



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYERI

ELC APPEAL NO. E027 OF 2024

PETER KAMAU MWANGI

APPELLANT

VERSUS

ANN WANJIRU MWANGI.....

RESPONDENT

AND

PAUL GATUTHA MACHARIA

PAULINE GATHUTA MACHARIA

KAREN WANJIKU GICHURU...INTENDED INTERESTED

PARTIES

RULING

1. There are two motions before this court for consideration.

The first, dated April 11, 2025, is filed by the intended interested parties and includes the following prayers:

- a)** That the Honorable Court may be pleased to grant a stay of execution of the judgment delivered by Hon. M. Gituma (SRM) on July 24, 2024, along with all consequential orders, pending the hearing and determination of this application.
- b)** That Karen Wanjiku Gichuru, the applicant herein, being an interested party, should be joined in the primary suit, Nyeri CMELC Case No. 43 of 2019, as an interested party.
- c)** That the primary suit, Nyeri CMELC Case No. 43 of 2019, be transferred to a different court other than the trial court that originally heard it for a new hearing.
- d)** That Karen Wanjiku Gichuru be joined in the current appeal as an interested party.
- e)** That the Honorable Court be pleased to grant a stay of proceedings pending the hearing and determination of this application and the main suit.

f) That, pending an inter partes hearing of this application, an order of temporary injunction be issued restraining the respondents from interfering with the applicant's quiet possession of all that property known as Tetu/Muthuaini/2510.

g) That this Honorable Court be pleased to issue any other or further orders it deems just and appropriate.

h) The respondents should bear that costs.

2. The application is supported by the affidavit sworn by the applicant, Karen Wanjiku Gichuru, dated 4th December 2024.

3. The application is opposed; Charles Karweru swears a replying affidavit dated July 3, 2025.

4. The second application, dated June 17, 2025, requests the following orders from the court:

a) That the honorable court grant leave for Paul Gatutha Macharia and Pauline Wamuyu Gichuru to be added as interested parties in this appeal.

b) That, once leave is granted as requested in paragraph (a), Paul Gatutha Macharia and Pauline Wamuyu Gichuru be allowed to present their submissions and/or pleadings.

c) That the costs of this application be provided for.

- 5.** The application is supported by the affidavit deposed by the applicant, Paul Gatutha Macharia, on 17th June 2025.
- 6.** The application is opposed through the replying affidavit sworn by her advocate, Mr. Karweru Muchemi Charles, on July 3rd, 2025.
- 7.** The applications were disposed of through written submissions. I acknowledge the submissions by counsel representing the parties, as these greatly contributed to resolving the issues raised in the application.
- 8.** Based on the materials and submissions by the parties, the issues I identify for the court's decision are whether to include the applicants in this matter and appeal, whether the orders requested in the two applications are appropriate to grant, and who should be responsible for the costs of these applications.
- 9.** The applicant, in the application dated April 11th, asserts that during the hearing of the primary suit, she was the registered owner of the property known as Tetu/Muthuaini/2510, a subdivision from Tetu/Muthuaini/582. She maintains that she has been in physical occupation of

the said property at all relevant times. The primary prayers sought were for the cancellation of the land parcels numbered Tetu/Muthuaini/2508, 2509, 2510, 2511, 2512, and 2513. Among the relevant title deeds was the applicant's title deed for parcel number Tetu/Muthuaini/2510. The suit was conducted without the applicant's knowledge, and adverse orders were issued against her without affording her an opportunity to be heard by the Honourable Court. The judgment was delivered by the trial magistrate on July 24, 2024, accompanied by orders directing the Lands Registrar to cancel the applicant's title deed. Such actions were unlawful, as the applicant, being the registered owner of Tetu/Muthuaini/2510, was not involved in the proceedings and was deprived of the opportunity to participate, thereby adversely affecting her rights. She seeks to be joined in these proceedings to ventilate her rights and requests the orders as pleaded in the motion.

10. In the 2nd motion dated June 17, 2025, the applicants contend that it is not in dispute that the two intended interested parties were defendants in the suit before the trial court and that they were omitted from the appeal before this

honorable court. Additionally, their proprietary rights over the parcels of land numbered Tetu/Muthuaini/2509 and Tetu/Muthuaini/2508 have been affected by the judgment under appeal; therefore, they have a significant interest in the outcome of the appeal.

11. In answer to the two motions, counsel for the respondents contends that on the motion application dated 11 April 2025, the applicant made a similar application before the lower court, almost word for word, which was denied by the Court. If they were dissatisfied with the Court's decision, they should have appealed. Essentially, the application before the Court is an attempt at a second bite at the cherry, albeit in different forums. The rules of res judicata clearly apply. Asking this Court to grant an audience on appeal to the applicant is clearly an attempt to overturn the lower Court's decision in an application rather than an appeal.

