

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
KITALE
ELC NO. E020 OF 2023

KAPENGURIA DIARY CO-OPERATIVE SOCIETY LTD
(Suing Thru” The Management Committee
Comprising the Chairman,
Secretary and Treasurer)-----
PLAINTIFF/RESPONDENT

VERSUS

THOMAS LOKER-----1ST
DEFENDANT/RESPONDENT

JANE LOCHAKAPONG-----2ND
DEFENDANT/RESPONDENT

AND

JOSEPH ROTICH CHEKE-----APPLICANT/INTENDED 3RD
DEFENDANT

RULING

1. By an application dated **28/11/2025**, Joseph Rotich Cheke seeks to join this suit as a 3rd defendant. This matter was scheduled for the main hearing on **3/12/2025**. It had to be postponed in order to consider this application. The applicant, in his application and the supporting affidavit, says that he is a beneficial owner of part of land title No. **West Pokot/Keringet ‘A’/613** out of which he purchased three plots measuring **50ft by 100ft**,

resulting in plot No. **4251**, and has been in possession or occupation together with his family.

- 2.** The applicant says that he only became aware of the suit in **February 2025**. He has attached as annexure **JRC-(1)**, a copy of the sale agreement dated **9/9/2016**, between him and Alice Kasaniak Pkarual.
- 3.** The applicant deposes that during the subdivision and issuance of the resultant titles, the entire plot No. **4251**, including his plots, was given to the plaintiff, without his knowledge or involvement.
- 4.** The applicant says that the delay in not seeking joinder was because he has been sickly as per the medical notes attached as **JRC-2(a)** and **(b)**. The applicant urges the court to allow his application; otherwise, he will be condemned unheard and his right to the land prejudiced.
- 5.** Joinder of parties to a suit in respect of any right or relief arising out of the same act or transaction alleged to exist, or where a common question of law or fact, either as plaintiffs or defendants, is allowed by **Order 1** of the Civil Procedure Rules. Substitution or addition of parties is also available under **Order 1 Rule 10** of the Civil Procedure Rules.

6. In **JMK -vs- MWM & Another [2015] eKLR**, the court said that an application for joinder of parties can only be filed in a pending proceeding, and the power of the court to add a party to the proceedings can be exercised at any stage of the proceedings, either before or during the trial.
7. In **Everton Coal Enterprises Limited -vs- Karanja & 5 others (Application E026 of 2023) [2023] KESC 98 (KLR) (10 November 2023) (Ruling)**, the court cited **Francis K. Muruatetu & Another -vs- Republic & Others [2016] eKLR**, to hold that any party seeking to join proceedings in any capacity must come to terms with the fact that the overriding interest or stake in any matter remains those of the primary or principal parties before the court.
8. Necessary parties to a suit mean those without whom no decree at all can be passed. In the case of a defendant, the court in **Joseph Njau Kingori -vs- Robert Maina Chege & Others [2002] eKLR**, held that he has to show:
- (a) *A right to some reliefs against him in respect of the matter involved.*
 - (b) *His presence should be necessary to enable the court effectually and completely adjudicate upon and settle all the questions involved in the matter.*

(c) *He has to show some direct and substantive interest in the issues arising in the litigation, which interest will be recognized in a court of law to be enforced.*

- 9.** In **Civicon Limited -vs- Kivuwatt Limited & 2 others (2015) eKLR**, it was indicated that the power of the court on joinder is discretionary, to be exercised judicially, to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of the proceedings. The court said that any party reasonably affected by the proceedings is a necessary and proper party and should be enjoined.
- 10.** Looking at the plaint dated **11/4/2023**, the claim by the plaintiff is against persons alleged to be trespassers on the suit land occupying **7** plots. Among them appears to be the intended defendant who has exhibited a sale agreement over **3** plots comprised in the title deed held by the plaintiff. During the pendency of this ruling, another application for joinder dated **18/2/2026** has been filed by the plaintiff.

11. I think the applications are genuine. Consequently, I allow the two applications dated **28/11/2025** and **18/2/2026**. The plaintiff is hereby granted leave to amend the plaint within **21 days** from the date herein and to bring on board all the necessary parties to the suit. There will be no order as to costs.

12. Orders accordingly.


Ruling dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **4th** day of **March 2026**.

In the presence of:

Court Assistant - Dennis

Miss Keya for the plaintiff present

Miss Chebii for the defendants present



**HON. C.K. NZILI
JUDGE, ELC KITALE.**