

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MAKUENI**  
**ELC CASE NO. E018 OF 2023**

**LUCAS KYALO MUSAU (Sued as the legal representative and administrator of the Estate of Daniel Musau – Deceased) .....PLAINTIFF**

**-VERSUS-**

**KALEVU MUNYWOKI MAVI (Suing as Administratrix ad litem of the Estate of Munyoki Nzina Mualavu alias Munywoki Mavi ....INTENDED INTERESTED PARTY/1<sup>ST</sup> APPLICANT**  
**JAMES LITO .....DEFENDANT/2<sup>ND</sup> APPLICANT**

**RULING**

1. The Applicants filed the Notice of Motion dated 24<sup>th</sup> October, 2025 under the provisions of Sections 1A, 1B, 3A and 80 of the Civil Procedure Act in addition to Order 1 Rule 3 and Order 40 of the Civil Procedure Rules, 2010.
2. The following orders were sought: -
  - 1) [SPENT]
  - 2) [SPENT]
  - 3) **THAT this Honourable Court be pleased to review and set aside or vary the judgment with respect of this matter and its 2<sup>nd</sup> and 3<sup>rd</sup> orders it made in a judgment delivered on the 22<sup>nd</sup> of October 2025.**
  - 4) **THAT this Honourable Court issue an order prohibiting the Plaintiff/Respondent from interfering with the 7<sup>th</sup> Defendant's/2<sup>nd</sup> Applicant's use and peaceful occupation of formerly LR No. NZAUI/KALAMBA/80 or on any other LR resulting from the subdivision of NZAUI/KALAMBA/80 or NZAUI/KALAMBA/1070.**

**5) THAT this Honourable Court be pleased to reopen and retry the main suit with the intended Interested Party/1<sup>st</sup> Applicant being granted leave to appear as a Defendant or Counter-claimant or both.**

**6) THAT costs be provided for.**

3. In support of the application, a joint supporting affidavit was sworn by Kalevu Munywoki Mavi and James Lito Mulinge on 24<sup>th</sup> October, 2025. The deponents state that the late husband of the Intended Interested Party concluded a sale agreement on 9<sup>th</sup> August, 1992 with the father of the Plaintiff/Respondent for the sale of one hectare of land within LR No. NZAUI/KALAMBA/80. That the sale agreement spanned up to 8<sup>th</sup> May, 1997 whereafter the late husband of the 1<sup>st</sup> Applicant took over peaceful occupation of the suit property.
4. It was further averred that before transfer of ownership of the purchased portion and before the demise of the 1<sup>st</sup> Applicant's husband, he sold the portion of land he had purchased to the 2<sup>nd</sup> Applicant herein. That despite the full knowledge by the Plaintiff/Respondent, he advertently or inadvertently failed to include the 1<sup>st</sup> Applicant to represent Munywoki Mavi (Deceased) *per stirpes*.
5. The Applicants averred that on or before 24<sup>th</sup> June 2025, the Plaintiff went ahead and caused subdivision of the suit property without obtaining the consent of the Land Control Board awarding Munywoki Mavi 0.4 hectares as opposed to the actual size of land that was purchased. That the Plaintiff sued for eviction of the 2<sup>nd</sup> Applicant as a trespasser on a piece of land which belonged to the 1<sup>st</sup> Applicant's late husband.
6. The Applicants contended that the orders issued on 22/10/2025 endanger the interests of the Applicants adding that the 1<sup>st</sup> Applicant was not notified and given a chance to be heard which is contrary to the rules of natural justice. They urged the court to grant the application as prayed.

7. Opposing the application, the Plaintiff/Respondent filed a replying affidavit sworn by himself on 20<sup>th</sup> November, 2025. He averred that on 9/8/1992, his late father sold one acre of land to Munywoki Mavi. That the late Munywoki Mavi sold his one-acre portion of land to the 2<sup>nd</sup> Applicant in the year 2011. The Respondent averred that the 1<sup>st</sup> Applicant has no *locus standi* to institute the instant suit because she is not the owner of the land. It was further averred that the 1<sup>st</sup> Applicant is acting at the behest of the 2<sup>nd</sup> Applicant since the land in question does not form part of the Estate of Munywoki Mavi.
8. The Respondent contended that the 2<sup>nd</sup> Applicant was sued for trespass into an extra one and half acre piece of land belonging to the Estate of Daniel Musau Nzyoka since he is the one in occupation of the land and not the Estate of Munywoki Mavi. That the principal suit is for the eviction of the trespassers and the 1<sup>st</sup> Applicant is not a party. He urged the court to dismiss the application with costs.
9. The Applicants filed a further joint affidavit sworn on 24<sup>th</sup> November, 2025 in response to the Respondent's replying affidavit. They averred that contrary to the Respondent's assertions; both of the Applicants have been in occupation of one hectare of land in LR NZAUI/KALAMBA/80 for more than thirty years. They urged the court to reject the replying affidavit with costs.
10. The application was canvassed by way of written submissions. Only the Applicants' submissions were on record as at the time of writing this ruling.
11. Counsel for the Applicants identified one issue for determination namely: -
  - a) *Whether it is in the interest of justice that the 1<sup>st</sup> Applicant should be joined in the foregoing matter as an Interested Party.*
12. Submitting that the 1<sup>st</sup> Applicant had demonstrated that she has a protectable interest in the case and that refusal to grant her an order for joinder would result in loss of more than one half of her late husband's estate, Counsel urged the

court to allow the application as sought. Reliance was placed on the case of **M'imwenda & another v Mire [2024] KECA 1257 (KLR)** in support of the application.

