



REPUBLIC OF KENYA



**In re Estate of William Kiptui Rotich (Deceased) (Succession Cause
E001 of 2024) [2025] KEHC 16693 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16693 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
SUCCESSION CAUSE E001 OF 2024**

**RB NGETICH, J
NOVEMBER 13, 2025**

IN THE MATTER OF THE ESTATE OF WILLIAM KIPTUI ROTICH (DECEASED)

BETWEEN

**DORCAS JEPSONGOL KIPTUI 1ST APPLICANT
LUCY J. ROTICH 2ND APPLICANT**

AND

**KENNEDY KIPRUTO ROTICH 1ST OBJECTOR
FESTUS BARASEL ROTICH 2ND OBJECTOR**

AND

KENYA INDUSTRIAL ESTATES LTD INTERESTED PARTY

RULING

1. This is a ruling on Application dated 30th May 2025 filed by the intended Interested Party/Applicant's seeking the following orders: -
 - a. Spent.
 - b. That this Honorable court be pleased to grant leave to the Interested Party/Applicant to be joined in the proceedings as an Interested Party
 - c. That upon being joined as Interested Party, the Interested Party be granted unconditional leave to file defence and any document in defence of the cause herein
 - d. The cost of this application be provided for.
2. The application is supported by the annexed affidavit sworn by Charity Ndeke on 30th May, 2025. She avers that the Interested Party holds a charge interest over all that parcel of land known as. Baringo/



Ravine/102/133 registered in the name of Festus B. Rotich and that it came to the attention of the Interested Party that there is a dispute regarding the ownership of the said parcel of land.

3. In addition, that the Interested Party's rights over the said property is at risk of being taken away from it without being accorded a chance to be heard and no prejudice will be occasioned upon the Respondents if the Interested Party is joined in this succession proceedings.

Grounds Of Opposition By 1st And 2nd Respondents

4. The 1st and 2nd administrator filed grounds of opposition dated 23rd June 2023. The grounds are that the Court lacks jurisdiction to handle this matter as between the Applicant and the estate; the Court has already pronounced itself on the ownership of Baringo/Ravine 102/133; the wrong procedure has been adopted by the applicant and that the application has been overtaken by events.
5. The 3rd Administrator on the other hand filed a preliminary notice of objection dated 1st July, 2025 with similar grounds as those raised in the 1st and 2nd administrator's grounds of opposition.

Applicant's Submissions

6. The applicant submits that the issue for determination by this court is whether this Court should grant the orders sought in the Interested Party/Applicant application.
7. The applicant submits that the instant application was filed in court on 3rd June, 2025. On 5th June 2025 the court issued directions that application be served for directions on 18th June, 2025. The ruling by this honourable court was delivered on 12th June 2025 after the Interested Party had already filed the instant application.
8. They submit that the applicant has properly filed the instant application before this honourable court. Rule 59(1) of the Probate and Administration Rules provides as follows on applications of the current nature: -
 59. Form of proceedings
 1. Save where otherwise provided in these Rules every application to the court or to a registry shall be brought in the form of a petition, caveat or summons as may be appropriate.
9. That in the instant proceedings the applicant wishes to be joined as Interested Party and not an objector as alluded by the respondents. Thus, the Interested party has rightly approached this honourable court by way of chamber summons.
10. They submit that this court has the jurisdiction to handle an application where a party has sought to be joined as interested party. The elements for one to be joined as an interested party in a suit were set out in the Supreme Court's decision of Francis Kariuki Muruatetu & another v Republic & 5 others [2016] eKLR as follows;

“From the foregoing legal provisions, and from the case law, 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 is 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 interested 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.
- iii. 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. They submit that the Interested party has sufficiently satisfied the elements set out above to be joined as an interested party and the court should exercise discretion in its favour. Firstly, the Intended interested party advanced a loan facility to Placido Investment Company Limited in September, 2022 and the said facility was secured by the property known as Baringo/Ravine -102/133. Further, the Interested Party has recently been made aware that there is a family dispute and allegation that the said security was fraudulently acquired by the Guarantor Festus B. Rotich who is a beneficiary in the instant suit.
12. Secondly, the Interested party believes that it still has a stake in the matter and should be accorded a chance to participate in the instant proceedings. In the ruling of the court, it is noted that the other beneficiaries agreed that one Festus B. Rotich is entitled to 50% of the Baringo/Ravine-102/133 a property that had been charged to the Interested Party.
13. In Francis Kariuki Muruatetu & another v Republic & 5 others [2016] eKLR the court held as follows on the question of prejudice.

