the applicant has failed to demonstrate the interest or stake the intended fourth defendant has in the matter before this court.

c. The plaintiff is engaging in a fishing expedition and delay tactics, and it is clear that this application is an attempt at litigating in instalments so that the plaintiff can continue enjoying the status quo orders to the grave detriment of the first defendant, who is the sole registered owner of the suit property.

d. The application is misconceived and only serves to waste precious judicial time and resources, and should, therefore, be dismissed with costs to the first defendant.

4. As directed by the court, the motion is canvassed by written submissions with the plaintiff's law firm on record of **Ms Mercy Barasa & Co. Advocates**, filing theirs dated 27/10/2025 and the first defendant's law firm on record **Ms B. M. Musau & Co., Advocates LLP**, filing theirs dated 24/09/2025. Therefore, after identifying and considering the issues for determination, this ruling will, later in its analysis and decision, address the arguments presented in the competing submissions regarding the specific issue and also take into account relevant law and judicial precedents. Accordingly, having reviewed the motion, its grounds, affidavit, annexures, grounds of opposition, and the opposing

submissions, the singular issue that emerges for resolution is **whether the intended fourth defendant should be joined as a party to these proceedings.**

5. Respecting the law on this issue, guidance is drawn from **Order 1 Rule 10(2)** of the **Civil Procedure Rules (CPR)** which has mainly been interpreted to mean that the party who should be joined or added to civil proceedings-whether as a defendant, plaintiff, or interested party, whose presence in the proceedings is essential to assist the court in determining the matter effectively and comprehensively-should be included in the proceedings. This proviso states as follows:

“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.”

6. The **Black’s Law Dictionary, 11th Edn, page 1351**, defines an interested party in the following terms:

“A party who has a recognizable stake (and therefore standing) in a matter.”

7. The meaning of this definition was reiterated in the Supreme Court of Kenya's decision in **Trusted Society of Human Rights Alliance v Matemo & 5 others [2014] KESC 32 (KLR)**, as follows:

“3. An interested party was one who had a stake in the proceedings, though they were not initially a party to the cause. Such a person felt that their interest would not be well articulated unless they personally appeared in the proceedings, and championed their cause.”

8. When considering a motion for joinder, the court exercises prudent discretion rooted in law and reason. Therefore, this court adopts the guiding principles established in **Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) [2016] KESC 12 (KLR)**, thus: -

“37. From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party:

One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements: The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.”

9. In this case, the plaintiff and first defendant are in opposition, with the latter asserting that the motion has not satisfied the required threshold. In contrast, the former claims it has. Therefore, it calls upon this court to exercise its discretion, consider whether the plaintiff has met the established threshold, and conclude either way.

10. In addressing this matter, it is imperative to thoroughly examine the materials submitted by the plaintiff as the foundation for the alleged joinder, namely, an illegible lease and a deed plan. Unfortunately, a corresponding certificate of title establishing a connection between the purported lease, the deed plan, and **L.R. No. 25960 (I.R. No. 184634) (“suit property”)**, which the plaintiff claims was not provided. In the circumstances, this court concurs with the first defendant that the plaintiff, who bears the responsibility to produce documents demonstrating that the intended fourth defendant is a pertinent party to this litigation and has a stake in this suit, has failed to discharge the burden.
11. Significantly, despite the issue of illegible documents being raised in the grounds of opposition and the court on 5/06/2025 directing the plaintiff to serve legible documents, in an act of defiance, he failed to do so. In his submissions, he is quiet about this issue and has misled the court by purporting that the fourth defendant holds title documents over the suit property, yet, as earlier stated, no certificate of title was presented to the court. These acts of the plaintiff have not been taken kindly, and the motion warrants a dismissal. In the end, this court finds the notice of motion is not merited, and costs shall be in the cause. In the end, the following final disposal orders are issued: -

- a) The notice of motion dated 21/08/2023 is hereby dismissed with costs being in the cause.***
- b) Parties are hereby directed to fully comply with Order 11 of the Civil Procedure Rules and file and exchange indexed and paginated trial bundles within 60 days hereof.***
- c) A mention shall be given for purposes of pre-trial directions.***

Orders accordingly.

Delivered and Dated at Machakos this 3rd February, 2026.

**HON. A. Y. KOROSS
JUDGE
03.02.2026**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms Kanja Court Assistant

Mr. Opiyo holding brief for Miss Baraza for Plaintiff

Miss Thuku for Dr. Musau for 1st Respondent

Mr. Kuria holding brief for Miss Lungu for 2nd and 3rd Defendants.

ORIGINAL