



**RULING**

1. Before this court for determination is the Notice of Motion filed by the 1<sup>st</sup> Defendant in ELC No. 152 of 2018 dated 1<sup>st</sup> October, 2025 brought pursuant to the provisions of **Section 1A, 1B, and 3A** of the **Civil Procedure Act, Order 40 Rule 1** and **Order 51 Rule 1** of the **Civil Procedure Rules**. The Applicant, the 1<sup>st</sup> Defendant in ELC 152 of 2018, seeks the following reliefs:

- i. That pending the hearing and determination of this suit, an order be and is hereby issued compelling the Cabinet Secretary Ministry of Lands to produce in court and confirm the availability of all the records on the 1<sup>st</sup> Defendant/Applicant's title known as L.R No. 24968/2 I.R NO. 152577 as per the contents of the letters dated 16<sup>th</sup> January 2018, 28<sup>th</sup> January 2022 and 30<sup>th</sup> May, 2022 emanating and authored by the Ministry of Lands.*
- ii. That the Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development ("the Ministry of Lands") be enjoined in these proceedings as the 5<sup>th</sup> Defendant in ELC Case NO. 152 of 2018.*

***iii. That this Honourable Court do make any other and/or such further orders and issue any further relief it may deem fit to grant in the interest of justice.***

***iv. That the costs of this Application be provided for.***

2. The Motion is premised on the grounds set out on the face thereof and supported by the affidavit of the Applicant, Peter David Leparakwo, who deponed that by way of a counterclaim dated 30<sup>th</sup> July, 2018 and filed on 20<sup>th</sup> September, 2018 in ELC Case No. 152 of 2018, he asserted that he is the registered proprietor of all that parcel of land known as L.R. No. 24968/2 I.R. No. 152577, Deed Plan No. 230580 measuring approximately 9.72 hectares, situated at Karen Plains within Nairobi County (hereinafter “the suit property”), and that he has been in continuous occupation thereof at all material times.
3. He further deponed that on or about 10<sup>th</sup> April, 2019, he became aware that the suit property was being claimed by several other entities, namely the National Hospital Insurance Fund (NHIF, now SHA), Kaskazi Traders Limited, Cirtex Kenya Limited, and Crowline Freighters Limited, all of whom he described as strangers to his title and interest in the property.

4. In light of those developments, he lodged a formal complaint with the Directorate of Criminal Investigations (DCI) Headquarters seeking investigations into the authenticity of the ownership documents held by NHIF (now SHA), Kaskazi Traders Limited, Cirtex Kenya Limited, and Crowline Freighters Limited in relation to the suit property.
5. The Applicant contended that following his complaint to the Directorate of Criminal Investigations (DCI), and as evidenced by a letter dated 9<sup>th</sup> September 2021 addressed by the DCI to the Chief Land Registrar, Ministry of Lands, an Inquiry File No. INQ No. 46/2020 was opened, and that the inquiry was initiated following the disputed ownership of the suit property. According to the investigation letter, several competing claims had emerged over the land.
6. It is the Applicant's case that upon completion of the investigations, the Directorate of Criminal Investigations (DCI) prepared a report and recommendations dated 9<sup>th</sup> September 2021, which were forwarded to the Chief Land Registrar, Ministry of Lands, with a copy to the Cabinet Secretary for Lands and that in that communication, the DCI affirmed that the genuine title deed was the one registered in his favour.
7. Consequently, he deposed, the DCI advised the Director of Surveys to expunge any records purportedly lodged without his authority and urged the Ministry of Lands to take the

necessary steps to enable the registered proprietor to deal with the property in accordance with the law.

8. He explained that further, and after the DCI had completed investigations as stated hereinabove, Fredrick Kimemia Kimani of Cirtex Kenya was arrested and arraigned in court on 13<sup>th</sup> July, 2022 at the Milimani Chief Magistrate Court, **Criminal Case E660/2022; Republic -vs- Fredrick Kimemia Kimani** on fraud in respect of the suit property, and that in the said criminal proceedings, he was the complainant.
9. In view of all the foregoing, he urged, it is clear that the DCI carried out thorough investigations on all the titles on the suit property as noted hereinabove for a period of over four (4) years and in its final report, conclusion and recommendations upheld that his title is genuine while the rest of the titles were fraudulent and advised that they be cancelled.
10. According to Mr. Leparakwo, one of the titles to be cancelled is the one held by NHIF now SHA which now forms the basis of the letter dated 4<sup>th</sup> September 2025 by the Cabinet Secretary Ministry of Lands and that the Ministry exonerated him through a decision contained in its Minutes dated 28<sup>th</sup> January 2022. In its conclusion and recommendations, he deposed, Certificate of Title Deed I.R 152577 L.R No. 24968/2 in his name was found to be genuine while the rest of the titles were thereby cancelled by the Ministry of Lands.

