



REPUBLIC OF KENYA



KENYA LAW
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**Onchiri & 489 others v Omani & 11 others (Civil Appeal (Application)
E335 of 2023) [2025] KECA 695 (KLR) (11 April 2025) (Ruling)**

Neutral citation: [2025] KECA 695 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E335 OF 2023
DK MUSINGA, M NGUGI & GV ODUNGA, JJA
APRIL 11, 2025**

BETWEEN

**MOSES ONCHIRI & 489 OTHERS & 489 OTHERS & 489 OTHERS &
489 OTHERS & 489 OTHERS & 489 OTHERS & 489 OTHERS & 489
OTHERS APPLICANT**

AND

**TOM OMANI & 11 OTHERS & 11 OTHERS & 11 OTHERS & 11 OTHERS & 11
OTHERS & 11 OTHERS & 11 OTHERS & 11 OTHERS RESPONDENT**

(Being an application to strike out the 6th, 7th and 8th respondents and to join other parties as interested party in an appeal from the judgment of the Environment and Land Court at Nairobi (K. Bor, J.) delivered on 26th April 2021 in ELC No. 661 of 2015)

RULING

1. The applicant's Notice of Motion dated 12th August 2024 seeks the striking out of the names of the 6th, 7th and 8th respondents namely, Revji Properties Ltd, Seema Properties Ltd and Krushil Properties Ltd from these proceedings. It also seeks to join Kabarnet Trading Co. Ltd, Alphana Business Park Ltd, Unigroup Transporters Ltd, Sukadi Complex Ltd and M/s Kensalt Ltd as interested parties/respondents in the proceedings.
2. It was contended by the applicants: that Revji Properties Ltd, Seema Properties Ltd and Krushil Properties Ltd were dissolved on 11th September 2013 vide Kenya Gazette Notice of the same date hence the suit against them is unmaintainable; that Kabarnet Trading Co. Ltd has erected/constructed a permanent perimeter wall on the title No. LR No. 209/11309 which is part of the suit parcel of land; that Alphana Business Park Ltd and Unigroup Transporters Ltd have constructed/erected permanent godowns on suit parcels being LR 209/11312 and LR 209/11311 respectively; that Sukadi Complex Ltd has already erected/constructed permanent godown on the suit parcels of land being LR Nos 209/11254, 209/11255 and 209/11256; that M/s Kensalt Ltd has fenced with wire mesh and excavated



on the suit parcels of land being LR No. 209/11249, 209/11410, 209/12110 and 209/11125; and that it is necessary for the said parties to be joined to the proceedings in order to afford them an opportunity of being heard.

3. Although the parties sought to be joined were duly served, only Unigroup Transporters Limited, the intended 3rd Interested Party, filed a replying affidavit in which it was averred: that it has no legal or beneficial interest in the land parcel No. 209/11312; that it does not claim title to the said parcel of land and has no issue to raise before the Court; and that the reliefs that are likely to be given by the Court will not extend to it since there were no allegations before the trial court that it was involved in the eviction of the applicants.
4. When the application was called out for virtual hearing on 5th March 2025, learned counsel, Dr Khaminwa, appeared for the applicants, learned counsel, Mr Boniface Masinde, appeared for the 3rd, 4th and 5th respondents and learned counsel, Mr Fred Yonga appeared for the intended 3rd interested party, Unigroup Transporters Ltd. Dr Khaminwa relied on his submissions while Mr Masinde informed the Court that his clients had no stake in the matter. On his part, Mr Yonga reiterated that his client had no interest in the suit parcel of land and there is no benefit they are expected to bring to these proceedings.
5. We have considered the application which is largely unopposed save for the contention by the intended 3rd interested party and the 3rd, 4th and 5th respondents that they have no interest in the suit properties.
6. In *Departed Asians Property Custodian Board v Jaffer Brothers Ltd* [1999] 1 EA 55, it was held that:

A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involve in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party's presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involve in the cause or matter...For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the Court in that suit. Alternatively, a person qualifies, (on an application of a Defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.”

7. In the application before us, the applicants are seeking to have the intended interested parties joined to the appeal so that they are afforded an opportunity of being heard since the applicants contend that they have erected structures on the suit property. Whether or not this position is correct, we are unable to tell at this stage.
8. In the premises, we allow the application dated August 12, 2024. Let the applicants amend their pleadings accordingly.
9. We make no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF APRIL 2025.

D. K. MUSINGA, (PRESIDENT)

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**JUDGE OF APPEAL
MUMBI NGUGI**

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**JUDGE OF APPEAL
G. V. ODUNGA**

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