“Having carefully considered all arguments, we are of the opinion that any party seeking to join proceedings in any capacity, must come to terms with the fact that the overriding interest or stake in any matter is that of the primary/principal parties' before the Court. The determination of any matter will always have a direct effect on the primary/principal parties. Third parties admitted as interested parties may only be remotely or indirectly affected, but the primary impact is on the parties that first moved the Court. This is true, more so, in proceedings that were not commenced as Public Interest Litigation (PIL), like the proceedings now before us.

- (42) Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed by the Court from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues, or introduce new issues for determination by the Court. One of the principles for admission of an interested party is that such a party must demonstrate that he/she has a stake in the matter before the Court. That stake cannot take the form of an altogether a new issue to be introduced before court.”



14. Further in the case of *Cyprian Andama v Director of Public Prosecution & another* [2018] eKLR the court in allowing an application to be joined as interested party held thus: -

“...I note that the main issue for determination is whether the intended interested party has sufficiently demonstrated that it deserves to be admitted to these proceedings as an interested party.”

15. Rule 7 of Mutunga Rules provides as follows:

Interested party

1. A person with leave of the court make an oral or written application to be joined as an interested party
2. A court may on its own motion join any interested party to the proceedings before it.

16. In the case of *Trusted Society of Human Rights Alliance v Mumo Matemu* [2014] e KLR, the Supreme Court held that:

“An interested party is one who has a stake in the proceedings, though he or she was not a party to the cause ab initio. He or she is one who will be affected by the decision of the court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or herself appears in the proceedings, and champions his or her cause....”

17. The applicant submits that the Interested party has not made the instant application with the intention of delaying the succession proceedings. Its interest is only limited to ownership and apportionment of all that parcel of land known as Baringo/Ravine-102/133 and submit that this is an exceptional circumstance to warrant the joinder of the Applicant in this suit. It would be fair, just and equitable and in the interest of justice that the orders sought by the Applicant be granted and the notice of preliminary objection and grounds of opposition be dismissed.

1st And 2nd Administrator’s Submissions

18. In response to the application dated 30th May, 2025 the 1st and 2nd administrators filed Grounds of opposition dated 23rd June, 2025 and first submissions dated 24th June 2025 setting out the following grounds:-

1. The application has been overtaken by events. This is because this Court has already taken viva voce evidence in respect to Baringo/ Ravine/ 102/133 and pronounced itself on who is the owner of the property through ruling delivered on 12th June, 2025. A Party dissatisfied with the decision made can only apply for review or file an Appeal. The Applicant had an opportunity to participate in the Proceedings an opportunity they did not take.
2. The issue raised by the Applicant on the validity of its Charge over parcel known as Baringo/ Ravine/102/ 133 cannot be canvassed by a 3rd party in this matter.

19. That the Succession Act Cap 160 Laws of Kenya confers a special jurisdiction limited in its application and relied on the case of *Muriuki Musa Hassan -VS- Rose Kanyua Musa & 4 Others* [2014] eKLF where the court held as follows: -

“Jurisdiction of a family Court dealing with a Succession Cause is Such Court's sphere of inquiry is limited to ascertaining what assets are available to the estate; who are the



beneficiaries and the mode of distribution of the estate. Such court cannot delve into establishing the validity of a Claim as one before the court.

In the Case before the court, there are serious issues that need to be ascertained either by the Lower court or the court with jurisdiction. the Lower Court or the Court with jurisdiction to entertain a claim to land.”

20. They submit that the Procedure used by the Applicant is wanting and that in a Succession matter, the Proceedings that can be entertained are Petitions and Objection Proceedings. They relied on the case of In Re Estate of Dorcas Omena Binayo (Deceased) [2021] eKLR, where the procedure in pursuing Objection Proceedings are set out.
21. That the Applicant’s application cannot qualify as an Objection Proceedings. The Applicant’s recourse faced with the situation it finds itself in is not the Succession Act but the Civil Procedure Under Order 37 Rule 4.
22. That the Application before the Court is asking the Court to sit on appeal on its ow decision and ought to be dismissed with costs to the Administratrix.