- 11.** He stated that these findings were consistent with, and indeed mirrored, the earlier findings by the DCI. The Applicant further relied on official communications from the Ministry of Lands affirming his ownership of the suit property. In particular, he referred to a letter dated 16<sup>th</sup> January, 2018 from Dr. Nicholas Muraguri, then Principal Secretary in the Ministry of Lands, addressed to his advocates, which confirmed that according to government records held at the Central Registry, Nairobi, Title L.R. No. 24968/2 was registered in the name of Peter David Leparakwo.
- 12.** He also referred to a subsequent determination by the Ministry of Lands contained in a letter dated 28<sup>th</sup> January, 2020, authored by C.K. Ngetich for the Chief Land Registrar, concerning the competing claims by NHIF (now SHA) and Cirtex Kenya Limited.
- 13.** In that communication, he stated, the Ministry determined that the valid ownership document in respect of L.R. No. 24968/2 was Certificate of Title I.R. No. 152577 issued on 29<sup>th</sup> October 2013 in favour of Peter David Leparakwo and that the letter further directed the cancellation of Grant No. I.R. 87345 issued on 29<sup>th</sup> October, 2001 and the lease and certificate of title I.R. 179264 registered on 25<sup>th</sup> August, 2016, and ordered rectification of the land register to reflect the lawful title in his favour.

- 14.** He further relied on a letter dated 30<sup>th</sup> May, 2022 from the Ministry of Lands to the Attorney General, which indicated that a hearing had been conducted on 10<sup>th</sup> April 2019 under **Section 14** of the **Land Registration Act No. 3 of 2012**, with all parties present and represented by counsel, and that in that communication, the Ministry directed the Office of the Attorney General to institute appropriate proceedings by way of a Notice of Motion on the basis that Peter Leparakwo was the bona fide owner of the parcel, and that the titles registered in favour of Cirtex Kenya Limited and the National Hospital Insurance Fund ought to be cancelled or expunged from the register pursuant to **Section 80** of the **Land Registration Act, No. 3 of 2012**.
- 15.** Despite this, the Applicant contended that the Ministry of Lands, Public Works, Housing and Urban Development, through a letter dated 4<sup>th</sup> September, 2025 issued by the Cabinet Secretary and addressed to his advocates, indicated that upon conducting inquiries, the parcel in respect of which conversion had been sought was situated on public land.
- 16.** The letter further stated that the land was owned by the Social Health Authority (SHA), the statutory successor to the now defunct National Hospital Insurance Fund (NHIF) and that the I.R. number cited in his correspondence (I.R. No. 152577) did not correspond with the L.R. number referenced (L.R. No. 24968/2) according to the Ministry's records.

- 17.** According to Mr. Leparakwo, he is aware and indeed it is in the public domain that a huge sum of money in billions of shillings as reported in the press at various times, has allegedly been paid out by NHIF now SHA in respect of an intended Health Facility Project on the suit property and that the matter is currently under investigations by the Parliamentary Investments Committee (PIC) as per the 24<sup>th</sup> Report of that Committee.
- 18.** The Applicant deponed that the letter dated 4<sup>th</sup> September, 2025 issued by the Cabinet Secretary, Ministry of Lands, is highly suspicious and appears tailored to assist NHIF (now SHA) in addressing concerns arising from substantial payments allegedly made to various service providers and suppliers in respect of a purported Health Facility Project.
- 19.** He contended that the said project was intended to be undertaken on a property that, in effect, does not exist in law, given that the title held by NHIF (now SHA) had been found to be fraudulent, withheld by the DCI, and subsequently cancelled by the Ministry of Lands pursuant to investigations and recommendations by the DCI, as earlier outlined.
- 20.** He urged that in light of the foregoing, the Cabinet Secretary, Ministry of Lands should be joined in this case and that no prejudice will be occasioned to any of the parties herein if the orders sought in the application are granted.

