



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELCL (OS) CASE NO. E015 OF 2024

JOSEPH KABIRI MBURUGU1ST

APPLICANT

AGNES KARINTHONI MBURUGU.....2ND

APPLICANT

ALICE KARWITHA MBURUGU.....3RD

APPLICANT

=VERSUS=

**JEREMIAH KAMATHI KAIRANYA (*Sued as the
Legal Representative of the estate of
M'MUKINDIA M'KAIRANYA also known as
LAWRENCE KAIRANYA M'MUKINDIA -
DCD*).....RESPONDENT**

RULING

1. Falling for determination in this ruling is a notice of motion brought by **Newtone Gitonga Kairanya [*the applicant*]**, dated 24/7/2025. Through it, the applicant seeks to be joined in this suit as an interested party and to be granted leave to file pleadings in the suit. The three plaintiffs/claimants opposed the application. The key issue to be determined in the ruling is whether the applicant is a necessary party for the

effectual and complete adjudication and settlement of all the questions that are involved in the suit. Before I analyse and dispose the above issue, I will briefly outline the parties' respective cases on the application.

2. The application was premised on the grounds outlined in the motion and in the applicant's two affidavits dated **24/7/2025** and **13/10/2025** respectively. It was canvassed through brief oral submissions tendered on 18/2/2026. The case of the applicant is that he is one of the beneficiaries of the estate of the late **M'Mukindia M'Kairanya** *also known as Lawrence Kairanya M'Mukindia* (the deceased) pursuant to a certificate of confirmation of grant issued on 15/9/2025 in **Meru High Court Succession Cause No 2 of 2020**. Vide the said certificate of confirmation of grant, the suit land, **Nyaki/Kithoka/1722**, devolved to him together with **Jeremiah Kamathi Kairanya** and **Mwenda Jacob Kairanya** in equal shares. **Nyaki/Kithoka/1722** [*the suit land*] is the subject matter of this originating summons.
3. The applicant contends that because he is one of the beneficiaries of the suit land under the certificate of confirmation of grant, he has an interest in the suit land and he is a necessary party for the purpose of enabling the court to effectually and completely adjudicate upon and settle all the questions involved in the originating summons. The applicant adds that the reliefs sought in the originating summons have a direct bearing on the properties of his deceased father [the deceased] and therefore there is need for him to be joined in the suit. He contends that the claimant will greatly interfere with his deceased father's right to own property.

4. The three plaintiffs/claimants opposed the application through a replying affidavit sworn on 2/10/2025 by **Joseph Kabiri Mburugu** and through oral submissions tendered by their Learned Counsel, **Mr. Murango Mwenda**, on 18/2/2026. The case of the plaintiffs is that the deceased is the registered proprietor of the suit land. The three plaintiffs sued the administrators of the estate of the deceased because the deceased was and is still the registered proprietor of the suit land. The plaintiffs add that the defendant is the duly recognized legal representative of the deceased proprietor of the suit land.
5. The plaintiffs add that the applicant is not a necessary party because he is not a personal representative of the deceased proprietor. They add that the key issue before court is whether they have acquired ownership of the suit land through adverse possession. They contend that given that the suit land was at all material times registered in the name of the deceased and is still registered in the name of the deceased, the administrator of the estate of the deceased is the proper party to respond to the claim. They urge the court to reject and dismiss the application.
6. The court has considered the application and the submissions tendered on the application. As pointed out in the opening paragraph of this ruling, the key issue to be determined in the ruling is whether **Newton Gitonga Kairanya** is a necessary party for the effectual and complete adjudication and settlement of all the questions involved in the suit.

7. The criteria upon which this court exercises jurisdiction to issue a joinder order has been legislated under **Order 1 rule 10 (2)** of the **Civil Procedure Rules** which 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.”

