



REPUBLIC OF KENYA



**KENYA LAW**  
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**Baya v Ahmed (Environmental and Land Originating Summons  
E007 of 2023) [2025] KEELC 5487 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5487 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E007 OF 2023**

**JO OLOLA, J  
JULY 24, 2025**

**BETWEEN**

**REHEMA KAZUNGU BAYA ..... PLAINTIFF**

**AND**

**KHALID OMAR AHMED ..... DEFENDANT**

**RULING**

1. By the Notice of Motion dated 31<sup>st</sup> January, 2025, Tulip Development Limited (the Intended 2<sup>nd</sup> Defendant/Applicant) prays for orders:-
  1. Spent;
  2. That leave be granted to the Intended 2<sup>nd</sup> Defendant/Applicant to be joined in these proceedings as the 2<sup>nd</sup> Defendant;
  3. Spent;
  4. That the Judgement entered herein on 16<sup>th</sup> October, 2024 and all consequential orders be set aside *ex debito* justitiae;
  5. That the proceedings and the Judgment herein and all consequential orders be declared a nullity in view of the determination already made by this court in ELC. No. 222 of 2020; *Tulip Development Limited – v- Rebema Kazungu Baya, Khalid Omar Ahmed, Salim Salim Mwabable, Joseph A. Ngetich and Abraham Birundu Nyangoto* on 11<sup>th</sup> June, 2024 on the ownership of L.R. No. MN/1/3220 registered as grant number CT 27666 in favour of Tulip Development Limited, the Applicants herein; and
  6. That the costs of this application be provided for.



2. The application is supported by an Affidavit sworn by the Applicant's General Manager Aleem Iqbal and is premised on the grounds that:-
  - i. The Applicant is the legitimate legal and beneficial owner of LR No. MN/1/3220 registered as CR. No. 27666;
  - ii. The Applicant obtained judgment in its favour against both the Plaintiff and the Defendant herein, among others in ELC No. 222 of 2020 where a declaration was made that the Applicant is the only lawful owner of the suit property and all titles held by the Defendants in the said suit, were obtained fraudulently and are null and void;
  - iii. The Plaintiff failed to disclose to this Honorable Court of the suits she had filed against the Applicant, the same being ELC No. 82 of 2017 (OS), ELC No. 120 of 2017 and ELC No. 131 of 2020 wherein her claims of adverse possession of the suit property were dismissed;
  - iv. The Plaintiff also failed to disclose to this court the existence of ELC No. 222 of 2020 filed by the Applicant wherein both the Plaintiff and the Defendant herein were named as the 1<sup>st</sup> and 2<sup>nd</sup> Defendants respectively and the determination made by the court on 11<sup>th</sup> June, 2024 conclusively determining the rights of the parties in respect of the suit property;
  - v. The suit herein is re judicata as the matter directly and substantially in issue has been directly and substantially in issue in previous suits as aforementioned and has been heard and finally decided by this court;
  - vi. The Applicant is apprehensive that the Plaintiff and those she is in collusion with, including the Defendant herein, may at any time alienate the suit property on the basis of the judgment which has been irregularly obtained herein which shall cause irreparable loss to the Applicant; and
  - vii. It is in the interest of justice that this Honorable court intervenes and prevents the gross abuse of its process through a fraudulent scheme intended to dispossess and deprive the Applicant of its property.
3. Rehema Kazung Baya (the Plaintiff) is opposed to the application. The Plaintiff avers that the application is incompetent, frivolous and vexatious as the matter has already been determined and the decree has been executed fully. The Plaintiff further avers that the issues raised by the Plaintiff cannot be dealt with in this matter and that the Applicant has to file a new suit wherein the same can be canvassed.
4. I have carefully perused and considered both the application as well as the response thereto. I have similarly perused and considered the submissions and authorities placed before the court by the Learned Advocates representing the parties.
5. By its application before the court, the Applicant urges the court to grant it leave to be enjoined as the 2<sup>nd</sup> Defendant herein and for the judgment entered herein on 16<sup>th</sup> October, 2024 and all consequential orders to be set aside. The Plaintiff is opposed to the said application.
6. Order 1 Rule 10(2) of the *Civil Procedure Rules, 2010* 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.”