- 21.** In response to the Motion, the Plaintiff in ELC No. 152 of 2018 filed Grounds of Opposition dated 16<sup>th</sup> October, 2025, contending that the application is an abuse of the court process intended to delay and obstruct the expeditious hearing and determination of the suit.
- 22.** It was argued that the Applicant has failed to establish any legal or factual basis for the joinder of the Cabinet Secretary, Ministry of Lands; lacks the locus to unilaterally introduce a new Defendant into a suit framed and instituted by another party, and further failed to demonstrate any direct or material interest on the part of the Cabinet Secretary in the dispute concerning L.R. No. 24968/2.
- 23.** The Plaintiff further contended that the application is a disguised attempt to legitimize the Applicant's title in the face of competing claims over the suit property advanced by the Plaintiff in ELC No. 152 of 2018, Cirtex Kenya Limited, and the Social Health Authority (formerly NHIF) in ELC No. 691 of 2011.
- 24.** According to the Plaintiff, the orders sought, particularly those inviting the court to affirm the position reflected in various letters relied upon by the Applicant would improperly invite the court to endorse the Applicant's claim to ownership while disregarding the competing claim and the evidence already before the court.

- 25.** It was also argued that the orders sought would be redundant and unnecessary, since the documents the Applicant seeks to introduce through the Cabinet Secretary fall within the mandate of the Chief Land Registrar, who is already a party to the proceedings and has filed a defence and will present evidence at trial.
- 26.** The Plaintiff further expressed concern that compelling the preservation or production of the impugned records could implicitly validate the Applicant's title and thereby prejudice its case before the issues in dispute are determined.
- 27.** Finally, the Plaintiff asserted that granting the orders sought would undermine the right to a fair hearing under **Article 50** of the **Constitution**, as it would risk influencing the court's evaluation of evidence before the relevance, authenticity and admissibility of the documents are properly tested. In its view, the application is mischievous and calculated to prejudice its claim, and therefore ought to be dismissed with costs.
- 28.** The Plaintiff in ELC 691 of 2011 filed a Preliminary Objection dated 21<sup>st</sup> October, 2025 contending that the application as framed is fatally defective for offending the provisions of **Order 1 Rule 3 & 10** of the **Civil Procedure Rules, 2010** as it seeks for orders on interim basis against a proposed party or non-party to the proceedings, rendering it frivolous and warranting its dismissal.

29. The Plaintiff in ELC 691 of 2011 also filed Grounds of Opposition dated 22<sup>nd</sup> October, 2025, asserting that the application offends the provisions of **Order 1 Rules 3 and 10** of the **Civil Procedure Rules, 2010**, in so far as it seeks injunctive relief against the Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development, who is presently a stranger to the proceedings.
30. Further, it was averred that the Applicant has failed to meet the legal threshold for joinder as articulated by the High Court in *Meme v Republic [2004] 1 EA 124*, a decision subsequently cited with approval by the Supreme Court in *Communication Authority of Kenya & 4 Others vs Royal Media Services Limited & 7 Others [2014]eKLR*.
31. According to the Plaintiff in ELC 691 of 2011, the Motion does not disclose sufficient grounds to warrant the issuance of injunctive or preservative orders against the said Cabinet Secretary, particularly considering that the Cabinet Secretary is not the statutory custodian of land registration records, which fall within the mandate of the Ministry of Lands and the office of the Chief Land Registrar.
32. It was also urged that the Application is procedurally improper and incompetent, as it seeks to invite the court, at an interlocutory stage, to make premature determinations on substantive issues that lie at the heart of the main suit. Consequently, it was deponed, the Motion is frivolous,

vexatious, and an abuse of the court process, and ought therefore to be dismissed with costs.

- 33.** The Attorney General for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants in ELC 152 of 2018, similarly filed Grounds of Opposition dated 21<sup>st</sup> October, 2025 premised on the grounds that the Applicant has not laid a basis for the grant of an injunction against the Cabinet Secretary Ministry of Lands, Public Works, Housing and Urban Development who is not a party or impleaded in the suit before the Court.
- 34.** It was contended by the Attorney General that the Applicant has not satisfied the criteria for joinder under **Order 1 Rule 3** and **Order 1 Rule 10(2)** of the *Civil Procedure Rules [Civicon Limited vs Kivuwatt Limited and 2 others [2015] eKLR, Meme vs Republic [2004] KLR 637]* and seeks reliefs against non-parties. [*Deported Asians Custodian Board vs Jaffer Brothers Ltd [1999] 1 E.A. 55 (SCU)*] as referenced in *Pravin Bowry vs John Ward and Another [2015] eKLR*.
- 35.** It was further argued that the Cabinet Secretary, Ministry of Lands, is not the statutory custodian of land registration records under the Land Act and the Land Registration Act, and therefore her joinder is unwarranted; that litigation is driven by the parties themselves and that the court cannot dictate how a party should conduct its case or which witnesses it should call. [*Trusted Society of Human*

