



Chege & 2 others (Being the Administrators of the Estate of Chege Ng'ang'a alias Chege Nganga alias David Chege Ngángá - Deceased) v Ngundu Farmers Co-operative Society Ltd & 2 others; Kimani (Being the Administrator of the Estate of Asaph Kimani Kuria – Deceased) (Interested Party) (Environment and Land Case 335 of 2018) [2025] KEELC 7618 (KLR) (24 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7618 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 335 OF 2018
TW MURIGI, J
OCTOBER 24, 2025**

BETWEEN

**MERCY WAMBAIRE CHEGE 1ST PLAINTIFF
STEPHEN NGANGA CHEGE 2ND PLAINTIFF
IRENE RUGURU CHEGE 3RD PLAINTIFF
BEING THE ADMINISTRATORS OF THE ESTATE OF CHEGE NG'ANG'A
ALIAS CHEGE NGANGA ALIAS DAVID CHEGE NGÁNGÁ - DECEASED**

AND

**NGUNDU FARMERS CO-OPERATIVE SOCIETY LTD 1ST DEFENDANT
THE NATIONAL LAND COMMISSION 2ND DEFENDANT
THE CHIEF LAND REGISTRAR 3RD DEFENDANT**

AND

**MARGARET WANJIRU KIMANI (BEING THE ADMINISTRATOR OF THE
ESTATE OF ASAPH KIMANI KURIA – DECEASED) INTERESTED PARTY**

RULING

1. By a Notice of Motion dated 12th November 2024 brought under Order 1 Rule 3 and 10, Order 51 Rule 1 and 13 of the Civil Procedure Rules and Sections 1A, 1B & 3A of the *Civil Procedure Act*, the Interested Party/Applicant seeks the following orders: -



- a. That the Honourable Court be pleased to order that the Interested Party be listed as the 4th Defendant.
 - b. That upon grant of prayer A above, the Honourable Court be pleased to direct that parties' pleadings be amended to reflect the position and further that the Applicant's draft statement of defence and counterclaim be filed and served within 14 days.
 - c. That the Honourable Court, upon grant of prayer B, grant the Applicant leave to file for Discovery against the Liquidator of the 1st Defendant.
 - d. That the costs of this application be provided for.
2. The application is based on the grounds appearing on its face, together with the supporting affidavit of Margaret Wanjiru Kimani, sworn on the even date.

The Applicant's Case

3. The Applicant seeks to change her status to that of the 4th Defendant to enable her to file a counterclaim related to the 4 acres purchased by Asaph Kimani Kuria from Chege Ng'ang'a.
4. She argued that she cannot file a counterclaim unless she changes her status to that of a Defendant. She also stated that this change will prevent multiple lawsuits involving the same parties. The Applicant is apprehensive that she will be dispossessed if the orders sought are not granted.

The Plaintiff/respondents' Case

5. The Plaintiffs' opposed the application through the replying affidavit of Mercy Wambaire Chege, sworn on 29th October 2024.
6. The deponent asserts that the application is frivolous, vexatious, and an abuse of the court process, intended to delay the determination of this suit.
7. She averred that the Interested Party sought to be joined as an Interested Party, fully aware that the role of an Interested Party is passive. She argued that the Applicant is bound by the court's ruling that joined her as an Interested Party without needing to amend the Plaintiff. She also contended that they have no claim against the Interested Party and, therefore, allowing the Applicant to change her status would effectively alter the basis of the suit.
8. She further argued that the Applicant cannot introduce a new cause of action or frame issues presented to the court by the primary litigants; consequently, the purported defence and counterclaim are deemed null and void ab initio. She maintained that the Applicant has the capacity to file a separate claim against the Plaintiffs.
9. According to the deponent, the property claimed by the Applicant belonged to the estate of David Chege Nganga, which has since been distributed amongst the beneficiaries of the deceased in accordance with the certificate of confirmation of grant dated 27th January 2023. Therefore, the Applicant cannot seek to litigate over a property that has already been distributed, as his claim is overtaken by events. She argued that the Interested Party did not participate in the succession proceedings, raise an objection to the issuance of the grant, or claim any share of the estate.
10. She further argued that allowing the application would lead to a cycle of amendments to the plaintiff and defence, which would cause delays in the determination of this suit.
11. The Application was canvassed by way of written submissions.



