



**Okuro & another v Owayo; Ojanga (Objector) (Civil Appeal (Application)  
E030 of 2023) [2024] KECA 1428 (KLR) (11 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1428 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPEAL (APPLICATION) E030 OF 2023  
HM OKWENGU, HA OMONDI & JM NGUGI, JJA  
OCTOBER 11, 2024**

**BETWEEN**

**LONAH BOL OKURO ..... 1<sup>ST</sup> APPELLANT**

**CLIFF ORIWO OKURO ..... 2<sup>ND</sup> APPELLANT**

**AND**

**ISHMAEL OWANO OWAYO ..... RESPONDENT**

**AND**

**THOMAS OCHIENG OJANGA ..... OBJECTOR**

*(Being an application to enjoin the Objector in the Appeal in this  
Court from the judgment of the High Court of Kenya at Homa Bay  
(G.M.A. Ongondo, J) dated 1st March, 2022 in ELC No. 17 of 2021)*

**RULING**

1. Thomas Ochieng Ojanga (Thomas), who describes himself herein as the Objector, has moved this Court through a notice of motion dated 14<sup>th</sup> July, 2023, seeking to be enjoined in the appeal arising from the Environment and Land Court (ELC) Case No. 17 of 2021. He claims to be the owner of land parcel No. Kanyada/Kanyabala/3647 (suit property), that is subject of the litigation.
2. The notice of motion arises from a judgment delivered by the ELC (Ongondo, J) on 1<sup>st</sup> March 2022 in which the learned Judge ruled in favour of the respondent herein, Ishmael Owano Owaya (Ishmael), Lorna Bol Okuro (Lorna) and Cliff Oriwo Okuro (Cliff), who were the defendants in the ELC suit lodged Civil Appeal No E30, which is pending in this Court. This is the appeal that Thomas seeks to be enjoined.



3. The notice of motion is anchored on grounds stated on the face of the motion, and a supporting affidavit sworn by Thomas. In short, Thomas is the registered owner of the suit property, which he purchased in 2013 and was issued a certificate of title in 2015. He was not aware of the suit filed by the respondent, and only discovered on 23<sup>rd</sup> May, 2023, that a judgment had been delivered by the ELC in connection with the suit property. He contends that the appellants were intentionally wrongly sued to mislead the court; and that as the appellants had no capacity to defend the suit on his behalf, he was condemned unheard.
4. Thomas argued that he has an interest in the suit property and shall be affected by the outcome of the appeal, and therefore prayed that he be enjoined in the appeal. In support of his submissions, Thomas cited Communication Commission of Kenya and 4 Others vs Royal Media Services Limited & 7 Others 2014 eKLR, and this Court's decision in David Kiptugen vs Commissioner of Lands, Nairobi and 4 Others (2016) eKLR.
5. The motion is opposed through a replying affidavit sworn by the respondent, Ishmael Owano Owaya (Ishmael). He deposes that Thomas has grossly misled the Court by misrepresenting the true state of affairs; that the suit was dealt with in Homa Bay ELC Case No. 17 of 2021, where a judgment was rendered by the ELC in Ishmael's favour, and that Thomas having bought the suit property from the appellants he should not be enjoined in the present suit, as he can bring any claim in regard to the suit property through a separate substantive suit.
6. Ishmael maintains that the suit property is his only ancestral land where he has been staying for over fifty years, having taken possession of the property in 1968. He swears that his mother, father, step mother, his eldest son, daughter in law and grand children were all buried on the suit property. He maintains that neither the previous registered owners of the suit property. nor Thomas have ever taken any steps to interfere with his possession and or occupation of the suit property, and therefore any title or right that Thomas may have had on the suit property has lapsed or been extinguished by effluxion of time, and that he (Ishmael) has acquired adverse rights or interest on the suit property.
7. Lorna Bol Okuro (Lorna), the first appellant, has also sworn a replying affidavit with authority from the second respondent Cliff Oriwo Okuro (Cliff). She contends that the notice of motion by Thomas is a waste of the Court's time as he does not satisfy the required conditions for being enjoined in the appeal, and that the motion has not complied with Section 41 of the Court of Appeal Rules. She contends that they were sued in the Homa Bay ELC by Ishmael over a claim for adverse possession, and that they were sued without any justifiable reasons.
8. We have carefully considered the motion, the supporting affidavit, the affidavits in reply, the contending written submissions by the parties, and the law. The main issue for determination is whether Thomas ought to be joined in these proceedings.
9. In Hamisi Yawa & 36,000 Others v Tsangwa Ngala Chome & 19 Others [2018 eKLR, this Court (differently constituted) stated as follows regarding joinder of parties:

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. See this Court's decision in Nderitu Wachira Reciever & Reciever & Manager of Bulleys Tanneries Ltd. (Under Receivership) & 4 others vs. Siraji Enterprises Ltd & another [2016] eKLR.



12. 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:
  1. 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.
  2. The joinder will not prejudice the other parties
  3. The joinder will not vex the parties or convolute the proceedings with unnecessary new matters and grounds not contemplated by the parties or envisaged in the pleadings. See this Court's decision in the case of Attorney General vs Kenya Bureau of Standards & another [2018] eKLR.
10. In Francis Karioko Muruatetu & another v Republic & 5 others [2016] eKLR, (Supreme Court Petition No(s.) 15 & 16 of 2015 (Consolidated)), the Supreme Court set out the elements applicable where a party seeks to be joined in proceedings as follows:

“The following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party: One must move the court by way of a formal application. Enjoinment is not as of right, but at the discretion of the court; hence, sufficient grounds must be laid before the court, on the basis of the following elements:

  - i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
  - ii. The prejudice to be suffered by the intended party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined, and not something remote.
  - ii. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the court.”
11. In this case, Thomas claims to be the registered proprietor of LR No. Kanyada/Kanyabala/3647 having purchased it in 2013. He has exhibited a certificate of title in his name which title he claims was issued in 2015. It is not disputed that in the suit subject of the judgment that Thomas intends to impugn, the respondent sued Lorna and Cliff as the registered owners of the suit property, and that Thomas was not included as a party to the suit. It is evident that the orders made in the judgment will adversely affect the interest of Thomas in the suit property, as his title will be rendered useless.
12. Applying the above cited guiding principles for joinder, we find that Thomas has a stake in the proceedings, as he has demonstrated that he holds a title to the suit property, and that his interest will be imperiled if he is not enjoined in the suit. In the circumstances, we are satisfied that Thomas has met the threshold for joinder in the appellate process, as his joinder is necessary to enable this Court to effectually and completely adjudicate upon and settle all the questions involved in the appeal with regard to the issue of the ownership of the suit property. Neither Ishmael nor the appellants have demonstrated any prejudice that they are likely to suffer as a result of this joinder.



13. Consequently, we allow the notice of motion filed by Thomas and issue orders as prayed. Costs shall be in the appeal.

**DATED AND DELIVERED AT KISUMU THIS 11<sup>TH</sup> DAY OF OCTOBER, 2024.**

**HANNAH OKWENGU**

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**JUDGE OF APPEAL**

**H. A. OMONDI**

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**JUDGE OF APPEAL**

**JOEL NGUGI**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