**Rights Alliance vs Mumo Matemo & 5 others [2014] eKLR**.

36. The Attorney General argued that our legal system follows the adversarial model, under which each party bears responsibility for determining the pleadings to file and the evidence to present before the court. **Independent Electoral and Boundaries Commission & another vs Stephen Mutinda Mule & 3 others [2014] eKLR** and that the court's role remains that of an impartial arbiter, ensuring the dispute is resolved in accordance with established procedure, as reiterated in **Stanley Mombo Amuti v Kenya Anti-Corruption Commission [2019] eKLR**.
37. Further, it was asserted, the Applicant herein is bound by the provisions of **Article 35** of the **Constitution** and the **Access to Information Act (Act No. 31 of 2016)** which provides the modalities of obtaining any information held by the State or another person. **Njonjo Mue & Another vs Chairperson of Independent Electoral and Boundaries Commission & 3 others [2017] eKLR**.
38. The 2<sup>nd</sup> Defendant in ELC No. 691 of 2011 filed Grounds of Opposition dated 21<sup>st</sup> November 2025, contending that the application is frivolous, misconceived, and an abuse of the court process. It was argued that the Plaintiff, as *dominus litis*, retains the prerogative to determine whom to sue and cannot be compelled to institute a claim against, or add as a

Defendant, a party against whom no relief is sought and that the Chief Land Registrar and the Director of Land Administration, who are the lawful custodians of the land records relevant to the dispute, are already parties to the proceedings.

- 39.** Consequently, it was averred, the joinder of the proposed party would not advance the just, expeditious, or effective determination of the suit. It was emphasized that the law provides adequate mechanisms for discovery and inspection of documents, and that it would therefore be improper for a party to seek the joinder of an additional Defendant merely as a means of securing evidence, particularly where such a course would occasion prejudice to the other parties.
- 40.** Additionally, it was submitted that the matter has already reached an advanced stage of the proceedings, and the introduction of a new party at this late stage after the close of discovery would occasion prejudice to the 2<sup>nd</sup> Defendant and lead to unnecessary delay in the final determination of the suit. On that basis, the 2<sup>nd</sup> Defendant urged the court to dismiss the application with costs in the interest of justice.
- 41.** The 1<sup>st</sup> Defendant/Applicant, through a Further Affidavit dated 14<sup>th</sup> November, 2025, deponed on the advice of counsel that a Preliminary Objection is only sustainable where it raises a pure point of law, and cannot properly lie where the issues require the ascertainment of facts or the exercise of judicial discretion.

- 42.** He contended that the objection raised in the present instance is therefore misconceived, as the question whether the Cabinet Secretary, Ministry of Lands, ought to be joined as the 5<sup>th</sup> Defendant in ELC Case No. 152 of 2018 can only be determined upon a substantive consideration of the present Motion, which calls for the court's evaluation of the merits of the application rather than a determination at the preliminary stage.
- 43.** The Applicant also maintained that under **Order 1 Rule 10(2)** of the **Civil Procedure Rules, 2010**, the court retains wide discretion to order the joinder of any person whose presence before the court is necessary for the effectual and complete adjudication of all questions in controversy. As such, he urged, it lies within the court's discretion to determine whether the joinder of the Cabinet Secretary is necessary in the circumstances of the case.
- 44.** According to Mr. Leparakwo, the findings and recommendations of the Directorate of Criminal Investigations, together with other relevant authorities referenced in his supporting affidavit, have on several occasions affirmed the sanctity and authenticity of his title, namely L.R. No. 24968/2 I.R. No. 152577 and that the letter dated 4<sup>th</sup> September, 2025 is an abrupt and unexplained departure from the aforesaid.

45. He urged that the Cabinet Secretary's presence in the proceedings is necessary to clarify, verify, and explain the basis and authenticity of the records held within the Ministry. Such participation, he contended, would enable the court to effectively and conclusively determine the ownership and status of the suit property, thereby rendering the Cabinet Secretary both a proper and necessary party to the proceedings.
46. Finally, he deponed that unless the orders sought in the application are granted, he stands to suffer irreparable harm not compensable by damages, as there exists a risk that the Cabinet Secretary and the Ministry of Lands may interfere with, alter, or extinguish records relating to his title, thereby rendering his Counterclaim nugatory.

### **Submissions**

47. The 1<sup>st</sup> Defendant/Applicant filed submissions on 14<sup>th</sup> November, 2025. Counsel submitted that joinder is governed by **Order 1 Rules 1, 3 and 10 of the Civil Procedure Rules, 2010**, which confer wide judicial discretion on the Court. Relying on ***Civicon Limited vs Kivuwatt Limited & 2 others [2015] KECA 588 (KLR)***, Counsel argued that the overriding consideration is whether the intended party has a direct interest in the dispute and whether their presence is necessary for the effectual and complete adjudication of the issues.