The Interested Party's Submissions

12. The Applicant filed her submissions dated 13th March 2025.
13. On behalf of the Applicant, Counsel submitted that an Interested Party cannot seek substantive orders, hence the instant application.
14. Counsel argued that the Applicant should be allowed to change her status to that of a Defendant in order to pursue her counterclaim, as she has demonstrated a tangible interest in the suit land, specifically the 4 acres she claims. To support this argument, reliance was placed on the case of *Ngumbao & 2 others v District Land Registrar Uasin Gishu & another; Wainaina (Interested Party)* ELC Case 74 of 2015z (2022) KEELC 15490, where it was held that:-

“...it is therefore necessary that the status of the Applicant as an interested party be converted from that position to that of a Defendant because, in law, an interested party’s participation in a suit is passive in nature. An interested party cannot be granted substantive relief.”

In conclusion, Counsel urged the court to allow the application as prayed.

The Plaintiffs Submissions

15. The Plaintiffs filed their submissions dated 21st March 2025.
16. On their behalf, Counsel submitted that the sole issue for determination is whether the Interested Party should be allowed to change her status to that of the 4th Defendant.
17. Counsel submitted that the dispute in the suit concerns ownership of title No. Nairobi/Block126/749, where the Plaintiffs, as the administrators ad litem of the Estate of Charles Ngángá alias Charles Nganga alias David Chege Ngangá, are seeking a declaration that the deceased is the sole owner of the suit property.
18. Counsel further submitted that the suit was heard on its merits and a judgment was delivered in favour of the Plaintiffs. The Plaintiffs, who are among the beneficiaries of Chege Ngángá’s estate, initiated the process of distributing the estate in accordance with the certificate of confirmation of grant, which led to the issuance of titles to the beneficiaries.
19. It was submitted that vide a ruling delivered on 9th May 2024, the judgment was set aside and the matter was ordered to be heard de novo. The Applicant was joined as an Interested Party with leave to tender evidence, but was not granted leave to file a statement of defence and counterclaim despite seeking the order.
20. Counsel argued that changing the Interested Party’s status to a litigating 4th Defendant amounts to hijacking the Plaintiff’s suit, as she seeks to introduce a new cause of action.

Analysis And Determination

21. Having considered the application in light of the pleadings, the respective affidavits, and the rival submissions, the issue that arises for determination is whether the Interested Party is entitled to the orders sought.
22. The Interested Party is seeking to change her status to that of the 4th Defendant in order to allow her to file a defense and counterclaim.



23. The Respondents strongly opposed the application, arguing that the joinder would introduce a new cause of action. They further stated that the deceased's estate had already been distributed amongst the beneficiaries.
24. The record shows that the Interested Party filed a Notice of Motion dated 19th June 2023 seeking the following orders:-
 1. Spent
 2. Spent.
 3. Spent.
 4. That the Honourable court be pleased to set aside the judgment dated and delivered on 8/06/2023 and the resultant order and/or decree and in place order that the suit be heard de novo.
 5. That the Honourable Court be pleased to join the Interested Party/Applicant to the suit and further be pleased to enlarge time and grant the Interested party leave to file a statement of Defence and counterclaim out of time.
 6. That pending the hearing and determination of this suit, the Honourable court be pleased to grant an order of injunction against the Plaintiffs/Respondents and/or their agents, servants, employees and any person claiming through the Plaintiffs/Respondents from invading, alienating, selling, transferring, charging, leasing, disposing or dealing in any manner whatsoever with the property known as Nairobi/block 126/749.
 8. Spent.
 9. That in the alternative, pending inter partes hearing and determination of this suit, the Honourable court be pleased to grant an order of status quo ante.
 10. That the costs of the application be provided for.
25. In its ruling delivered on 9th May 2024, the Applicant was granted leave to join the suit as an Interested Party, to present evidence, and participate in the proceedings herein.
26. Her prayer seeking leave to file the defence and counterclaim was not granted.
27. Based on the foregoing, I find that the application is res judicata because the court had previously addressed a similar application and made a decision. The Plaintiffs indicated that they have no claim against the Applicant. The Plaintiffs have the right to choose the parties to sue. They cannot be compelled to proceed against persons whom they have no desire to sue. This means that the Applicant cannot be added as Defendant without the Plaintiffs' consent, as doing so would alter the nature of the suit. Given that a similar prayer was previously sought, I find that the application constitutes an abuse of the court process.
28. The upshot of the foregoing is that the application dated 12th November 2024 is devoid of merit and the same is hereby dismissed with costs.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 24TH DAY OF OCTOBER 2025.

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T. MURIGI



JUDGE

In The Presence Of:-

Kariuki Gacau E for the Plaintiff

Ahmed – Court assistant