12. Regarding the application dated June 17, 2025, counsel for the respondents asserts that the applicants were previously defendants in the suit before the lower court. To date, they have not filed an appeal against the judgment that canceled their individual titles. From the grounds and affidavits

supporting the case, it is clear that the applicants are attempting to rely on the appellant's appeal to make their own case. It is important to note that each of the defendants in the lower court had their own titles that were revoked. The question is whether a party that has not filed an appeal can request that a court, in an appeal in which they are not listed as respondents, vacate specific orders against their own title.

13. Joinder of parties is governed by Order 1 of the Civil Procedure Rules. Legally, joinder should be allowed for all parties claiming any right to relief related to the same act, transaction, or series of acts or transactions, whether jointly, severally, or alternatively, if separate suits would raise common questions of law or fact. The court can, on its own initiative, add a party if that party is necessary for resolving the core issue or if their presence is essential for the court to effectively and fully adjudicate all matters in the case. Therefore, the law permits the joinder of parties at any stage of proceedings. However, joinder may be refused if it causes practical problems, such as complicating the handling of the case, is unnecessary, or could lead to unwarranted delays or costs. In other words, joinder will be denied if the proposed

cause of action or relief is incompatible with, or completely different from, the existing case. The main consideration for joinder is whether a common question of fact or law would arise between the current and prospective parties. See the Supreme Court decision 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)** paragraph 34 of the judgment:

“With that definition of “interested party,” the Court proceeded to hold further [paragraphs 17-18]:

“(17) Suffice it to say that while an interested party has a ‘stake/interest’ directly in the case, an amicus’s interest is its ‘fidelity’ to the law: that an informed decision is reached by the Court having taken into account all relevant laws, and entertained legal arguments and principles brought to light in the Courtroom. “

[18] Consequently, an interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her

interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause...”

14. Can joinder be permitted at the appellate stage, as demonstrated in this case? The answer is yes. The Court of Appeal addressed this in **JMK v MWM & another [2015] eKLR**, where it clearly stated:

“Order 1 Rule (10) (2) of the Civil Procedure Rules empowers the court, at any stage of the proceedings, upon application by either party or suo motu, to order the name of a person who ought to have been joined or whose presence before the court is necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit, to be added as a party. Commenting on this provision, the learned authors of Sarkar’s Code of Civil Procedure (11th Ed. Reprint, 2011, Vol. 1 P. 887), state that:

“The section should be interpreted liberally and widely and should not be restricted merely to the parties involved in the suit, but all persons necessary for a complete adjudication should be made parties.

*” This Court adopted the same approach in **Central Kenya Ltd. V. Trust Bank & 4 Others, Ca No. 222 OF***

1998, when it affirmed that the guiding principle in amendment of pleadings and joinder of parties is that: “all amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs.”

We would however agree with the respondent that Order 1 Rule (10)(2) contemplates an application for amendment or joinder of parties where proceedings are still pending before the Court. Sarkar’s Code, (supra) quoting as authority, decisions of Indian Courts on the provision, expresses the view that an application for joinder of parties can be filed only in pending proceedings. In the same vein, the Court of Appeal of Tanzania, while considering the equivalent of Order 1 Rule 10(2) of our Civil Procedure Rules, in *Tang Gas Distributors Ltd v Said & Others*[2014] EA 448, stated that the power of the court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before, or during the trial; that it can be done even after judgment where damages are yet to be assessed; that it is only when a suit or proceeding has been finally

disposed of and there is nothing more to be done that the rule becomes inapplicable; and that a party can even be added at the appellate stage.”

15. Concerning the first application and in accordance with the principles I have outlined on joinder, and agreeing with the respondent, the applicant submitted an almost identical application to the lower court, which was subsequently rejected. I concur with the respondents that joinder is inappropriate in this appeal. If the applicant had been dissatisfied with the court's decision, the correct course was to appeal that decision rather than attempt to relitigate the matter through this substantive appeal. I share this perspective. Essentially, the current application before this Court constitutes an attempt at a second decision on the same issue, merely in different forums. Requesting this Court to review the case on behalf of the applicant is analogous to seeking to overturn the lower court's ruling by application rather than by a substantive appeal. That will amount to an abuse of the court process.

16. On the second application, the applicants were parties in the lower court. Dissatisfied with the outcome, the proper thing to do was to appeal. This appeal directly derives from

the lower court proceedings, where they were not interested parties but defendants. The application before the court was brought solely to circumvent the time limits for filing appeals and constitutes an abuse of Court process. If the applicants wanted to be heard on appeal, they should have filed an appeal. They should not be allowed to argue an appeal through the back door. They must follow the proper procedures in approaching the court and avoid attempts to bypass the established appeal process.

17. Arising from the foregoing, the applications dated April 11, 2025, and June 17, 2025, and the orders sought cannot be granted; they lack merit and are hereby dismissed with costs.

Dated, signed, and delivered electronically in Nyeri on this 12th day of March, 2026.

E. K. MAKORI

JUDGE

In the presence of:

Mr. Macharia for the Appellant

Mr. Kihara & Ms. Wangechi for the Applicants

Mr. Karweru for the Respondent

Kendi: Court Assistant