



**Mwangi & another v Gathoni & 4 others (Civil Appeal (Application)
E088 of 2024) [2026] KECA 805 (KLR) (24 April 2026) (Ruling)**

Neutral citation: [2026] KECA 805 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL (APPLICATION) E088 OF 2024
LA ACHODE, JA
APRIL 24, 2026**

BETWEEN

AGNES MUTHONI MWANGI 1ST APPLICANT

PETER NDEGWA MWANGI 2ND APPLICANT

AND

PRISCILLA WANJERI GATHONI 1ST RESPONDENT

PRIMO THUKU GATHONI 2ND RESPONDENT

SERAH WANGARI MBUGUA 3RD RESPONDENT

AND

ROSE WANJIRU MUTAHI 1ST PROPOSED RESPONDENT

JOSEPH KIRANGA MUTAHI 2ND PROPOSED RESPONDENT

(Being an application for joinder in the appeal against the Judgment of the Environment and Land Court at Nyeri (Olola J.) dated 25th January, 2024 in ELC Case No. 386 of 2014)

RULING

1. In the Amended Notice of Motion dated 19th December, 2025, brought pursuant to rule 46(1) of the Court of Appeal Rules 2022 the applicants are seeking the following orders:
 - a. Joinder of Rose Wanjiru Mutahi as the 4th respondent and Joseph Kiranga Mutahi as the 5th respondent.
 - b. Cancellation of the transfer of the suit land THEGENGE/KARIA/1682 effected Pendente Lite.



- c. An injunction restraining the respondent from further dealing with the suit property, pending the determination of the appeal.
2. By dint of rule 55 (2) of the Court of Appeal rules 2022 only the prayer on joinder of Rose Wanjiru Mutahi and Joseph Kiranga Mutahi as the 4th and 5th respondents respectively, needs concern me in this ruling as a single Judge.
 3. The crux of the matter is that the applicants filed a Notice of Appeal on 30th January, 2024 following a judgment delivered in Nyeri ELC No. 386 of 2014. That despite the pendency of the appeal, the 3rd respondent Serah Wangari Mbugua, transferred the suit land to Rose Wanjiru Mutahi the proposed 4th respondent on 22nd March, 2024 and she subsequently obtained a title deed in her name on 27th March 2024. The transfer was confirmed by an official search dated 7th June, 2024. Another official search dated 7th August, 2024 confirms that she thereafter, transferred the land to Joseph Kiranga Mutahi, the 5th proposed respondent.
 4. The applicants submit the obvious that under rule 46(1) this Court has the power to order an amendment to the appeal for sufficient reasons. They aver that the proposed respondents have acquired a proprietary interest in the subject matter and joinder is therefore, essential to ensure any order regarding the land is directly binding on the current title holder.
 5. The applicants urge that joinder will prevent a multiplicity of suits and will effectively determine all issues relating to the property. That fairness and principles of natural justice (*audi alteram partem*), dictate that the proposed respondents be given an opportunity to present their case, as their rights are directly affected. The applicants aver that their appeal is not frivolous. It raises bona fide triable issues with high chances of success.
 6. The Amended Notice of Motion is supported by an affidavit sworn by Peter Ndegwa Mwangi on 19th December, 2025, and his written submissions dated 20th January 2026. Both are filed on his own behalf and on behalf of the 1st applicant reiterating the grounds in the motion. The applicants aver that they obtained an official search dated 7th June, 2024, confirming that the suit land had been transferred to Rose Wanjiru Mutahi, and another official search dated 7th August, 2024 confirming that the land had thereafter, been transferred to Joseph Kiranga Mutahi making them necessary parties to this suit.
 7. The application is opposed by the respondents by a replying affidavit sworn on 20th January, 2026 by Rose Wanjiru Mutahi. She deposes that at the time of filing this application, she was not the registered owner of Title No. THEGENGE/KARIA/1682, as it was on 1st August 2024, registered in the name of Joseph Kiranga Mutahi. She is therefore, not a necessary party in this appeal and she will not assist the Court in any way to effectually and completely adjudicate upon and settle all the questions involved. She deposes that joining her in the suit will only vex and prejudice her, as she has no equitable interest in the land and the official searches support her averment.
 8. The respondents posit in submissions filed on 16th March, 2026 by Wahome Gikonyo Advocate, that the amended application was filed without leave of the Court in contravention of rule 46 and is therefore incompetent and for striking out. Secondly, the question that was before the superior court and is now before this Court is whether the appellant had acquired the suit land by adverse possession and the proposed 4th and 5th respondents are not necessary in the determination of this issue as they did not give any evidence in the superior court in this regard.
 9. The respondents rely on the case of *M'Imwenda & Another vs Mire* [2024] KEA 1257 (KLR), where it was held that, the essence of allowing joinder of a party to any proceedings is for the court to achieve the ultimate goal of rendering conclusive determination of the real issues in controversy.



10. The first issue for determination is whether the amended application having been filed without leave of the Court in contravention of rule 46 is incompetent and ripe for striking out as submitted by the respondents.
11. The power of the court to add a party to a suit is wide and discretionary. The overriding consideration is whether the party has an interest in the suit and whether his right may be affected if they are not added as a party. The application for joinder is not complicated. The Court may grant it on a formal or informal application. I place reliance on the decision in *Pravin Bowry v John Ward & Anor* [2015] KECA 215 (KLR) where it was held that:

“There is no requirement under the said provisions for a draft of the pleading to be amended to be included as is the procedure in an ordinary application for amendment of pleadings. There is no requirement as there is in an ordinary application to join a third party for leave of the court to be sought. An applicant need only file the application and there is no requirement to serve that application upon the party intended to be joined as a co-defendant. Indeed the court itself may add such a party to the suit so that such addition will enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit.”

I agree with the foregoing holding and it is my finding that this application is properly before Court

12. The main question is whether the joinder should be allowed. Generally, in exercising this jurisdiction to join a party, the court will consider whether a party ought to have been joined as plaintiff or defendant, and is not so joined, or whether without his presence, the question in the suit cannot be completely and effectively decided. A necessary party is therefore one without whom no order can be made effectively, while a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings. 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. See: *Civicon Limited v Kivuwatt Limited and 2 others*) [2015] eKLR to which the respondent referred.
13. 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 this Court 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 and 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.”

14. The Court in the same ruling set out 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:

- “i. 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.



- ii. The joinder will not prejudice the other parties.
- iii. The joinder will not vex the parties or convolute the proceedings with unnecessary new matter and grounds not contemplated by the parties or envisaged in the pleadings.”

15. The respondents herein urge this Court to make a finding that their joinder will only vex them and not make this Court achieve the ultimate goal of rendering conclusive determination of the question of adverse possession. It is however, not disputed that the land which is the subject matter of the appeal was transferred from the 3rd respondent to the proposed 4th respondent, and thereafter to the proposed 5th respondent during the pendency of the appeal.

16. While therefore, the proposed appellants were not necessary parties during the trial, they became necessary parties in the appeal. Their joinder will prevent a multiplicity of suits and will effectively determine all issues relating to the property since their rights are directly affected.

Reasons wherefore, the application for joinder is found to have merit and is hereby allowed. The costs of the application shall abide the determination of the appeal.

It is so ordered.

DATED AND DELIVERED AT NYERI THIS 24TH DAY OF APRIL, 2026.

L. ACHODE

..... **JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