1st And 2nd Admistraor’s Further Submissions

23. In the further submissions dated 18th September 2025, the 1st and 2nd Administrators submit that it is not in dispute that the intended interested party has an interest in any of the properties in dispute but submit that the jurisdiction to deal with it does not lie in this court and the interested party should lodge complaint in the right forum and relied on the case of Muriuki Musa Hasan quoted in their submissions dated 24th June 2025; that this court only deal with properties of the estate ,the beneficiaries and mode of distribution.
24. They further submit that the court having determined that Eldama Ravine /102/133 belongs to the estate, this court cannot revisit the issue as to whether the Chargor was the owner and whether he had legitimately charged it to the intended interested party and submit that the court is functus officio.

Analysis And Determination

25. I have carefully considered the application dated 30th May 2025, the supporting affidavit, the grounds of opposition, the rival submissions, and the authorities cited by both parties. The issue for determination is whether the Applicant, Kenya Industrial Estates Limited, has met the threshold for joinder as an interested party in this succession cause.
26. The legal foundation for joinder as an interested party is found in Rule 73 of the Probate and Administration Rules, which reserves to the court inherent power to make such orders as may be necessary for the ends of justice. The principles governing joinder have been elaborated by the Supreme Court in Francis Karioko Muruatetu & another v Republic & 5 others [2016] eKLR, where the court held that an applicant must demonstrate: -
 - a. a clearly identifiable and proximate personal interest or stake in the matter;
 - b. the prejudice that would be suffered if not enjoined; and
 - c. the relevance of the intended participation and that such participation will not merely duplicate existing positions of the principal parties.
27. Applying the above principles, the Applicant contends that it advanced a loan facility to Placido Investment Company Limited in September 2022, which was secured by a charge over Baringo/



Ravine/102/133, a property now found by this court to form part of the estate of the deceased. The Applicant therefore seeks to be heard on the risk posed to its charge interest by the succession proceedings.

28. The 1st and 2nd Administrators oppose the application on the grounds that this court has already pronounced itself on the ownership of the said parcel in its ruling delivered on 12th June 2025; that the court is now functus officio on that issue; and that disputes regarding the validity or enforceability of a charge are outside the jurisdiction of a succession court.
29. I note from the record that in the ruling of 12th June 2025, this court determined that Baringo/Ravine/102/133 forms part of the assets of the deceased's estate, notwithstanding that it had been charged to the Applicant. The finding was made upon evaluation of the evidence on record, including the title history and the deceased's interest therein. The effect of that determination was to settle the ownership question for purposes of distribution.
30. The question now is whether, in light of that finding, the Applicant can properly be joined to these proceedings. Joinder of parties is intended to ensure that all persons whose rights may be directly affected by a decision are afforded an opportunity to be heard. However, as emphasized in *Muruatetu (supra)* and *Trusted Society of Human Rights Alliance v Mumo Matemu* [2014] eKLR, an interested party's participation must not alter or expand the substantive issues before the court.
31. In the present case, the substantive dispute in this succession cause concerns the identification of the assets of the deceased, the beneficiaries, and the mode of distribution. The Applicant's interest, on the other hand, arises from a commercial transaction between it and one of the beneficiaries who charged a portion of the estate property to secure a loan. The validity, enforceability, or realization of that charge are issues of a civil and contractual nature which fall outside the jurisdiction of a succession court, as held in *Muriuki Musa Hassan v Rose Kanyua Musa & 4 others* [2014] eKLR.
32. Once this court pronounced itself on ownership of the subject parcel, it became functus officio on that issue. The appropriate remedy for any party aggrieved by that determination lies in an application for review or an appeal, not through joinder to reopen a matter already determined. To admit the Applicant at this stage would effectively invite the court to revisit its previous findings under the guise of participation as an interested party.
33. While I acknowledge that the Applicant holds a charge registered over the property, such interest does not confer locus to participate in the succession proceedings. The Applicant retains the right to pursue its remedies in the proper forum under the *Land Act* and Civil Procedure Rules should the charged security be affected by distribution.
34. Final Orders: -
 - a. The application dated 30th May 2025 lacks merit and is hereby dismissed.
 - b. Each party shall bear its own costs.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 13TH OF NOVEMBER 2025.

.....

RACHEL NGETICH
JUDGE

In the presence of:



CA Elvis.

Ms. Ekesa H/B for Mr. Ojoo for intended interested party.

Mr. Kamonjo for 1st and 2nd Administrator.

Mr. Yator for 3rd Administrator.

