

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MILIMANI
ELCLC NO. E341 OF 2025

SULEIMAN MOHAMED.....1ST
PLAINTIFF/RESPONDENT

PATRICIA AUMA OTENGO.....2ND
PLAINTIFF/RESPONDENT

-VERSUS-

FRANKLINE MUTEGI NKOU.....1ST
DEFENDANT/RESPONDENT

STEPHEN THUITA CHEGE.....2ND
DEFENDANT/RESPONDENT

PETER SAMUEL NJAGI.....3RD
DEFENDANT/RESPONDENT

AND

DENNIS MURIITHI MUSYOKAINTENDED 4TH
DEFENDANT/APPLICANT

HARRISON MWANGI KURIA.....INTENDED 5TH
DEFENDANT/APPLICANT

BEDFORD GITONGA MWAMBA.....INTENDED 6TH
DEFENDANT/APPLICANT

RULING

1. The intended defendants/applicants filed the notice of motion dated 18th November, 2025, seeking the following orders:-

- i. That the honourable court be pleased to join the applicants herein as defendants in this suit.***
- ii. That costs of this application be provided for.***

2. The application is premised on the grounds inter alia that the intended defendants/applicants are the registered owners (tenants in common in equal share) of LR no. 21235/4. The application is further supported by the affidavit of Dennis Muriithi Musyoka, the 4th intended defendant/applicant sworn on 19th November, 2025. He deposed that together with Harrison Mwangi Kuria and Bedford Gitonga Mwamba, they are the registered owners, (as tenants in common in equal shares) of the suit property. He deposed that his share in the property was previously owned by his late father, Nelson Musyoka Mwamba, who had owned the same for over 20 years, and transferred to him to hold in trust for him and his siblings.
3. Separately, his late father and the other tenants in common (the 5th and 6th proposed defendants/applicants) developed residential structures on their respective portions of LR No. 21235/4, and have on their part established residential homes wherein they have resided for over 20 years and have never at any point relinquished or parted with possession of their shares. The 4th intended defendant/applicant deposed that he recently became aware of the present suit through Milimani MCELC No. E421 of 2025 involving himself and the 1st plaintiff/respondent and

discovered that the plaintiffs are seeking orders of adverse possession over the suit property.

4. That at all material times, his late father was the beneficial owner of his share and had developed a two-bedroom apartment thereon, which he let to the plaintiffs and the 1st plaintiff/respondent is currently occupying his share of the property. He deposed that he has already obtained eviction orders against the plaintiffs/respondents in Milimani MCELC No. E421 of 2025, which orders he annexed. He deposed that despite being fully aware of their occupation, proprietary interests, and the ongoing legal proceedings regarding the suit property, the plaintiffs/respondents have deliberately and mischievously failed to join him and his co-applicants as parties to this suit.
5. The 4th intended defendant/applicant averred that together with his co-applicants, they are necessary and proper parties to this suit and that their participation is essential for the complete, effectual and just determination of all issues concerning ownership, possession and occupation of the suit property, thus it is in the interest of justice that they be enjoined to this suit as defendants.
6. The application was opposed by the replying affidavit of the 1st plaintiff/respondent sworn on 4th December, 2025. He deposed

that intended defendants/applicants have failed to satisfy the requirements for joinder under **Order 1 Rule 10** of the **Civil Procedure Rules**, and that their application is frivolous, incompetent and an abuse of the court process. Further, that they allege to be the registered owners of the suit property yet they have completely failed to demonstrate the root of their alleged title, contrary to the **Land Registration Act, Land Act**, and judicial precedents. Further, the alleged possession and occupation for over 20 years, has not been supported by any credible evidence whatsoever including utility bills, tenancy records, approvals, photographs, receipts or any document indicating long-term residence.

7. According to the 1st plaintiff/respondent, the intended defendants/applicants are trespassers attempting to unlawfully interfere with their long, open, exclusive and uninterrupted possession of the suit property, which is the basis of their claim for adverse possession. Further, that reliance on Milimani MCELC No. E421 of 2025 does not establish ownership of the suit property, nor does it diminish their occupation or support their bid for joinder.
8. The application was canvassed through written submissions. The intended defendants/applicants filed their submissions dated 12th

February, 2026. The plaintiffs/respondents filed their submissions dated 20th February, 2026. I have considered the application, the reply and the written submissions filed by the respective parties. The issue for determination is *whether the 4th, 5th and 6th intended defendants/applicants are a necessary party in this suit to warrant joinder.*

9. The rules governing joinder of a party are found in **Order 1** of the **Civil Procedure Rules. Order 1 Rule 10** provides that:-

“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.”

10. Further, **Order 1 Rule 3** further states 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.”

- 11.** The Black's Law Dictionary 8th Edition defines a “Necessary Party” as:

“a party who being closely connected to a lawsuit should be included in the case if feasible but whose absence will not require dismissal of proceedings.”

- 12.** The intended defendants/applicants relied on the holding of Nambuye J (as she then was) in the case of **Joseph Njau Kingori v Robert Maina Chege & 3 others [2002] KEHC 1192 (KLR)** where it was observed:-

“The operative words in order I rule 10(2) are that “the name of any person who ought to have been joined or whose presence before the court may be necessary in order to enable the court effectively and completely to adjudicate upon all questions involved in the suit be added.”

- 13.** Additionally, in **Civicon Limited v Kivuwatt Limited & 2 others [2015] eKLR** it was held that:-

“In the case of Gurtner vs Circuit (1968) I All ER 328 it was held that , a party may be enjoined if he can demonstrate that any order in the action would directly affect him either legally or financially. (Denning, M.R.) stated thus:

“...The bureau clearly had a commercial interest in resisting the declaration; but that is not enough. John Stephenson J accepted the analysis of the rule and the many previous decisions under it contained in the exhaustive judgment of Devlin, J., in A Amon vs Raphael Tuck & Sons, Ltd. (1956) 1 All ER 273 and took the view that the court had no jurisdiction to add a party against the will of the plaintiff unless the person seeking to be added was:

“...at least able to show that some legal right enforceable by him against one of the parties to the action or some legal duty enforceable against him by one of the parties to the action will be affected by the result of the action...”

...The only reason which makes it necessary to make a person a party to an action is so that he may be bound by the result of the action, and the question to be settled therefore, must be a question in the action which cannot be effectively and completely settled unless he is a party...”

14. The intended defendants/applicants annexed a copy of the certificate of title, indicating that all three of them are the registered owners of the suit property. The plaintiffs/respondents seek to establish rights of adverse possession over the same suit

property. Any rights of adverse possession are registered against the title of the property, therefore any orders granted herein shall affect the intended defendants/applicants. The other issues concerning the root of the title can be interrogated at the hearing of the case. The intended defendants/applicants have proved that their joinder in this suit is necessary.

15. From the above, I find merit in the notice of motion dated 18th November, 2025 and it is allowed in the following terms:-

- i. The 4th, 5th and 6th intended defendants/applicants are joined in this suit as the 4th, 5th and 6th defendants respectively, to join the applicants herein as defendants in this suit.***
- ii. The 4th, 5th and 6th defendants have 21 days from the date hereof to file and serve their statement of defence and the accompanying documents.***
- iii. Each party to bear their own costs.***
- iv. Further mention on 1st July, 2026 for further directions.***

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 23RD DAY OF APRIL, 2026.**

**HON. MBOGO C.G.
JUDGE
23/04/2026.**

In the presence of:

Ms. Benson Agunga - Court assistant
Ms. Masomi for the Petitioner
No appearance for the Respondents

ORIGINAL