48. According to Counsel, relying on **Jack Kaguu Githae vs James Mugo Kinga & 9 others [2019] KECA 87 (KLR)** and **Mukisa Biscuit Manufacturers Co. Ltd vs West End Distributors Ltd [1969] EA 696**, the question of whether the joinder sought is merited involves factual inquiry and judicial discretion and therefore cannot properly be disposed of by way of a preliminary objection.
49. On the merits for an order of joinder, Counsel contended that the Cabinet Secretary's recent position has introduced a competing official stance directly affecting the 1<sup>st</sup> Defendant's proprietary claim, thereby making her both a necessary and proper party within the meaning of **Order 1 Rule 10(2)**. Reliance was placed on **Youth Limited vs Kihiko & another; Kenya Railways Corporation (Intended Defendant) [2024] KEELC 1413 (KLR)** and **Civicon Limited vs Kivuwatt Limited & 2 others [2015] KECA 588 (KLR)**.
50. Regarding injunctive relief, Counsel submitted that the 1<sup>st</sup> Defendant has satisfied the principles in **Giella vs Cassman Brown & Co. Ltd [1973] EA 358, as restated in Mohamed Ahmed Noor & 3 Others vs Bora Developers Limited & 2 Others [2012] KEHC 1495 (KLR)**. It was argued that a prima facie case exists in line with the definition in **Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] KLR 125**, as there is an apparent infringement calling for rebuttal.

51. Counsel further submitted that the risk of interference with land records demonstrates irreparable harm, and that the balance of convenience favours preservation of the status quo, as explained in **Siteyia vs Gitome & 3 others [1993] KEHC 88 (KLR)**.
52. Finally, reliance was placed on **Karani & 2 others vs Karani & 2 Others; Murage & another (Intended Defendant) [2025] KEELC 5341 (KLR)** to demonstrate that the court may order joinder together with interim injunctive relief where necessary to preserve the substratum of the suit.
53. The Plaintiffs in ELC No. 152 of 2018 filed their submissions on 22<sup>nd</sup> January 2026. Counsel submitted that the 1<sup>st</sup> Defendant had failed to establish a prima facie case within the meaning set out in **Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] eKLR**. It was argued that the claim is founded largely on administrative letters which in law neither confer title nor conclusively determine proprietary rights. The legality of the competing titles, including one issued through the Chief Land Registrar, who is already a party to the proceedings, can only be resolved through full evidentiary determination at trial.
54. On irreparable harm, Counsel cited **Paul Gitonga Wanjau vs Gathuthi Tea Factory Company Ltd & 2 Others [2016] eKLR**, which clarified that irreparable injury refers

to substantial injury not adequately compensable by damages. It was argued that allegations of possible interference with land records are speculative and unsupported by evidence of any imminent or unlawful action by the Chief Land Registrar.

55. On the balance of convenience, Counsel relied again on **Paul Gitonga Wanjau vs Gathuthi Tea Factory Company Ltd & 2 Others [2016] eKLR**, as well as **Muchiri vs Tharamba & 3 Others [2025] KEELC 6822 (KLR)**, which emphasized that the balance of convenience is effectively a balance of inconvenience and the burden lies on the Applicant to show greater prejudice.
56. Granting the injunction would, Counsel argued, elevate contested administrative letters to conclusive proof of ownership and prejudice the Plaintiff's registered title, while the Applicant's alleged risks remain speculative.
57. On the issue of joinder, Counsel submitted that the power under **Order 1 Rule 10 (2)** of the **Civil Procedure Rules** is guided by necessity, not tactical advantage. Reliance was placed on **Communications Commission of Kenya & 3 Others vs Royal Media Services Limited & 7 Others; Nature Foundation Limited (Proposed Interested Party) [2014] KESC 52 (KLR)**, which cited **Meme vs Republic [2004] 1 EA 124**, setting out the principles for joinder.

58. It was argued that the Cabinet Secretary is neither a necessary nor a proper party, as the Chief Land Registrar, the statutory custodian of land records is already before the court. Reliance was placed on *Civicon Limited vs Kivuwatt Limited & Others [2015] eKLR* and *Sheila Kabole Mabwa vs Joshua Angelei & 4 Others [2021] KEELC 877*.
59. Regarding the prayer for production or “confirmation” of land records, Counsel submitted that such relief is procedurally untenable; that the Chief Land Registrar is the lawful custodian of land records, and any production should be sought through appropriate evidentiary mechanisms and that to seek executive “confirmation” of contested records would undermine the adversarial process and offend **Article 50** of the **Constitution** by inviting executive endorsement of disputed claims prior to trial.
60. The Plaintiff in ELC 691 of 2011 filed submissions on the 2<sup>nd</sup> December, 2024. Counsel submitted that the principles governing joinder are set out in *Meme vs Republic [2004]1 EA 125* as affirmed by the Supreme Court in *Communication Authority of Kenya & 4 Others vs Royal Media Services Limited & 7 Others [2014] eKLR* and that joinder is necessary to ensure all persons whose presence is necessary to effectually and completely adjudicate and settle all questions are involved.

