



Salford Investments Limited v Waterfront Outlets Limited & 5 others (Environment and Land Case 1569 of 2016) [2025] KEELC 5972 (KLR) (2 September 2025) (Ruling)

Neutral citation: [2025] KEELC 5972 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 1569 OF 2016
CG MBOGO, J
SEPTEMBER 2, 2025**

BETWEEN

SALFORD INVESTMENTS LIMITED PLAINTIFF

AND

WATERFRONT OUTLETS LIMITED 1ST DEFENDANT

PETER NJERU MUGO 2ND DEFENDANT

NJEKU OCHUNYI 3RD DEFENDANT

WILLIS AGWATA 4TH DEFENDANT

TERNIC ENTERPRISES LIMITED 5TH DEFENDANT

AND

**ETHICS AND ANTI-CORRUPTION COMMISSION INTENDED
DEFENDANT**

RULING

1. Before this court for determination is the notice of motion dated 22nd April, 2024 filed by the plaintiffs/ applicants and it is expressed to be brought under Sections 1A, 1B, 3 and 3A of the [Civil Procedure Act](#), Order 1 Rule 10 (2), Order 8 Rule 2 and Order 51 of the Civil Procedure Rules seeking the following orders: -
 1. Spent.
 2. That this honourable court be pleased to join the Ethics and Anti-Corruption Commission as the 6th defendant or in such other capacity as this honourable court may deem fit.



3. That this honourable court be pleased to grant leave to the applicant to amend the plaint dated December 15, 2016.
 4. That the draft amended plaint annexed in the supporting affidavit filed herewith be deemed as duly filed upon payment of the requisite fees.
 5. That costs of this application be in the cause.
2. The application is premised on the grounds on its face. The application is further supported by the affidavit of Gopal Dhanji Patel, the director of the plaintiff/ applicant sworn on even date. The plaintiff/ applicant deposed that it is the registered owner of the property known as LR. No. 209/1539 situate off Ojijo road, and that despite being the registered owner, the defendants/ respondents have fraudulently conspired to illegally and unlawfully alienate the suit property through subdivision into parcels 209/16716 and 209/16717. The plaintiff/ applicant deposed that the 1st, 2nd and 3rd defendants/ respondents have conspired amongst themselves to institute HCCC No. 609 of 2010 ELC Njeka Ochunyi v Peter N. Mugo and ELC No. 270 of 2012 Waterfront Outlets Limited v Njeka Ochunyi & Another where they sought various orders including eviction in a bid to sanitize their fraudulent actions.
 3. The plaintiff/ applicant deposed that by virtue of Section 55 of the *Anti-Corruption and Economic Crimes Act*, the intended 6th defendant/respondent is mandated to investigate a person suspected of corruption and it has received credible information that a Senior Assistant Director at the Ministry of Lands and Physical Planning has entered into various contracts with the 5th defendant/respondent. That in view of these, the intended 6th defendant/respondent instituted Milimani ACEC Case No. E024 of 2022 (OS)-Ethics and Anti-Corruption Commission v Nicholas Owino Ochiel & 4 Others as it touches on the great public interest and involves abuse of public position.
 4. The plaintiff/ applicant deposed that it is necessary that the intended 6th defendant/respondent is joined in these proceedings to prevent a likely proliferated litigation and for just determination of the proceedings. Further, that the joinder will aid the court in arriving at a just and effectual determination of the issues raised in the suit. It was deposed that it is necessary to amend the plaint to properly address the issues at hand as the same is made in good faith and with the intent to pursue justice.
 5. The intended 6th defendant/respondent filed its replying affidavit sworn on 4th March, 2025 by Shadrack Mwenda. The intended 6th defendant/respondent deposed that the Commission filed ACEC Suit No. E024 of 2022 seeking among other prayers forfeiture of LR No. 209/16717 as against Ternic Enterprises Limited as it comprises an unexplained asset. The intended 6th defendant/respondent deposed that the dispute herein regards ownership of LR No. 209/1539 which LR. No. 209/16717 is a subdivision, and that the commission's interest is limited to the outcome of the suit in respect to LR. No. 209/16717 which will determine its' next cause of action. It was deposed that the Commission is not an appropriate party as a defendant, and it is amenable to joinder as an interested party, owing to its limited stake.
 6. The application was canvassed by way of written submissions. The plaintiff/ applicant filed its written submissions dated 28th April, 2025 where it raised two issues for determination as follows: -
 - i. Whether this honourable court should join the Ethics and Anti-Corruption Commission as the 6th defendant.
 - ii. Whether the court should grant the consequential order to amend the plaint dated December 15, 2016.



