



REPUBLIC OF KENYA



**Maweu v Mwangi & 2 others (Environment and Land Miscellaneous  
Case E175 of 2021) [2026] KEELC 1893 (KLR) (5 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1893 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND MISCELLANEOUS CASE E175 OF 2021**

**JA MOGENI, J**

**MARCH 5, 2026**

**BETWEEN**

**PURITY KATHOKI MAWEU ..... APPLICANT**

**AND**

**HEZEKIAH NJUKI MWANGI ..... RESPONDENT**

**AND**

**HYPAC INVESTMENT LIMITED ..... INTERESTED PARTY**

**AND**

**LUCY NKATHA FRANCIS ..... INTENDED INTERESTED PARTY**

**RULING**

1. In the Notice of Motion dated 4/09/2024 the Intended Interested Party has sought for the following Orders:
  1. Spent.
  2. That the Applicant herein be enjoined in this suit as Interested Party and be allowed to file a counter-claim.
  3. That the Honorable Court be pleased to grant orders for stay of execution of the orders delivered by Honorable Justice Mogeni delivered on 25/11/2021 and or any other orders of the Honorable Court in respect to LR No. Nairobi Block 115/119 pending the hearing and determination of this application.
  4. That pending the hearing and determination of this application this Honorable Court be pleased to grant an interim injunction restraining the Respondents their servants, agents or any person claiming under them from evicting, removing, attaching, disposing of or in any other



way alienating the Applicant's personal effects and or interfering with the Applicant's quiet enjoyment of a property known as LR No. Nairobi Block 115/1192 pending the hearing and determination of this suit.

5. That this Honorable Court be pleased to issue any other order that it may deem fit to grant in the circumstance.
  6. That the OCPD Kayole and OCS Mihango Police Station to ensure compliance of these orders.
  7. That the costs of this application be provided for.
2. The application is based on the grounds thereof and the Supporting Affidavit dated 4/09/2024. The Applicant avers that she is the legal wife of the Respondent and that the suit property is the only matrimonial home that the Respondent and herself together with her children have and they may be left homeless.
  3. That she is apprehensive to have received information from reliable sources that the Respondent/Applicant are planning to evict them from their matrimonial home and they will suffer substantial loss.
  4. She averred that she has never been involved in the case and only discovered that the Respondents intend to evict them when some strangers went to their house. Further that she contributed to the acquisition and development of the matrimonial property which is the suit property LR No. Nairobi Block 115/1192.
  5. She contends that whereas the loan her husband took was Kshs. 1,500,000/- now the suit property is valued at Kshs. 15,000,000/- and so she would suffer if the suit property were to be sold.
  6. In opposing the application, the Applicant/Respondent submitted and stated that the Intended Interested Party seeks to be enjoined in a determined suit where the Court has become functus officio. That the issues being raised by the Intended Interested Party have been overtaken by events. The Respondent stated that the application is a duplication of past applications which have been determined by this Honorable Court starting the application dated 22/03/2022 where a conditional stay was granted and not honored so it lapsed, then the Notice of Motion Application dated 23/06/2022 seeking review orders before it was heard another Notice of Motion application dated 30/06/2023 was filed and on 7/7/2022 the two applications were dismissed for want of prosecution.
  7. On the same date another Notice of Motion Application was filed seeking stay and reinstatement of the dismissed Application and on 7/02/2023 the Court reinstated the two applications dated 23.06.22 and 30/06/2022 conditionally and directed payment of throw away costs of Kshs. 20,000/- and deposit of security costs of Kshs. 100,000/-. But on 07/03/2023 another application was filed by the Applicant/Respondent seeking stay of the orders issued on 7/02/2023.
  8. On 12/07/2023 the Court issued further orders directing the Applicant to deposit Kshs. 50,000/- by 20/07/2023 and Kshs. 350,000/- within 90 days but there was no compliance and the stay lapsed and the Applicant was at liberty to execute.
  9. The Applicant filed a Notice of Appeal on 9/12/2021 but due to failure to prosecute it was dismissed on 29/08/2024. It was the averment of the Applicant/Respondent that the Intended Interested Party and her husband who is the Respondent have become litigious and they are keen on denying the Applicant/Respondent the fruit of her Judgment.
  10. I have read and considered the rival submissions by both the Intended Interested Party dated 6/11/2024 and for the Respondent dated 10/01/2025 and the various authorities cited in support



of their respective cases and I have taken the same into account in arriving at my decision. The Respondent/Applicant did not file any response to the application for joinder.

11. The starting point is to note that in litigation, the Plaintiff has a wide discretion on the person he wants to sue. Inevitably, the Plaintiff will sue the person from whom the remedy he seeks is to be derived from. In this case, the Applicant/Respondent have properly sued the person who is registered proprietors of the suit property. The Court of course also has discretion to order the inclusion of a person into, or the removal of a person, in a suit. This is contained in Order 1 Rule 10 which provides as follows :-

“ 10. Substitution and addition of parties [Order 1, rule 10.]

- (1) Where a suit has been instituted in the name of the wrong persons as Plaintiff, or where it is doubtful whether it has been instituted in the name of the right Plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as Plaintiff upon such terms as the Court thinks fit.
- (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.
- (3) No person shall be added as a Plaintiff suing without a next friend or as the next friend of a Plaintiff under any disability without his consent in writing thereto.
- (4) Where a Defendant is added or substituted, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new Defendant and, if the Court thinks fit, on the original Defendants.”