13. The 1<sup>st</sup> Applicant seeks joinder as an interested party in these proceedings in addition to the review and setting aside of the order issued by this court on 22<sup>nd</sup> October, 2025. In reply, the Respondent contended that the 1<sup>st</sup> Applicant is not a party in the primary suit which was instituted solely against the trespassers within LR No. NZAUI/KALAMBA/80. The Respondent maintained that the 1<sup>st</sup> Applicant has no locus standi to institute these proceedings.

14. Joinder of parties to proceedings is governed by Order 1 of the Civil Procedure Rules. In respect of joinder of defendants to a suit, Order 1 Rule 3 of the Civil Procedure Rules 2010 outlines 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.’**

15. Order 1 Rule 10 (2) goes on to provide as follows: -

**‘(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.’**

16. The sole issue for determination is whether the 1<sup>st</sup> Applicant has demonstrated merit in the application for joinder as a Defendant in the proceedings.
17. The 2<sup>nd</sup> Applicant/7<sup>th</sup> Defendant has been sued by the Plaintiff vide the Plaint dated 23<sup>rd</sup> May, 2023. Among the orders sought therein is for vacant possession to be awarded to the Plaintiff against the 7<sup>th</sup> Defendant.
18. The 7<sup>th</sup> Defendant filed a Defence and Counterclaim on 15<sup>th</sup> June, 2023. His line of defence to the Plaintiff's suit is founded on the basis that he purchased two and half acres of land within LR No. NZAUI/KALAMBA/80 from the 1<sup>st</sup> Applicant paying the full purchase price of Kshs. 300,000/=. He further averred that he took possession of the land and made developments thereat.
19. The 7<sup>th</sup> Defendant/Applicant counterclaims against the Plaintiff for a declaration that he is bona fide purchaser of the land comprised in the suit property. He has also sought an order for transfer of the portion occupied by himself.
20. The 7<sup>th</sup> Defendant derives his claim to the suit property from the 1<sup>st</sup> Applicant/Intended Interested Party. It is the 1<sup>st</sup> Applicant's case that the Plaintiff's late father sold one hectare of land to her late husband in 1992 and that the Plaintiff is in breach of the sale agreement for failing to transfer the one hectare of land. In the same vein, the Plaintiff contends that while indeed his late father sold land to Munywoki Mavi (deceased), the area of land is one acre and not one hectare.
21. From the foregoing background, it is clear that the respective claims of the Applicants and the Respondent are intertwined from a similar set of facts. This court has not had the opportunity to hear the parties on the dispute over the land and make a determination on the validity of their ownership claims. Amongst the contested issues were a series of sale agreements spanning between 1992 and 2011.

22. In the case of Werrot and Company Ltd & Others v Andrew Douglas Gregory & Others [1998] eKLR it was held as follows: -

*“For determining the question of who is a necessary party there are two tests; (i) there must be a right to some relief against such a party in respect of the matter involved in the proceeding in question and (ii) it should not be possible to pass an effective decree in the absence of such a party.”*

23. Amongst the prayers sought by the Plaintiff in the Plaint are orders for eviction and a permanent injunction against the 7<sup>th</sup> Defendant. The 7<sup>th</sup> Defendant cannot effectively defend his claim to the suit property without involving the 1<sup>st</sup> Applicant who purchased the land from the Plaintiff’s father before subsequently selling it to the 7<sup>th</sup> Defendant.

24. These are substantive orders which ultimately may prejudice the 7<sup>th</sup> Defendant if the 1<sup>st</sup> Applicant is not made a party to these proceedings. It is therefore the finding of this Court that the 1<sup>st</sup> Applicant’s presence is necessary for purposes of defending her proprietary interest in the suit property.

25. In Pravin Bowry v John Ward & another [2015] eKLR, the Court of Appeal commenting on who is a necessary party referred to the Ugandan case in Deported Asians Custodian Board v Jaffer Brothers Ltd [1999] 1 E.A. 55 (SCU) where the court stated as follows: -

*“A clear distinction is called for between joining a party who ought to have been joined as a Defendant and one whose presence before the court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. A party may be joined in a suit because the party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the cause or matter... For a person to be joined on the ground that his presence in the suit is necessary for effectual and*

*complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders which the Plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the court in that suit. Alternatively, a person qualifies (on an application of a Defendant) to be joined as a co-Defendant, where it is shown that the Defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.”*

26. In conclusion, it is in the interest of effectual and complete adjudication of the dispute herein that the 1<sup>st</sup> Applicant should be made a party to the proceedings. Again, since the orders sought would affect the rights of the 7<sup>th</sup> Defendant who would then turn his sights for legal recourse against the 1<sup>st</sup> Applicant, an order for joinder would prevent unnecessary protraction and multiplicity of suits.

27. In the end, the application herein is merited. It ought to be allowed in the following terms: -

- 1) An order for joinder is hereby issued granting 1<sup>st</sup> Applicant leave to appear as a Defendant. The Pleadings in this matter shall be served upon the 1<sup>st</sup> Applicant only who shall be at liberty to file a defence to the Plaintiff's claim.**
- 2) THAT costs of the application shall be in the cause.**

It is so ordered.

.....  
**HON. E. O. OBAGA**

**JUDGE**

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS  
THIS 23<sup>RD</sup> APRIL, 2026.**

**IN THE PRESENCE OF:**

Mr. Mutiso for Applicant.

Court assistants – Steve and Nyaanga

ORIGINAL