



**Chepkonga & another v Koima & Kibii (Suing as the Legal Representatives of the Estate of the Late Isaiah Kibii Boswony - Deceased) & 2 others (Civil Appeal E003 of 2023) [2025] KEELC 6790 (KLR) (6 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6790 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KABARNET  
CIVIL APPEAL E003 OF 2023  
L WAITHAKA, J  
OCTOBER 6, 2025**

**BETWEEN**

**CHEBIEGON CHEPKONGA ..... 1<sup>ST</sup> APPELLANT**

**JOSEPH KIPKEMOI CHEPYEGON ..... 2<sup>ND</sup> APPELLANT**

**AND**

**ROSE JEPKORIR KOIMA & KENNETH KIPCHIRCHIR KIBII (SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE ISAIAH KIBII BOSWONY - DECEASED) ..... 1<sup>ST</sup> RESPONDENT**

**OBADIA KIPKURUI YATOR ..... 2<sup>ND</sup> RESPONDENT**

**DISTRICT LAND REGISTRAR KOIBATEK/ MOGOTIO ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This ruling is in respect of the notice of motion application, dated 9th May, 2025. Through the application, the 1<sup>st</sup> respondents in this appeal, who are the applicants, inter alia, seeks leave of the court to join Amina Omar and Fatuma Rashid to the appeal on the ground that the proposed interested parties purchased the parcel of land known as Baringo/Sabatia-103/895 and got registered as proprietors of the said parcel of land after judgment had been issued in their favour in respect of the said parcel of the land.
2. The applicants fault/blame the 2nd appellant for allegedly transferring the suit property to the interested parties during the pendency of this appeal thereby undermining the administration of justice by putting the suit property outside the reach of the 2nd appellant.
3. It is the applicants' case that joinder of the interested party is necessary to accord them an opportunity to be heard and to ensure that no orders are made affecting their rights without their participation.



- Terming the proposed interested parties necessary and proper parties to the appeal, the applicants contend that joinder of the proposed interested parties does not introduce new issues to the appeal as the issue of ownership and legal interests in the suit property is already under contention.
4. It is the applicants' case that joinder of the proposed interested parties to the appeal is necessary in order to enable the court effectually and completely adjudicate and settle all questions involved regarding the subject matter and the orders thereafter.
  5. According to the applicants, joinder of the proposed interested parties to the appeal will also avoid multiplicity of suits regarding the issues raised.
  6. The application is supported by the affidavit of Kenneth Kipchirchir Kibii sworn on 9th May 2025 in which the grounds on the face of the application are reiterated. Besides reiterating the grounds on the face of the application, the applicants have annexed a certificate of official search dated 4th August 2023 (marked KKK2) showing that as at 25th April 2023, the proposed interested parties were the registered proprietors of the suit property.
  7. The 2nd appellant filed a reply to the application. In the replying affidavit he swore on 29th May 2025, he avers that the proposed interested parties should not be joined to the appeal because the contract entered between him and the proposed interested parties was rescinded. In support of that averment, the 2nd appellant has annexed an agreement executed between himself and the proposed interested parties, dated 6th November 2024 titled compensation and settlement agreement (marked JKC1).
  8. In a rejoinder, the applicants filed a further affidavit of Kenneth Kipchirchir Kibii, sworn on 20th June 2025 in which he avers and contends that the agreement between the 2nd appellant and the proposed interested parties was not only not candid but also dishonest and a mockery; that the agreement is silent on whether title to the suit property sold and transferred by the 2nd appellant to the purchasers and title issued to the proposed interested parties on 25th April 2023 was surrendered to the lands office for cancellation; that there are no grounds in the replying affidavit for opposing joinder of the proposed interested parties and that the replying affidavit is defective, a perjury and an abuse of the process of the court as it is meant to mislead the court.
  9. The 2nd appellant filed a supplementary affidavit sworn on 1st July 2025 in which he avers and contends that the agreement entered between him and the interested parties is not in respect of the suit property but a property known as Baringo-103/279; that the proposed interested parties were not parties in the suit in the lower court; that joining the proposed interested parties will not add any probative value to the appeal as their evidence was never tendered in the lower court and would not have opportunity to cross examine the respondents witnesses. Further, that the alleged transfer of the suit property to the proposed interested parties was never a question before the lower court; that an appellate court cannot tender new evidence or join a party without specific leave to do so and that joining the proposed interested parties to the appeal will be a kin to re-opening the applicants' case yet the matter had been concluded at the lower court.
  10. The 2nd appellant acknowledges that there is an order staying any sell, transfer and subdivision and terms the applicants' application herein frivolous, treacherous, vexatious, malicious, bad in law and an abuse of the court process.
  11. Pursuant to directions issued on 19th May 2025, the application was disposed of by way of written submissions.
  12. In their submissions filed on 16th July 2025, the applicants basically rehash the issues raised in the grounds taken up in support of the application and the affidavits sworn in support thereof. They also



cites the law in support of the issues raised and/or arising from the application. I will give a detailed review of the submissions in the analysis of the application hereunder.

13. In their submissions filed on 25th July 2025, the appellants have submitted that the applicants' application is not anchored in law because the provisions of Order 1 Rule 10(2) of the Civil Procedure Rules contemplates a primary suit as opposed to an appeal; that an appellate court confines itself to issues on the record of appeal; that the application by the applicants raises no triable issue; that the proposed interested parties do not qualify to be joined in the suit because they were not parties to the proceedings in the lower court and because the allegations by the applicants are not substantiated.

### **Analysis and determination**

14. I have carefully read and considered the grounds taken up in support of the application, the response by the 2nd appellant and submissions by the applicants and the appellants/respondents. While there is no doubt that the issue of alleged transfer of the suit property to the proposed interested parties during the pendency of this appeal and when a judgment in favour of the applicants was in place is a weighty matter touching on a possible case of disobedience of the authority of the court and interference with administration of justice by the 2nd respondent and perhaps the proposed interested parties, it is the considered view of this court that this court is not the right forum to hear and determine the issues raised by the applicants. This is so because the issue of the alleged illegal and unlawful transfer of the suit property after judgment is not one of the issues taken up as a ground of appeal by the appellants. The issue merely arises in the instant application. Dealing with the issue in this application will not in any way make it one of the grounds of appeal for purposes of affording the proposed interested parties opportunity to answer to it as suggested by the applicants.
15. The alleged illegal and unlawful transfer of the suit property in violation of the judgment and decree of the lower court appealed from is also a weighty issue, necessitating the cancellation of the title issued in favour of the proposed interested parties and rectification of the title to the suit property. For this court to issue such orders against the proposed interested parties, there must be proper pleadings instituted against the proposed interested parties. The grounds taken up by the applicants, including the additional prayers sought by the applicants cannot form a basis of interfering with the impugned title held by the proposed interested parties in the absence of pleadings filed by applicants or any other interested person raising them against the proposed interested parties and affording the proposed interested party opportunity to be heard on the case urged against them.
16. The upshot of the foregoing is that the application dated 9th May 2025 is found to be lacking in merits and is hereby dismissed. Costs of the application to abide the outcome of the Appeal.
17. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KABARNET THIS 6<sup>TH</sup> DAY OF OCTOBER, 2025.**

**L. N. WAITHAKA**

**JUDGE**

Ruling read virtually in the presence of;-

N/A for the 1<sup>st</sup> and 3<sup>rd</sup> Respondents

Mr. Sirma holding brief for Mr. Kipkenei for the Appellant /Respondent

Mr. Mureithi for the 2<sup>nd</sup> Respondent



Court Assistant: Ian