7. The power of a court to order joinder is one based on its discretion. The discretion must however be exercised judiciously and in accordance with the parameters set out in Order 1 Rule 10(2) of the *Civil Procedure Rules*. That was the position taken in *Civicon Limited – v- Kivuwatt Limited and 2 others* (2015) eKLR where the court held as follows:

“Again the power given under the Rules is discretionary which discretion must of necessity 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.... From the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order 1 Rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”

8. In *Joseph Njau Kingori – v- Robert Maina Chege & 3 Others* (2002) eKLR, the court distilled the guiding principles in considering whether or not to allow joinder of an intending party as follows:

1. He must be a necessary party
2. He must be a proper party.
3. In the case of a defendant there must be a relief flowing from that defendant to the plaintiff.
4. The ultimate order or decree cannot be enforced without his presence in the matter.
5. His presence is necessary to enable the Court to effectively and completely to adjudicate upon and settle all questions involved in the suit.”

9. On the basis of the above legal provisions and authorities, this court must now consider whether on the basis of the material placed before the court, the Applicant ought to be joined in this suit in which a judgment has already been pronounced.

10. From a perusal of the record, the suit herein relates to a parcel of land known as LR. No. MN/1/3220 registered as CR. No. 27666. It was further apparent from a perusal of the record that at some point in time, the Defendant herein obtained registration as the proprietor of the said property. In the suit herein, the Plaintiff claimed to have acquired title to the said property by way of adverse possession. In the judgment delivered on 16<sup>th</sup> October, 2024, the court found in favour of the Plaintiff.

11. A perusal of the Supporting Affidavit of the Applicant’s General Manager Aleem Iqbal however reveals that the suit property had been the subject of other proceedings involving both the Applicant herein on the one side and the Plaintiff and the Defendant on the other. In Mombasa ELC Case No. 222 of 2020, the Applicant had sued both the Plaintiff and the Defendant herein accusing them of trespass and urging for a declaration that the title held by the Defendant was illegal and fraudulently obtained.



12. Upon hearing the dispute and in a judgment rendered on 11<sup>th</sup> June, 2024, the Honorable Justice Nelly Matheka did determine that the Defendant was not the legitimate owner of the suit property having fraudulently obtained the same and the title was deemed to have been cancelled.
13. The Applicant asserts that the Plaintiff herein was aware of the proceedings and the decision made in the said Mombasa ELC Case No. 222 of 2020 and ought to have known that she could not legitimately claim adverse possession from the Defendant who neither entered appearance nor filed any defence to the claim. The Plaintiff has not challenged the Applicant's assertion merely claiming that the suit has been concluded and that the Applicant cannot be enjoined to a matter where the decree has already been executed.
14. In my mind, the Applicant who is the registered proprietor of the suit property was a necessary party in the suit and ought to have been made aware of the proceedings before any adverse findings were made. The Applicant has demonstrated its personal interest and stake and ought to have been joined in the proceedings.
15. Dealing with a similar argument as that of the Plaintiff in the *Presbyterian Church of East Africa Pwani Presbytery and Another – v- Juma Jefa Mboe and Another* (2017) KEHC, 7321 (KLR) Hon. P.J.O. Otieno J. held as follows:

“The plaintiff/respondent argued and so forcefully that after judgment there cannot be an order for joinder and that the court has become functus officio. That cannot be true. To say that the mere existence of a judgment, however obtained, put a decision beyond reproach, would be to miss the point and reward impropriety and injustice many a times. My finding is that any process of the court that has left a necessary party out and unheard is not a fair and just determination. In fact, before a court of law determines a dispute with all concerned being afforded a chance to be heard the court reserves the right to set aside its orders to facilitate such parties being heard. It matters not that a judgment has been rendered or even a decree extracted and executed. Nothing done in violation of the right to be heard can be allowed to stand. I may only add that if there exists any principle or rule of law or practice anywhere that would suggest support for such, such would be unconstitutional and void to the extent that it negates on the right to be heard and heard fairly.”

16. In the matter herein, the Plaintiff did not bother to join the Applicant in these proceedings despite her knowledge that the Applicant had been declared by a Court as the rightful proprietor for the parcel of land she purported to claim from the Defendant. She proceeded to prosecute her claim without disclosing to the court about the judgment declaring the Applicant as the owner of the property. She cannot now waive the judgment she irregularly obtained against the cry of the Applicant to be heard.
17. It follows that I am persuaded that there was merit in the Applicant's Notice of Motion dated 31<sup>st</sup> January, 2025. I allow the same in terms of prayers Nos. 2, 4 and 5 thereof with costs.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 24<sup>TH</sup> DAY OF JULY, 2025**

.....

**J.O. OLOLA**

**JUDGE**

In the presence of:

Ms. Firdaus Court Assistant.



Mr. Mwakireti Advocate for the Applicant

No Appearance for the Respondents

