



Kimutai & another v Tarus; Saina & 2 others (Applicant) (As a Legal Representatives of the Estate of Kipsaina arap Tarus alias Kipsaina Tarus - Deceased) (Environment & Land Case 12 of 2021) [2025] KEELC 3908 (KLR) (21 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3908 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE 12 OF 2021
GMA ONGONDO, J
MAY 21, 2025**

BETWEEN

CHEPTOO KIMUTAI 1ST PLAINTIFF

KIPRUTO TUIYOI SAINA 2ND PLAINTIFF

AND

KIPSAINA TARUS DEFENDANT

AND

MIKE KIPNGETICH SAINA APPLICANT

HOSEA KIPROP SAINA APPLICANT

SAIN KIPLAGAT ELILAH APPLICANT

**AS A LEGAL REPRESENTATIVES OF THE ESTATE OF KIPSAINA ARAP
TARUS ALIAS KIPSAINA TARUS - DECEASED**

RULING

1. By an application by way of a notice of motion dated 9th March 2021 pursuant to, inter alia, sections 1A, 1B, 3 and 3A of the [Civil Procedure Act](#) Chapter 21 Laws of Kenya and Article 159 of the [Constitution of Kenya 2010](#) the applicants through Kipkosigei Choge and Company Advocates are seeking the following orders;
 - a. That the Honourable Court be pleased to grant leave to the Applicants to Amend the Defence in E & L No 12 of 2021 (the suit) so as to Substitute the Deceased Defendant with the Administrator of his Estate.



- b. That the Honourable Court be pleased further to allow the Applicants/ the Administrator now the Defendants to Consolidate and Amend the Defence in E & L No 12 of 2021 with the Plaintiff in E & L No 57 of 2021 and in No E006 of 2022, the Plaintiff/s in these suits No E & L No 57 of 2021 and E & L No. E006 of 2022 already being the proposed Defendants in the suit.
2. Mr Sang instructed by Mr Choge learned counsel for the applicants has sought leave to withdraw the application. That the applicants intend to file afresh application as there are changes in this matter.
 3. There is no response to the application and leave sought to withdraw the same.
 4. It is established law that the choice by a party to withdraw a matter before court having given reasons thereof as a general rule, cannot be taken away from that party; see *Council of Governors v Senate & another*; SC Reference No. 1 of 2014 (2014) eKLR.
 5. Learned counsel for the applicants has given reasons for the withdrawal of the application as stated in paragraph 2 hereinabove.
 6. In the premises, I find merit in the applicant's request to withdraw the application.
 7. Accordingly, I hereby allow the withdrawal of the application dated 9th March 2025 with no orders as to costs.
 8. It is so ordered.

DATED AND DELIVERED AT KAPSABET THIS 21ST DAY OF MAY 2025.

G M A ONGONDO

JUDGE

Present

Mr Sang instructed by Mr Choge learned counsel for the applicants

Mr Walter Kipkorir, court assistant

