



**Khasakhala v National Land Commission & 15 others; Khasakala
& 14 others (Intended Interested Party) (Environment & Land Case
36 of 2019) [2022] KEELC 13613 (KLR) (13 October 2022) (Judgment)**

Neutral citation: [2022] KEELC 13613 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 36 OF 2019
A OMBWAYO, J
OCTOBER 13, 2022**

BETWEEN

FLORENCE AMUNGA KHASAKHALA PLAINTIFF

AND

NATIONAL LAND COMMISSION & 15 OTHERS DEFENDANT

AND

TONY OTSWONI KHASAKALA INTENDED INTERESTED PARTY

WILLIAM WILGRAM AMERE INTENDED INTERESTED PARTY

CAROLINE ANYISO NGUKU INTENDED INTERESTED PARTY

ELIZABETH ANNE AKOYA INTENDED INTERESTED PARTY

CAREY BARVAN KHASAKALA INTENDED INTERESTED PARTY

LYDIA TERESIA OSITA INTENDED INTERESTED PARTY

WILBERFORCE KWENDO INTENDED INTERESTED PARTY

NICHOLAS INGATI INTENDED INTERESTED PARTY

BETT ANGATIA MWENESI INTENDED INTERESTED PARTY

KENNEDY MAJIMBO INTENDED INTERESTED PARTY

JANICE TRUFENA AMUNGA INTENDED INTERESTED PARTY

NICKY MARTIN INTENDED INTERESTED PARTY

CHRISTINE ABITU INTENDED INTERESTED PARTY

CONSTANCE NYAKOA INTENDED INTERESTED PARTY

HUDSON KWENDO INTENDED INTERESTED PARTY



JUDGMENT

1. The Notice of Motion is dated 9th November 2021 wherein the applicants seek to be enjoined in the suit as interested parties. The application is based on the following grounds;-
 1. That the Plaintiff/Respondent and Clerah Josephine Nyangweso(now deceased) were the co-wives to Eric Edward Khasakhala(Deceased).
 2. The Intended Interested Parties/Applicants are the children of the late Clerah Josephine Nyangwesoand Eric Edward Khasakhala(Deceased).
 3. The suit property herein forms part of the estate of Eric Edward Khasakhala(Deceased).
 4. In the foregoing and for all intends and purposes, the Intended Interested Parties/Applicants are beneficiaries of the estate of Eric Edward Khasakhala(Deceased).
 5. Considering the above, the Intended Interested Parties/Applicants have a fundamental stake in the suit herein which cannot be wished away.
 6. In the circumstances, the interests of the Interested Parties/Applicants will not be properly articulated unless they are enjoined in the suit as Interested Parties.
 7. It is proper that the Intended Interested Parties/Applicants be enjoined for the protection of their interests with respect to the suit property.
 8. No prejudice will be occasioned to any party if the prayers herein are granted.
 9. In any event, the joinder of the Intended Interested Parties/Applicants in the suit will only serve in the complete settlement of all the questions involved in the proceedings.
 10. Further, it is common ground that their enjoinder in the main suit will prevent the likely cause of proliferated litigation.
 11. On the other hand, the Intended Interested Parties/Applicants will be extremely prejudiced in the event that adverse orders are issued without their participation.
 12. It is in the interest of justice that the application herein be allowed as prayed.
2. The application is supported by the affidavit of N. A. Awino who reiterated to grounds of the application. Order 1 rule 10 of the [Civil Procedure Rules](#) 2010 provides;

“Substitution and addition of parties [Order 1, rule 10.]

- (1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.
- (2) 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.

- (3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent in writing thereto.
- (4) Where a defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants.

3. I have considered the application and do consider the fact that the deceased Eric Edward Khasakhala had two (2) wives who are now the widows of the deceased. It is in the interest of justice that the applicants be enjoined in the suit as interested parties. I do grant an order that the applicants be and are hereby enjoined in the suit as the interested parties.

4. Costs of the application be in the suit.

DATED AND DELIVERED THIS 13TH DAY OF OCTOBER 2022

A. O OMBWAYO

JUDGE