7. On the first issue, the plaintiff/applicant submitted that from the proceedings in Milimani ACEC Case No. E024 of 2022, it is evident that the intended 6th defendant/respondent has a substantive interest and identifiable stake in the matter and should it succeed in its suit against the 5th defendant/respondent, the suit property i.e. LR No. 209/16717 will revert to the intended 6th defendant/respondent. It was further submitted that to avoid multiplicity of suits, the joinder is necessary and no prejudice will be suffered as a result of the joinder. To buttress on this issue, the plaintiff/applicant relied on the cases of Civicon Limited v Kivuwatt Limited and 2 Others [2015] eKLR, and Departed Asians Property Custodian Board v Jaffer Brothers Ltd [1999] 1 EA.
8. On the second issue, the plaintiff/applicant submitted that it is necessary to amend the plaint to properly address the issues at hand. Further, that the amendment does not seek to alter the subject matter of the suit or introduce a new cause of action. The plaintiff/applicant submitted that the interest of the intended 6th defendant/respondent forms part of the suit property, and that since the hearing is yet to take off, the intended 6th defendant/respondent can be granted leave to file a substantive statement of defence. Reliance was placed in the case of Central Kenya Limited v Trust Bank Limited & 5 Others [2000] eKLR.
9. The intended 6th defendant/respondent filed its written submissions dated 28th April, 2025. The intended 6th defendant/respondent submitted that LR. No. 209/16717 is a subject of proceedings in ACEC E024 of 2022 and that the court upon weighing the evidence shall decide as to whether it forms part of the unexplained wealth traced to the defendants therein. Further, that LR. No. 209/16717 is not public property. They submitted that forfeiture proceedings before the Anti-Corruption Court seeks to recover LR. No. 209/16717 by virtue of being purchased by the 5th defendant within the period of investigations when it reasonably suspected that Mr. Nicholas Ochiel was engaged in corrupt conduct, and as a result acquired assets disproportionate to his known sources of income.
10. The intended 6th defendant/respondent submitted that in the event this court finds that the suit property was illegally transferred and declares it the property of the plaintiff/applicant, the commission's recourse in ACEC E024 of 2022 will be to recover the value of LR. No. 209/16717 from the defendants jointly and severally. Further, that the proceedings before the anti-corruption court focus on the source of funds of acquisition of the defendants' assets within the period of interest which the relevant party was suspected of corrupt conduct.
11. The intended 6th defendant/respondent submitted that its participation will not be of great value, and as such it should be restricted to that of an interested party as opposed to the 6th defendant.
12. I have considered the application, the replying affidavit, and the written submissions filed by the respective parties. I am of the view that the issue for determination is whether an order for joinder of the 6th defendant/respondent ought to issue in the circumstance.
13. Order 1 Rule 10(2) of the Civil Procedure Rules provides that:-

“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.”



14. The decision to join a party to any proceeding is discretionary and such discretion ought to be exercised judiciously so as not to defeat justice to a deserving party. However, and in consideration of such a prayer, a heavier duty is imposed on such a party to show that it is deserving of joinder and while bearing in mind that the decision to sue a party rests with the plaintiff. In *Central Kenya Ltd v Trust Bank Ltd & 5 others* [2000] KECA 367 (KLR), it was observed as follows:-

“The jurisdiction of the court under O.1 rule 10(2) and O.VI rule 3(1) of the Civil Procedure Rules, respectively, is specific. The decision as to who to sue is essentially that of the plaintiff, and the court's duty thereafter, is to consider the allegations made against the named defendants and if it considers that there are other parties who should have been joined or were improperly joined give appropriate directions under O.1 rule 10(2), above.”

15. The plaintiff/applicant in this case contends that it is necessary for the intended 6th defendant/respondent to be joined as a party in these proceeding so as to enable the court adjudicate all issues effectively. The plaintiff/applicant argued that the intended 6th defendant/respondent has an identifiable stake in the proceedings before the anti- corruption court. While giving background information of the suit property, and the fraudulent acquisition of the same by the defendants/respondents, the plaintiff/ applicant is apprehensive that the same if found in favour of the commission, will revert to the same.

16. The intended 6th defendant/respondent maintained that the suit property is not public property and thus not available for forfeiture. Instead, their role in the proceedings before the anti-corruption court is focused on the source of funds of acquisition of the defendants' assets within the period of interest which the relevant party was suspected of corrupt conduct. To be clear, the intended 6th defendant/respondent submitted that its participation in these proceedings is limited and would be applicable as that of an interested party.

17. It appears that the plaintiff/applicant's fear is that the subdivided portion which it alleges to form part of the mother title LR. No. 209/1539 may be forfeited by the anti-corruption court. In looking at the application, the plaintiff/applicant has no direct claim against the intended 6th defendant/respondent which it can derive relief from. Whilst the 6th defendant/respondent may be a necessary party, there is no direct correlation that has been established linking the plaintiff/applicant and the commission.

18. On this issue, I do agree with the intended 6th defendant/respondent that participation in these proceedings would only be meaningful as an interested party. Having said that, the only amendment to the plaint would be limited to including the Commission as an interested party and nothing except that.

19. Arising from the above, the orders commending issuance with regard to the notice of motion dated 22nd April, 2024 is that the Ethics and Anti- Corruption Commission is hereby joined in these proceedings as an interested party and the amended plaint to reflect only that. Costs to be in the cause.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 2ND DAY OF SEPTEMBER, 2025.

HON. MBOGO C.G.

JUDGE

02/09/2025.

In the presence of:



Mr. Benson Agunga - Court assistant

Ms. Wambugu holding brief for Ms. Maina for the Intended 6th Defendant

Ms. Mwongela holding brief for Mr. Gitonga for the Plaintiff/Applicant

Ms. Waithaka holding brief for Mr. Chege for the 2nd Defendant/Respondent