12. There is no explicit provision in the Civil Procedure Rules for the inclusion of a person as Interested Party to a suit. The Courts generally utilize the wide discretion given in Order 1 Rule 10, specifically Order 1 Rule 10(2), to add an Interested Party to the suit. Order 1 Rule 10 (2) does give the Court power to enjoin a party to the suit, “whose presence before the Court may be necessary in order to enable the Court effectually and completely adjudicate upon and settle all questions involved in the suit ...” In my view, the Court therefore needs to assess whether the joinder of the person is necessary.
13. The position of the Applicant is that since the suit property is shared as a matrimonial home and that the Intended Interested Party contributed to its acquisition eviction will cause substantial loss and suffering. That she therefore needs to be enjoined to the proceedings lest she is condemned unheard.



14. Black's Law Dictionary 9<sup>th</sup> Edition at page 1232 defines an Interested Party as;

“A party who has a recognizable stake (and therefore standing) in a matter.”
15. Order 1 rule 10(2) of the Civil Procedure Rules provides 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.”
16. The *Civil Procedure Act* is silent on the concept of “Interested Party”. However, under Order 41 Rule 5 of the Civil Procedure Rules 2010, make a reference to the term “Interested Party” as follows;

“The Court either on its own motion or on application by any Interested Party, remove a receiver appointed pursuant to this order on such terms as it thinks fit.”
17. *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, defines an Interested Party as;

“A person or an entity that has an identifiable stake or legal interest or duty in the proceedings and may not be directly involved in the litigation.”
18. From the legal provisions hereinabove the rule of joinder may be done in two ways; when he ought to have been joined and is not joined, that is when he is a necessary party and secondly when without his presence the questions in the suit cannot be completely decided.
19. In the case of Francis Kariuki Muruatetu & Anor. Vs. Republic & 5 Others (2016) eKLR the Court held that an Applicant must demonstrate the personal interest that he has in the matter by laying sufficient grounds before the Court; the prejudice he would suffer if he is not enjoined as Interested Party; set out the case that he intends to make before the Court and demonstrate the relevance of the evidence being proffered to the Court in determining the issue in controversy. In my own words, a party must disclose a cause of action which is either not before the Court or if it is before the Court, the nature of it is such that it cannot be effectually and completely determined by the Court without the party being heard.
20. In Kenya, Courts have taken a liberal application to joinder of parties. In the case of Kingori vs. Chege (2002) 2 KLR 243, Warsame J had this to say;

“In my view in deciding an application for joinder, the Court must exercise a liberal approach so as not to shut out a genuine litigant who is effectively interested or is bound by the outcome of the suit, however the Court must guard against the frivolous or vexatious litigant whose sole motivation is to complicate and confuse issues that are before Court for determination.”



21. The Court of Appeal in *Meme vs. Republic* (2004) KLR 637 set out circumstances which would warrant grant of leave to enjoin a party to wit:-
- “(i) Whether the presence of the party will result in the complete settlement of all the questions involved in the proceedings;
- (ii) Whether the joinder will provide protection for the rights of a party who would otherwise be adversely affected in law; and
- (iii) Whether the joinder will prevent a likely course of proliferated litigation.”
22. Therefore in determining whether or not a person is indispensable or a necessary party, the Court must carefully examine the facts of the case, the relief sought and the nature and extent of the absent parties interest in the controversy raised in the suit.
23. In the instant case the issues between the Applicant/Respondent and Respondent/Applicant were already determined. What has emerged is that the Respondent/Applicant who is the husband of the Intended Interested Party have decided to make the Court as a theatre of the absurd. Looking at the myriad of applications made and the outright disobedience of Court Orders tell a story of a litigant who is hell bent on making the Judiciary a laughing stock.
24. I wonder which other application will now be filed – is the children who will now apply to be enjoined or what? This is despicable behavior which has to be discouraged with finality. Court and Court orders must be respected. No documents have been placed before the Court to show that the Intended Interested Party played any role in acquisition of the suit property nor the enhanced value as averred. Even then, that is water under the bridge infact it is water deep down in oceans it cannot be salvaged at this point. The Intended Interested Party retains the liberty to proceed as she desires against the Applicant/Respondent because this cause she is pursuing is a gone cause.
25. The upshot is that the Applicant has not met the threshold set in the *Francis Kariuki Muruatetu* (supra). The Court cannot determine that the Applicant is a necessary party in this case.
26. Given the decision on joinder the other issues in the application are moot.
27. The circumstances surrounding this case do not warrant grant of leave to enjoin the Proposed Interested Party as is stipulated in the case of *Meme vs. Republic* (supra). For the foregoing reasons, the Court finds that the Proposed Interested Party’s Notice of Motion dated the 4/09/2024 is not merited. Having found as herein above, I now make the following orders in conclusion.
- i. The Application dated the 4/09/2024 seeking joinder by the Intended Interested Party to the suit is herein denied.
- ii. Cost of this Application shall be borne by the Applicant/Respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 5<sup>TH</sup> DAY OF MARCH 2025  
VIA MICROSOFT TEAMS.**

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**MOGENI J.**

**JUDGE**

Delivered in the presence of;

Mr. Farah for the Applicant



No appearance for the Respondent

Mrs. Kamundia for the Intended Interested Party

Mr. Melita - Court Assistant

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**MOGENI J.**

**JUDGE**