- 61.** It was contended that the Applicant had failed to demonstrate that the Cabinet Secretary is a necessary party whose presence is required for the complete and effectual adjudication of the issues in dispute and that the proposed Motion for joinder is, in substance, an attempt to prosecute the merits of the main suit through an interlocutory application.
- 62.** It was further urged that the existence of ongoing or anticipated investigations by the Directorate of Criminal Investigations (DCI) or the Office of the Auditor-General cannot, of itself, constitute a lawful basis for seeking to join the Cabinet Secretary to these proceedings.
- 63.** With respect to the plea for injunctive relief, Counsel submitted that the Applicant has failed to satisfy the well-established principles in ***Giella vs Cassman Brown & Co. Ltd [1973] EA 358.***
- 64.** According to Counsel, land registry records are public records maintained within the statutory framework governing land administration, and any alleged mismanagement or interference with such records is, in any event, quantifiable and compensable in damages.
- 65.** Finally, it was submitted that the Motion invites this court to make premature determinations on substantive issues that properly fall for resolution at the trial. Such an approach, Counsel argued, amounts to an abuse of the court process. In

that regard, reliance was placed on **Muchanga Investments Ltd vs Safaris Unlimited (Africa) Ltd & 2 Others [2009] eKLR**, and **Omuya & 4 Others vs Nawel Business Agencies & 6 Others; Nairobi City County & 2 Others (Interested Parties) [2023] KEELC 2022 (KLR)**.

66. The 2<sup>nd</sup> Defendant in ELC No. 691 of 2011, filed written submissions on 24<sup>th</sup> November 2025. Counsel submitted that the Plaintiff, as *dominus litis*, is entitled to choose whom to sue and cannot be compelled to institute proceedings against a party from whom no relief is sought. As such, joinder of the Cabinet Secretary was legally untenable.
67. In that regard, Counsel referred the court to **Mulla, The Code of Civil Procedure, 16<sup>th</sup> Edition (Vol. II)**, on the interpretation of **Order 1 Rule 10** of the **Civil Procedure Rules**, wherein it is stated that a Plaintiff cannot be compelled to sue a person against whom he claims no relief. Reliance was also placed on **Santana Fernandes vs Kara Arjan & Sons & 2 others (1961) EA 695**, and **Malaysian Supreme Court decision in Tajjul Ariffin Mustafa v Heng (1993) Case 9 (SCM)**.
68. According to Counsel, the relief sought against the Cabinet Secretary for Lands merely concerns the production of documents which the Applicant considers relevant, a matter that does not, of itself, warrant her joinder.

**69.** Lastly, Counsel submitted that the suit was instituted in 2018 and that there must be finality to litigation through expeditious hearing and disposal. Allowing the application would necessitate service of summons upon a new party and reopening of pleadings that were closed nearly six years ago, thereby delaying the matter to the prejudice of all parties

**Analysis and determination**

**70.** At the outset, it is noted that the parties have extensively addressed the issue of injunctive relief in their respective submissions. However, from the framing of the Motion, the plea for injunction was sought pending the hearing and determination of the Application *inter partes*.

**71.** That stage has since been overtaken by events, as the Application is now before the court for determination after hearing all parties. Consequently, the question of interim injunctive relief pending inter partes hearing has become moot, and does not fall for substantive determination at this stage.

**72.** The issues that fall for determination are:

- i. *Whether the Preliminary Objection of 21<sup>st</sup> October, 2025 is competent and merited?*
- ii. *Whether the Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development should be enjoined in these proceedings as the 5<sup>th</sup> Defendant in ELC Case NO. 152 of 2018?*

iii. *Whether the Court should compel the Cabinet Secretary, Ministry of Lands, to produce and confirm the availability of records relating to L.R No. 24968/2 I.R No. 15257?*

**I. Whether the Preliminary Objection of 21<sup>st</sup> October, 2025 is competent and merited?**

73. The law with respect to preliminary objections is now well settled. Law JA in **Mukisa Biscuits Manufacturing Co. Ltd. vs. West End Distributors (1969) EA 696 at 700** stated that:

***“...a ‘preliminary objection’ consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”***

74. **Newbold, P** further held:

