



**Hassan v Choka Chelule & Co Advocates & 2 others (Civil Case 194 of 2014)
[2026] KEHC 2853 (KLR) (Commercial and Tax) (26 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2853 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 194 OF 2014
F GIKONYO, J
FEBRUARY 26, 2026**

BETWEEN

ADAN ALI HASSAN PLAINTIFF

AND

CHOKA CHELULE & CO ADVOCATES DEFENDANT

AND

ABDI DAHIR AHMED 1ST INTENDED INTERESTED PARTY

LILIAN SILOLE TIMA 2ND INTENDED INTERESTED PARTY

RULING

1. The 1st and 2nd intended interested parties (the applicants) have applied to be joined in these proceedings through the notice of motion dated 18.3.2025 supported by the affidavit sworn on the same date by Abdi Dahir Ahmed and written submissions dated 4.10.2025.
2. The defendant filed a replying affidavit sworn by Leonard Kipngetch Chelule on 30.9.2025.
3. The plaintiff filed affidavits sworn on 22.4.2025, 30.6.2025 and 6.10.2025. He also filed written submissions dated 25.8.2025.

Applicants' case

4. The applicants' case is that the plaintiff and themselves are the registered co-owners of the property known as L. R. No. KJD/MAILUA/1332 and therefore their joinder is necessary to protect their proprietary interests.



Defendant's response

5. The defendant's replying affidavit was in response to both the application under consideration and the plaintiff's application dated 6.2.2025 seeking release of the original title to the subject property to his advocates.
6. The defendant confirmed that the 1st and 2nd applicants and the plaintiff are tenants in common of the subject property, each entitled to 1/3 of the property. They entered into an agreement for sale of property for Kshs. 20,600,000/-. The purchasers paid a deposit of Kshs. 8,000,000/- and left a balance of Kshs. 20,600,000/-.
7. The defendant was the purchasers' advocate in the sale transaction, and he issued an undertaking to pay the balance.
8. A dispute ensued after the purchasers failed to pay the balance of the purchase price within the agreed timelines. The defendant filed HCCC 81 of 2016 against the purchasers, claiming the balance. Judgment was entered in its favour for Kshs. 20,600,000/-. The original title deed was released to the defendant in execution of the decree.
9. The purchasers entered a consent dated 22.7.2019 for the subdivision of the property to cater for the amount paid and the sale of the 100-acre portion of the property to cater for the balance for onward transmission to the vendors.
10. The defendant entered a consent with the plaintiff for the sale of the property and that the 1/3 portion to be paid to him.
11. The defendant stated that the applicants have since settled their interest and found a purchaser for their interest which would discharge the undertaking on their part, and there should be an order for the property to be subdivided, and the two thirds of the property be transferred to the purchaser.
12. The defendant asserted that the plaintiff has insisted on denying the other parties their share and wants the whole property to himself, hence his application for the release of the original title to his advocates.
13. The defendant contended that if the plaintiff's application were successful, he would not be discharged from his undertaking to the three parties to secure payment to them as he would still be obligated to the applicants. He therefore urged that the interests of all the parties should be taken into consideration.

The plaintiff's response

14. The plaintiff argued that the applicants have not demonstrated any registered or equitable interest in the subject property capable of sustaining their claim for joinder at this stage of the proceedings. He also argued that they have not availed evidence of fraud, concealment or exclusion for their joinder.
15. The plaintiff submitted that the application fails to meet the threshold for joinder as they have not shown how their presence is necessary for effective and complete adjudication of the questions in the suit.
16. The plaintiff termed the application an abuse of the court process, misconceived, untenable and intended to derail the fair and final resolution of the proceedings.
17. The plaintiff highlighted that the other property's owners did not participate in HCCC No. 81 of 2016. He complained that the subject property has not been sold since 2019 and that there is no evidence that the applicants have secured a purchaser.



18. The plaintiff indicated that he is opposed to the proposal that he waits for payment upon the sale of the property as per the consent in HCCC No. 81 of 2016. He submitted that the defendant subdivides the property at his costs so that he can have his own title deed and dispose it by himself.

Analysis and Determination

19. The court may at any stage of the proceedings order 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. Order 1 Rule 10(2) of the Civil Procedure Rules
20. A person may be joined as a party in a proceeding: - '(i) because his presence will result in the complete settlement of all the questions involved in the proceedings; (ii) to protect the rights of a party who would otherwise be adversely affected in law; (iii) to prevent a likely course of proliferated litigation.' Meme v Republic, [2004] 1 EA 124
21. The plaintiff asserted that the applicants have not demonstrated any registered or equitable interest in the subject property for their joinder. He did not expressly admit that he and the applicants are tenants in common of the subject property.
22. However, the plaintiff alluded to the fact that the applicants were the other owners of the property but, they failed to participate in HCCC No. 81 of 2016.
23. From the pleadings, there are issues regarding execution of the judgment in the matter, and the plaintiff has sought the release of the original title to the property citing delay in effecting the sale.
24. I am satisfied that the joinder of the applicants is necessary for the complete settlement of the questions because they have a proprietary interest in the subject property.

Disposal

25. The application dated 18.3.2025 is allowed with costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE
APPLICATION THIS 26TH DAY OF FEBRUARY, 2026**

F. GIKONYO M

JUDGE

In the presence of: -

Ms. Akinyi for Yusuf for Respondent

Omar for 1st & 2nd Intended Interested parties

CA – Ivan/Aggrey

