Waridi Limited v Maingey & 5 others (Civil Application E235 of 2025) [2026] KECA 817 (KLR) (30 April 2026) (Ruling)

Neutral citation: [2026] KECA 817 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CIVIL APPLICATION E235 OF 2025

M NGUGI, JA

APRIL 30, 2026

BETWEEN

WARIDI LIMITED ..... APPLICANT

AND

THOMAS MUMO MAINGEY (SUING ON HIS OWN BEHALF AND ON BEHALF OF THE FRANCISCANS OF OUR LADY OF GOOD COUNSEL SISTERS REGISTERED TRUSTEES, DAVID MASIKA, EVERGREEN CROPS LIMITED, DANIEL MUTISYA NDONYE AND VALLEY BROOK CAPITAL LIMITED) ..... 1ST RESPONDENT

DIRECTOR OF SURVEYS ..... 2ND RESPONDENT

HON ATTORNEY GENERAL ..... 3RD RESPONDENT

SARAH NYIVA HILLMAN ..... 4TH RESPONDENT

PAULINE KAMBUA MAINGEY ..... 5TH RESPONDENT

WILLIAM DAHER ..... 6TH RESPONDENT

RULING

1. In the application dated 3rd April 2025, the applicant, Waridi Limited seeks two substantive orders. First, that it be granted leave to act on its own behalf as a substantive respondent in Civil Application No. E179 of 2025 and the intended appeal related thereto; and secondly, that it be allowed to file a Notice of Change of Advocates and a Replying Affidavit and submissions out of time in respect to the said application.

2. The application is based on the grounds set out on its face and is supported by an affidavit sworn on 3rd April 2025 by Nelson Wanjala, a manager with the applicant.

3. It is averred for the applicant that it was one of the respondents in Civil Application No. E179 of 2025 that was pending for hearing, and it wished to act on its own behalf as a substantive respondent. Further, that it intends to change advocates from the Advocates on record for the other respondents represented by Thomas Maingey; and that unless its application is allowed, it risks being excluded from the proceedings.

4. The 1st respondent filed Grounds of Objection dated 5th May 2025 and written submissions opposing the motion.

5. The applicant filed submissions dated 10th June 2025 in which it addresses itself, primarily, to its right to be represented by an advocate of its choice. It submits that the right to legal representation by counsel of one's choice is constitutionally protected under Articles 48, 50(1) and 159(2)(a) of *the Constitution*. It further relies on Order 9 rule 5 of the Civil Procedure Rules and rule 23 of this Court's Rules, 2022.

6. In his submissions dated 8th July 2025, the respondent addresses himself to the applicant's application to be joined as a substantive respondent in Civil Application No. E179 of 2025. He asserts that the applicant has no independent cause of action or grievance capable of sustaining the application; that the applicant did not plead its own case or adduce evidence before the trial court and cannot initiate a separate cause at the appellate stage; that no adverse decision was made against the applicant by the trial court and the applicant therefore lacks locus standi to pursue the reliefs sought in this Court. Further, that the applicant is not seeking any substantive relief in the appeal and is not a necessary party; that it had elected not to present an independent case at trial, and it cannot therefore elevate itself into a substantive party at the appellate stage. It cites the decision in Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others [2014] eKLR for the proposition that parties to a suit are determined within the framework of the proceedings, and new parties cannot be introduced without proper basis. The 1st respondent urges the Court to dismiss the application with costs.

7. I have considered the application and the averments and submissions in support thereof. I have also considered the 1st respondent's grounds of objection and the affidavit and submissions in opposition to the application. While the applicant seeks two prayers in its application, in its submissions, it has focused exclusively on its right to legal representation by an advocate of its choice in Civil Application No. E179 of 2025. It has not addressed itself to the issue of its participating in the application and appeal as a respondent independently of the 1st respondent.

8. The essence of the application before me is a quest by the applicant to be joined as a substantive respondent in Civil Application No. E179 of 2025, an application brought by the 4th -6th respondents seeking stay of execution pending appeal from the judgment of the Environment and Land Court at Machakos (A. Nyukuri J.) dated 19th February 2025 in ELC No. 113 of 2015. The applicant participated in those proceedings, with others, under the aegis, so to speak, of the 1st respondent. The applicant also seeks to file a notice of change of advocates so that it obtains representation independent of the advocates representing the 1st respondent.

   It seems to me, however, that the issue of representation in any proceedings is dependent on whether or not there are still proceedings pending before the Court, and whether the applicant is properly before the Court as a substantive party.

9. The applicant seeks to change representation in order to appoint an advocate to file a response and submissions in answer to Civil Application No. E179 of 2025, and the intended appeal by the 4th -6th respondents. The said application was heard and determined by a ruling of this Court delivered on 30th January 2026. That aspect of the applicant's application has been overtaken by events.

10. The second limb of the applicant's prayer requires, in effect, the applicant's joinder as a substantive respondent in the intended appeal. From the documents before me, it is not clear whether such an appeal has been filed. If it has been filed, then, under the rules of this Court, an application to join a party to an appeal falls for determination before a full bench of this Court which is seized of the appeal. Such an application must, however, be made within the intended appeal once it has been filed.

11. Accordingly, Civil Application No. E179 of 2025 having been determined and the application for joinder of the applicant with respect thereto overtaken by events; and there being no appeal with regard to which an application for joinder as a substantive respondent can be made, I find the application dated 3rd April 2025 to be incompetent, and it is hereby struck out.

12. The applicant is at liberty to file an appropriate application for joinder as a party separate from the 1st respondent herein once a substantive appeal has been filed, or within such appeal if one is already filed.

13. I make no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF APRIL 2026

MUMBI NGUGI

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR