



Njoroge & another (Suing as the administrators of the Estate of Njoroge Kamau - Deceased) v Munene & 3 others (Environment and Land Case Civil Suit 301 of 2019) [2026] KEELC 2425 (KLR) (30 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2425 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 301 OF 2019
OA ANGOTE, J
APRIL 30, 2026**

BETWEEN

JOHN KAMAU NJOROGE & STEPHEN MUYA NJOROGE (SUING AS THE ADMINISTRATORS OF THE ESTATE OF NJOROGE KAMAU - DECEASED) PLAINTIFF

AND

**PETER KAMAU MUNENE 1ST DEFENDANT
THE CHIEF LAND REGISTRAR 2ND DEFENDANT
THE HON ATTORNEY GENERAL 3RD DEFENDANT**

AND

JOHN NJOROGE INTENDED INTERESTED PARTY

RULING

1. Before this court for determination is the Intended Interested Party’s/ Applicant’s Notice of Motion dated 6th November, 2025 brought pursuant to the provisions of Article 40,65(1)(2) and 159(2)(a)(d) and (e) of the *Constitution*, Section 1A(1) and (2),1B(1)(a),3A and 63(e) of the *Civil Procedure Act*, Orders 40, 10 (Rule 11) and 42 (Rule 6) of the Civil Procedure Rules seeking the following reliefs:
 - i. That the applicant be enjoined as a party in the suit herein.
 - ii. That the Plaintiff herein be hereby restricted, prohibited from taking possession, evicting and interfering in any means whatsoever with the parcel of Land Nairobi/Block 110/901 Thome Estate.



- iii. That the Plaintiff and their agents be hereby be restricted, prohibited from taking possession, auctioning and or interfering in any means with the Parcel of Land Nairobi/Block 110/901 Thome Estate pending hearing and determination of the whole suit.
 - iv. That the Honorable Court stay its order for eviction.
 - v. The costs of this Application be provided for.
2. The Motion is supported by the affidavit of John Njoroge, the son and heir to the Deceased, Mr Njoroge Kamau, and the one in possession of the property Nairobi/Block 110/901 Thome.
 3. The Intended Interested Party deponed that he has leased the suit property to various tenants who operate businesses thereon, including a car wash, hotel, bar and restaurant from whom he receives monthly rental income and that these tenants are currently in occupation of the premises.
 4. According to him, he only became aware of the present suit recently; that there is an existing court order preserving the status quo over the premises issued in ELC Case No. 281 of 2024, in which he is the Plaintiff and the 1st Defendant herein is the Defendant.
 5. Mr. Njoroge deponed that he has become aware that this court issued an eviction order against the 1st Defendant. He, however, maintained that the 1st Defendant was not in possession of the suit property and that he stands to suffer irreparably if the Plaintiff is allowed to execute the eviction order, as his tenants would be unfairly evicted.
 6. In response to the Motion, the Plaintiffs/Respondents, through John Kamau Njoroge, one of the administrators of the Estate of the Late Njoroge Kamau (Deceased) swore a replying affidavit on 15th December, 2025. He deponed that the application is fraudulent, frivolous and an abuse of the court.
 7. Whatever the Applicant's grievance may be, he explained, joinder of a party is not available in the present matter since the suit has already been heard and conclusively determined. He further stated that an injunction cannot issue in a matter that has already been finalized, and that such an order would contradict the judgment and orders already issued by the court.
 8. As regards the prayer for stay, he contended that the same cannot be granted in the absence of any appeal having been filed by the Applicant. He further pointed out that this court had already issued eviction orders against the 1st Defendant and all persons claiming under him.
 9. He asserted that there is no such person known as John Njoroge, as he has neither provided a copy of his National Identity Card nor disclosed his postal or physical address. He requested that the aforesaid person be personally produced before the court.
 10. The Plaintiff maintained that this is a manufactured application by the 1st Defendant to circumvent eviction from the suit property. By way of example, he noted that the signature of the applicant in the present application is similar to that signed in the affidavit dated 13th December 2024 filed in Milimani ELC 281 of 2024.
 11. Without prejudice to the foregoing, he noted that this is not a succession matter and the Applicant was in any event not a party to the succession proceedings in Nairobi Succession number 251 of 2013 which was concluded and the beneficiaries identified and properties distributed. Pursuant to the succession, the property devolved to John Kamau Njoroge.
 12. He explained that this suit, ELC 301 of 2019, has been actively prosecuted in this court for over six (6) years; that it has proceeded through pleadings, hearings, and was heard and determined on its merits and that thereafter, a lawful decree was issued.



13. The Plaintiff urged that the Applicant's attempt to be joined at this stage, on the eve of execution, is a deliberate and calculated ploy to obstruct justice and frustrate the lawful beneficiaries of the estate and that matters to do with ownership have been fully determined and accordingly, the application is *res judicata*.
14. As regards ELC 281 of 2024, he noted that it is evident that the suit commenced after the conclusion of the present suit, hence a conveniently crafted scheme to delay execution proceedings in this suit; that the suit involves the same subject matter and could not have proceeded without the Plaintiffs herein in a purported consent by the parties therein and that the parties therein agreed on injunctive terms that are contradictory to the judgment in this case.
15. The Plaintiff noted that they cannot be bound by a consent to which they were not privy. In his view, a consent entered into between other parties, without the participation of the Plaintiffs, cannot override this court's determination on the ownership of the suit property, which was conclusively determined on its merits.
16. He urged that the interest of justice, finality of litigation, and respect for court orders mandated the dismissal of this suit with costs. The Applicant did not file submissions as at 22nd April, 2026.
17. The Plaintiffs/Respondents' counsel filed submissions on 19th February, 2026. Counsel submitted that the Applicant's motion is incompetent as it seeks joinder, injunctive relief and stay orders in a matter that has already been fully heard and conclusively determined.
18. It was argued that, under Order 1 Rule 10 of the Civil Procedure Rules, joinder is only available in subsisting proceedings and cannot be invoked after judgment and decree and that Judgment in this matter was delivered on 13th June, 2024.
19. Reliance was placed on *Kimwele vs Kubora & Another; Mwasya & 5 Others (Interested Parties) [2025] KEELC 5636 (KLR)* for the proposition that a concluded suit does not admit joinder. Further reliance was placed on *Everton Coal Enterprises Limited v Rose Wakanyi Karanja & 5 Others [2023] eKLR* and *IMK v MWM & Another [2015] eKLR*, where the courts held that parties may only be joined while proceedings are pending.
20. Counsel submitted that after delivering judgment, this court has been rendered *functus officio* and cannot issue injunction or stay orders that would effectively suspend or contradict its own decree. Reliance was placed on *Chembe Katana Changi v Ministry for Lands and Settlement & 4 Others [2014] eKLR* and *Clesoi Holdings Ltd v Prime Bank Ltd [2021] eKLR* for the proposition that injunctions are preservative remedies which cannot issue after judgment.
21. Counsel also relied on *Kenya Airports Authority v Mitu-Bell Welfare Society & 2 Others [2016] eKLR* for the principle that delivery of judgment marks the end of litigation and the end of the court's jurisdiction, save for limited exceptions provided by law.
22. Counsel further submitted that the Applicant's ownership and beneficiary claims are barred by the doctrine of *res judicata* under Section 7 of the *Civil Procedure Act*, the ownership of the suit property having already been conclusively determined.
23. It was argued that the Applicant's claim as a son of the deceased cannot stand because the estate had already been administered in Nairobi Succession Cause No. 251 of 2013, where the beneficiaries were identified and the estate distributed and that the Applicant had neither been recognized as a beneficiary nor challenged the confirmed grant before the succession court. Counsel therefore argued that this court lacked jurisdiction to reopen or interrogate the succession proceedings.



24. Lastly, counsel submitted that the consent order issued in ELC No. 281 of 2024 cannot bind the Plaintiffs because they were not parties to that suit. In any event, it was urged, a consent order cannot override a valid judgment or confirmed grant. Counsel urged that the application was merely intended to delay eviction, frustrate demolition orders and obstruct lawful execution, and should therefore be dismissed with costs.

Analysis and Determination

25. Having considered the pleadings and submissions, the issues that arise for determination are:
- i. Whether the plea for joinder is merited and if so?
 - ii. Whether the injunctive orders can issue?
26. The Applicant asks to be joined into these proceedings as a party on the basis that he is the son and heir of the deceased, Njoroge Kamau, and is in possession of the suit property, and stands to be affected by the eviction orders issued by this court. He contends that he was not aware of the suit until recently and that he has tenants on the property whose businesses would be adversely affected if execution proceeds.
27. In response, the Respondents stated that judgment was delivered on 13th June 2024, ownership of the suit property was conclusively determined, and eviction and demolition orders subsequently issued. As such, there is no pending suit upon which joinder can lie, the matter having already been fully heard and determined.
28. The Respondents have further raised the doctrines of res judicata and functus officio. At this stage, it is sufficient to note that the present Motion is not, strictly speaking, barred by res judicata since the Applicant is not seeking a re-hearing of the merits of the ownership dispute, but rather seeks joinder into the proceedings on the basis that he is in possession of the suit property and likely to be affected by the execution process.
29. Equally, the mere fact that judgment has been delivered does not automatically render the court functus officio for all purposes. A court retains residual jurisdiction to entertain certain post-judgment applications, including those relating to execution, joinder, clarification, review, or the protection of persons who may be directly affected by its orders. Whether, in the circumstances of this case, that residual jurisdiction can properly be invoked in favour of the Applicant is a matter that falls for determination on the merits of the Motion itself
30. By way of brief background, the Plaintiff instituted this suit seeking inter-alia, a declaration that the registration of the 1st Defendant and issuance of title to the 1st Defendant over L.R Nairobi/Block 110/901 (suit property) was illegal and fraudulent, and that the Plaintiffs, as the administrators of the Estate of Njoroge Kamau are the legal and beneficial owners of the suit property.
31. Alternatively, they sought for a declaration that the Plaintiffs are entitled to be registered as proprietors on account of the adverse possession and permanent injunctive orders restraining interference with the suit property as well as general and exemplary damages.
32. The Plaintiffs' case was that their late father was the lawful owner of the suit property, having purchased it from Thome Farmers. They contended that, notwithstanding that ownership, the 1st Defendant unlawfully invaded the property. Upon conducting investigations, they discovered that the 1st Defendant had purportedly been registered as the proprietor of the suit property in 2016, culminating in the issuance of a title deed in his favour.



33. The matter proceeded for hearing and the court rendered its judgment on 13th June, 2024 in which it found in favour of the Plaintiffs and declared that, as administrators of the Estate of Njoroge Kamau (Deceased), they were the legal and beneficial owners of Nairobi/Block 110/901, Thome Estate, and entitled to registration as proprietors to the exclusion of the 1st Defendant and any other person.
34. The court further directed the cancellation of the 1st Defendant's title and ordered that the property be registered in the Plaintiffs' names as legal representatives of the Estate. A permanent injunction was also issued restraining the 1st Defendant, or any person acting under his authority, from in any way interfering with the Plaintiffs' possession and quiet enjoyment of the suit property. In addition, the Plaintiffs were awarded Kshs 5,000,000 as damages for trespass.
35. As aforesaid, the Applicant seeks to be joined in these proceedings. In the circumstances of this matter, that request amounts to a post-judgment joinder. Courts have had occasion to consider this question and set out the principles applicable to joinder after judgment has already been entered.
36. In *JMK vs MWM & Another* [2015] eKLR, the Court of Appeal noted:

“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 motu, 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. Commenting on this provision, the learned authors of Sarkar's Code of Civil Procedure (11th Ed. Reprint, 2011, Vol. 1 P. 887), state that:

“The section should be interpreted liberally and widely and should not be restricted merely to the parties involved in the suit, but all persons necessary for a complete adjudication should be made parties.”

This Court adopted the same approach in *CENTRAL KENYA LTD. V. TRUST BANK & 4 OTHERS*, CA NO. 222 OF 1998, when it affirmed that the guiding principle in amendment of pleadings and joinder of parties is that:

“all amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs.”

We would however agree with the respondent that Order 1 Rule (10)(2) contemplates an application for amendment or joinder of parties where proceedings are still pending before the Court. Sarkar's Code, (*supra*) quoting as authority, decisions of Indian Courts on the provision, expresses the view that an application for joinder of parties can be filed only in pending proceedings. In the same vein, the Court of Appeal of Tanzania, while considering the equivalent of Order 1 Rule 10(2) of our Civil Procedure Rules, in *TANG GAS DISTRIBUTORS LTD V. SAID & OTHERS* [2014] EA 448, stated that the power of the court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before, or during the trial; that it can be done even after judgment where damages are yet to be assessed; that it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable; and that a party can even be added at the appellate stage.”



37. In a more recent exposition, the Court of Appeal in *Mwachala v Msafari & 3 others* (Civil Appeal E024 of 2022) [2025] KECA 1142 (KLR) (20 June 2025) (Judgment) noted:

“It is not lost on us that, in principle, for one to be joined in certain proceedings with intent to procure a merit decision, those proceedings have to be pending before the trial court. In *Leonard Kimeu Mwanthi v Rukaria M’twrandu M’iringu; Nathaniel Kithinji Ikiugu & 4 others* (Intended Interested Parties) [2021] eKLR, Justice L. Mbugua aptly stated that “a party claiming to be enjoined in proceedings must have an interest in the pending litigation” In other words, the proceedings should still be alive in the trial court: they could be at the nascent or other stages, but must be alive (See also the Supreme Court’s decision in *Everton Coal Enterprises Limited v Karanja & 5 others* [2023] KESC 98 (KLR) where the Court held that “... a party will only be added to on-going proceedings in order to enable the court adjudicate fully upon and settle all the questions involved in the particular proceedings before it”).

28. Discussing the issue of joinder of parties, this Court in *Central Kenya Ltd v Trust Bank Limited & 4 others* [1996] KECA 197 (KLR) held that: “We would however agree with the respondent that Order 1 Rule (10)(2) contemplates an application for amendment or joinder of parties where proceedings are still pending before the Court. Sarkar’s Code (supra), quoting as authority decisions of Indian Courts on the provision, expresses the view that an application for joinder of parties can be filed only in pending proceedings ...; that it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable; and that a party can even be added at the appellate stage.” [Emphasis added] (see also this Court’s decision in *JMK v MWM & Another* [2015] eKLR where the Court stressed the principle that “... an application for joinder of parties can be filed only in pending proceedings.”

29. The meaning of (a court becoming) *functus officio* was rendered in *Telkom Kenya Limited v John Ochanda* (suing on his own behalf and on behalf of 996 former employees of Telkom Kenya Limited) (2014) eKLR as follows: “The doctrine is not to be understood to bar any engagement by a court with a case that it has already decided or pronounced itself on. What it does bar is a merit based decisional re-engagement with the case once final judgment has been entered and a decree thereon issued” [Emphasis ours]

30. In view of the foregoing, it is safe to conclude that where a party seeks to alter the merits of the judgment of the court with issues that are sought to be introduced by the proposed interested party, the court will be extremely hesitant to venture into that ‘mine’ field. Thus, it will not grant the proposed party opportunity to be part of the long- gone proceedings because its purpose shall have been served.”

38. What can be gleaned from the aforementioned cases is that it is not impossible for a party to be joined after judgment. The same is however only permissible in exceptional situations where it is necessary to facilitate execution, address a procedural issue arising after judgment, or protect an identifiable interest without reopening the substance of the dispute already determined. What is not permitted is the use of joinder to revive concluded issues, introduce fresh claims, or undermine the finality of a judgment.



39. In the present case, the suit was fully heard and determined on its merits. The 1st Defendant's title was cancelled, the Plaintiffs were declared the lawful proprietors as administrators of the estate, and permanent injunctive relief was granted. There is therefore no unresolved controversy remaining before this court to which the Applicant can properly be joined.
40. More importantly, the interest asserted by the Applicant goes to the very heart of the issues already determined. He claims to be a son and heir of the deceased, to be in possession of the suit property, and to stand outside the reach of the eviction orders. Those claims, if entertained, would require the court to revisit the issue of who is entitled to occupy, own or benefit from the suit property. In effect, the Applicant seeks to reopen the proprietary questions that have already been settled by the judgment of this court.
41. The Applicant's claim that he is a beneficiary of the estate equally does not assist him in these proceedings. If indeed he was omitted from the succession process or disputes the distribution of the Estate, that is a matter that properly falls within the jurisdiction of the succession court in Nairobi Succession Cause No. 251 of 2013, where the beneficiaries were identified and the estate distributed.
42. The Applicant also relies on the existence of orders allegedly issued in ELC No. 281 of 2024 preserving the status quo over the suit property. However, that suit was filed after the present matter had already been heard and determined. It cannot therefore undermine a judgment already rendered in this suit.
43. Moreover, the Plaintiffs herein were not parties to the purported consent recorded in ELC No. 281 of 2024 and cannot be bound by it. A consent order made in separate proceedings cannot override a valid judgment of this court or defeat rights that have already crystallized under a decree.
44. In the circumstances, this is not one of those exceptional situations in which post-judgment joinder would serve the ends of justice. To the contrary, the joinder sought would have the effect of reopening issues that were conclusively determined, undermining the principle of finality in litigation, and obstructing the lawful execution of the decree already issued. The plea for joinder is therefore untenable and is declined.
45. The prayer for injunction is equally untenable. This suit has already been heard and determined on its merits. The Applicant seeks an injunction pending the hearing and determination of the suit, yet the suit is no longer pending. There is as such no legal basis upon which the injunctive relief sought can issue.
46. In the end, the Notice of Motion dated 6th November, 2025 is found to be unmerited and is dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 30TH DAY OF APRIL, 2026.

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Chege Njoroge for Plaintiff

No appearance for Defendant/Applicant

Court Assistant: Tracy