***“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained***

***or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increases costs and, on occasion, confuse the issues. This improper practice should stop.”***

75. The Supreme Court in the case of **Hassan Ali Joho & Another vs Suleiman Said Shahbal & 2 Others [2014] eKLR** re-affirmed the principles as set out in the **Mukhisa Case(supra)** stating:

***“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration ... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”***

76. In the present case, the objection raised is that the Motion offends the provisions of **Order 1 Rules 1, 3 and 10** of the **Civil Procedure Rules**, on the basis that it seeks interim orders against a proposed or non-party rendering it frivolous, vexatious and an abuse of the court process.
77. Considering the Motion, it is noted that the Applicant has not only sought interim reliefs against the Cabinet Secretary but her joinder herein. Once the court determines the plea for joinder and finds in the affirmative, nothing prevents the issuance of reliefs sought if merited. The objection fails.
78. The second issue is whether the Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development should be joined in these proceedings as the 5<sup>th</sup> Defendant in ELC Case No. 152 of 2018. Under **Order 1 Rule 3** of the **Civil Procedure Rules**, a person may be joined in a suit as a Defendant against whom any right to relief arising out of an act or transaction is alleged to exist. The said provision provides 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 acts or 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.”***

79. Speaking to the court's jurisdiction to allow joinder, **Order 1 Rule 10(2)** of the **Civil Procedure Rules** provides thus:

*“(2) 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.”*

80. The Court of Appeal in **Civicon Limited vs Kivuwatt Limited and 2 Others [2015] eKLR** discussed the import of **Order 1 Rule 10** hereinabove thus:

*“Again, the power given under the Rules is discretionary which discretion must be exercised judicially. The objective of these Rules is 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 proceedings. Thus,*

***any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined.”***

**81.** In *Pravin Bowry vs John Ward & Another [2015] eKLR*, the Court of Appeal while considering the principles to be considered in an application for joinder of parties to a suit referred to the Ugandan case of *Deported Asians Custodian Board vs Jaffer Brothers Ltd [1999] 1 E.A. 55 (SCU)* where the Court stated as follows:

***“A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. A party may be joined in a suit because the party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the cause or matter...”***

***For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders which the plaintiff seeks in the suit, would legally affect the***

***interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the court in that suit. Alternatively, a person qualifies (on an application of a defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.”***

- 82.** The 1<sup>st</sup> Defendant/Applicant asks that this court joins the Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development as a party to these proceedings, specifically as the 5<sup>th</sup> Defendant.
- 83.** The basis advanced for the proposed joinder is that the Cabinet Secretary authored a letter dated 4<sup>th</sup> September, 2025 indicating that the suit property lies on public land owned by the Social Health Authority (SHA), formerly the National Hospital Insurance Fund (NHIF), and that the I.R. number referenced by the Applicant does not correspond with the L.R. number appearing in the Ministry’s records.
- 84.** According to the Applicant, this position contradicts earlier communications emanating from the Ministry of Lands, namely letters dated 16<sup>th</sup> January 2018, 28<sup>th</sup> January 2022, and 30<sup>th</sup> May 2022, which he contends affirmed the authenticity of his title.

- 85.** On that basis, the Applicant argues that the Cabinet Secretary's presence in the proceedings is necessary in order to clarify the Ministry's position and to enable the court effectually and completely determine the dispute relating to the suit property.
- 86.** This plea is contested by the Respondents who collectively contend that the proposed joinder is unnecessary, misconceived and intended to procure, at an interlocutory stage, executive "confirmation" of matters that are contested and reserved for trial.
- 87.** They argue that the Cabinet Secretary is neither a necessary nor a proper party; that the statutory custodians of the material land records are already before the court; and that, in any event, the Applicant has adequate procedural avenues for production of documents without expanding the scope of parties and pleadings in a suit that is already advanced.
- 88.** The present matters, consolidated in 2018, concern disputed ownership of L.R No. 24968/2 I.R No. 152577 as between Cirtex Limited, the Applicant herein, and NHIF now SHA. All claiming ownership. The core question for determination in the consolidated suits therefore revolves around the validity and authenticity of the competing titles, and whether any of the instruments relied upon by the parties are impeachable in law.

- 89.** The court has considered the record and notes that the impugned letter by the Cabinet Secretary dated 4<sup>th</sup> September 2025 stating that the parcel “lies squarely on public land” allegedly owned by SHA and that the I.R. and L.R. numbers by the Applicant are inconsistent does not introduce a new, distinct controversy requiring the Cabinet Secretary’s personal presence as a party.
- 90.** The said position substantially mirrors the posture already taken by the Attorney General on behalf of the Chief Land Registrar; the Director of Surveys and the Director of Land Administration vide their Defence dated 25<sup>th</sup> March, 2021. The AG’s position is that the Applicant’s title is irregular and/or fraudulent and is unsupported by official records.
- 91.** In that regard, the joinder sought would add no substantive value to the adjudicative process, but would merely duplicate an existing Government position already placed before the court through the Attorney General and the relevant officers.
- 92.** Further, and in any event, the Cabinet Secretary is not the statutory custodian of land registration records. Under the Land Registration Act, the Chief Land Registrar and the Registrars are the repository of the registers.
- 93.** It follows that the evidentiary issues raised by the Applicant, such as the availability of the registry file, the authenticity of the instruments, the correspondence between the I.R. and L.R. numbers, the registry history, and the survey plans or

Deed Plans linkages are matters that properly fall within the mandate of the Chief Land Registrar and the relevant registry officers, who are already parties to these proceedings and are duly represented.

- 94.** Further, if the Applicant requires production of documents or clarification of official records, the Civil Procedure Rules provide adequate mechanisms, including discovery, notices to produce, and witness summons directed to the appropriate custodians of the records.
- 95.** Joinder cannot be invoked merely as a means of procuring documents or explanations from a potential witness. To do so would misconceive the purpose of joinder, which is to secure the presence of parties necessary for the complete adjudication of the dispute, rather than to facilitate the gathering of evidence.
- 96.** In any event, the court notes that no substantive claim has been pleaded against the Cabinet Secretary in the existing pleadings. The Applicant has not sought leave to amend his Counterclaim so as to introduce any cause of action, relief, or prayer directed against the proposed party.
- 97.** In the absence of such amendment, there exists no substantive basis upon which the Cabinet Secretary may be joined as a Defendant. Joinder of a party must be anchored on a pleaded claim or identifiable relief arising from the subject matter of the suit.

- 98.** Ultimately, and based on the reasons aforesaid, the court finds the plea for joinder to be unmerited.
- 99.** The last issue for determination is whether the court should compel the Cabinet Secretary, Ministry of Lands, to produce and confirm the availability of records relating to L.R No. 24968/2 I.R No. 152577 as referenced in the letters dated 16<sup>th</sup> January 2018, 28<sup>th</sup> January 2022 and 30<sup>th</sup> May 2022 emanating from the Ministry of Lands.
- 100.** The Respondents oppose this prayer on the grounds that the Cabinet Secretary is neither a party to these proceedings nor the statutory custodian of land registration records.
- 101.** They contend that the relief sought improperly invites the court to compel a non-party to produce documents and, further, to “confirm” administrative positions expressed in ministerial correspondence, thereby risking the premature validation of contested evidence before the issues in dispute are determined at trial.
- 102.** At the outset, and having already found that the prayer for joinder of the Cabinet Secretary as a party to these proceedings is unmerited, it necessarily follows that the present prayer cannot lie. The Cabinet Secretary is not a party to this suit, and it would be procedurally improper for the court to issue coercive orders against a person who has neither been joined to the proceedings nor accorded an opportunity to participate in them.

- 103.** Even if this were not the case, the statutory framework governing land registration is clear that the custodians of the land register and all related records are the Chief Land Registrar and other registrars established under the **Land Registration Act**, who are already parties before this Court.
- 104.** Consequently, any questions concerning the existence, authenticity, or availability of records relating to the suit property properly fall within the evidentiary mandate of those officers, who may be called upon to testify and produce the relevant records at trial.
- 105.** Additionally, if the Applicant seeks access to information held by the Ministry or any public office, the law provides a clear and structured framework under **Article 35** of the **Constitution** and the **Access to Information Act, 2016**, through which such information may be formally requested and obtained.
- 106.** The court cannot therefore be invited to circumvent those statutory mechanisms by issuing interlocutory orders compelling the Cabinet Secretary to produce or confirm the availability of records in the context of a contested suit.
- 107.** In the end, the Motion dated 1<sup>st</sup> October, 2025 is found to be unmerited and is dismissed with costs.

**Dated, signed and delivered virtually in Nairobi this 12<sup>th</sup> day of March, 2026.**

**O. A. Angote**  
**Judge**

**In the presence of:**

Mr. Nyacholi for 1<sup>st</sup> Defendant

Ms Asli for Plaintiff

Mr. Alan Kamau for 2<sup>nd</sup> - 4<sup>th</sup> Defendant

Mr. Ogembo for 2<sup>nd</sup> Defendant

Mr. Muyuri and Mose for Plaintiff in 691/2011

Court Assistant: Tracy

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