8. Over the years, our courts have developed jurisprudence that guides them when exercising jurisdiction to grant an order of joinder. The Court of Appeal in ***Yawa & 35001 Others vs Chome (suing as the administrator of the Estate of Mumba Chome Ngala) (deceased) and 19 Others*** (Civil Application No. 100 of 2018) KECA 35 KLR stated as follows:

“The rationale behind the joinder of any party to proceedings is to have on board a necessary party for purposes of determining the real issues in dispute. Perhaps, this is reason behind the general guiding principle that joinder of a party like amendment of pleadings, should be freely allowed at any stage of the proceedings,

provided that it will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs.”

9. The Court of Appeal in the same case laid down the criteria for joinder in the following terms:

“In as much as an application by a party to be joined to any proceedings should not be restricted, there are criteria to be met by the party intending to be joined. The criteria which are in no way exhaustive include:

1) The applicant must demonstrate that it would be desirable for him/her to be added as a new party and that his/her presence would enable court to resolve all the matters in the dispute.

2) The joinder will not prejudice the other parties.

3) The joinder will not vex the parties or convolute the proceedings with unnecessary new matters and grounds not contemplated by the parties or envisaged in the pleadings.”

10. In ***JMK and MWM*** Misc Mombasa Civil Appeal No.15 of 2015, the Court reiterated the above principle as follows:

“Order 1 Rule (10) (2) of the Civil Procedure Rules empowers the court, at any stage of the proceedings, upon application by either party or suo moto, to order the name of a person who

ought to have been joined or whose presence before the court is necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit, to be added as a party."

- 11.** This court has been expressly invited to exercise jurisdiction under **Order 1 rule 10** of the **Civil Procedure Rules**. Secondly, the sole question to be determined in this originating summons is whether the plaintiffs have acquired title to land parcel number **Nyaki/Kithoka/1722** through adverse possession. At the time of initiating the suit, the plaintiffs exhibited an official search [extract of the land register] which reveals that the suit land is registered in the name of the deceased on 11/2/1993. It also reveals that on 27/8/2020 an inhibition was registered against the title. No evidence has been presented at this point to demonstrate that there has been any change in terms of the above registration. Put differently, at this point, the applicant has not demonstrated that he is the registered proprietor of the suit land. All that the applicant is waving is a certificate of confirmation of grant relating to the about 58 parcels of land which the deceased owned.
- 12.** Does the certificate of confirmation of grant render the applicant a necessary party at this stage under **Order 1 rule 10(2)** of the **Civil Procedure Rules**? I do not think so. Administration of the estate of a deceased land owner is a process. Obtention of a certificate of confirmation of grant is one of the steps that are undertaken by the personal representative of a deceased person once the grant is issued.

The next step will be the execution of the relevant instruments of transmission and presentation of the instruments to the Land Registrar for registration. Where necessary, subdivision of the relevant parcel may have to be undertaken. All the above are processes that are to be undertaken by the administrator of the estate.

- 13.** At this point, the suit land is still registered in the name of the deceased. Under **Section 79** of the **Law of Succession Act**, the person in whom the suit land still vests is the personal representative of the deceased [the administrator of the estate of the late **M’Kairanya**]. That person is the defendant/respondent in this originating summons. The applicant’s contention that the certificate of confirmation of grant alone makes him a necessary party to this suit at this point is a misapprehension of the law.
- 14.** For the above reasons, it is the finding of this court that the applicant has failed to meet the criteria for joinder to a subsisting suit under **Order 1 rule 10** of the **Civil Procedure Rules**. In tandem with the general principle on costs under **Section 27** of the **Civil Procedure Act**, the applicant shall bear costs of the application.

DATED, SIGNED AND DELIVERED AT MERU THIS 14TH DAY OF APRIL, 2026.

**B M EBOSO [MR]
ELC JUDGE**

In the Presence of:

Ms. Githinji for the proposed Interested Party

Mr. Murango Mwenda for the Plaintiffs.

Mr. Tupet - Court Assistant

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