

REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT KISUMU

LAND CASE NO.76 OF 2015

ASMAN CHUMBA OMARI.....PLAINTIFF/RESPONDENT

-VERSUS-

JOHN OUMA GUMBA.....DEFENDANT/APPLICANT

AND

JANE ACHIENG NGOMA.....1ST INTERESTED PARTY

**ANN ADHIAMBO OLANG.....2ND INTERESTED
PARTY**

VITALIS ONYANGO ANJAO.....3RD INTERESTED PARTY

R U L I N G

The application before court for determination is the Notice of Motion dated 17th June, 2025. It seeks for orders that:-

1. The honourable court be pleased to grant leave to the firm of C. Obiero & Associates Advocates to come on record for the 2nd Interested Party in place of Nyanga & Company Advocates after judgement.
2. The honourable court do clarify whether the costs as decreed in the judgement apply to the Interested Parties, specifically

the 2nd Interested Party, in the absence of specific directions to that effect in the judgement of the court.

3. That pending determination of this application, there be a stay of enforcement and/or execution of the Bill of Costs as against the 2nd Interested Party.
4. That such other or further orders as the court may deem fit to grant.

The grounds upon which the application is brought are that;

- a) Judgement was delivered in the matter and costs were awarded.
- b) The 2nd Interested Party had previously been represented by Nyanga & Company Advocates and intends to be represented by C. Obiero & Company Advocates post-judgement for purposes of defending the Bill of Costs.
- c) The court decree upon judgement did not expressly specify whether the costs were to be borne by the Interested Parties, and the Plaintiff has since served the Bill of Costs on the Applicant (2nd Interested Party).
- d) There is ambiguity as to the parties against whom the costs have been decreed and in the interest of justice and fair

hearing, the 2nd Interested Party seeks clarification from his honourable court.

e) It is just and equitable that this application be allowed.

The application is supported by the averments in the Supporting Affidavit of Anne Adhiambo Olang sworn on 17th June, 2025.

The application was opposed vide the plaintiff's Replying Affidavit sworn on 9th July 2025.

The application was argued by way of written submissions.

Prayer 1 of the application seeks for leave to issue to the firm of C. Obiero & Associates to come on record for the 2nd Interested Party in place Nyanga & Company Advocates. The prayer was not opposed by the respondent or the advocates previously acting for the applicant. The Applicants are entitled to representation by Counsel. Prayer 1 of the application is merited.

Prayer 2 which is the substantive prayer in the application invites the court to clarify whether the costs as decreed in the judgement apply to the Interested Parties, especially the 2nd Interested Party in the absence of the specific directions to that effect in the judgement of the court.

Under section 27 of the Civil Procedure Act, the law provides that;

“(1) subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid and to give all directions for the purposes aforesaid, and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers.

Provides that the costs of any action cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

(2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum and such interest shall be added to the costs and shall be recovered as such.”

From the above quoted law, as much as the issue of costs of a matter is in the discretion of the court, the guiding principle is that costs follow the event. The party in whose favour judgement is entered is ordinarily awarded the costs to be paid by the party

against whom the judgement is entered unless there is good reason for the court to otherwise order.

The Interested Parties in this matter caused themselves to be joined in the suit and the judgement ultimately delivered was against them as it was against the Defendant. The costs are therefore payable by the Defendant and the Interested Parties.

For the foregoing reasons, the court finds that no clarification was required as the order for costs applies to all the parties against whom the judgement was directed.

The application succeeds to the extent that prayer 1 thereof is allowed in the terms that the firm of C. Obiero & Associates Advocates is granted leave to come on record for the 2nd Interested Party in place of Nyanga & Company Advocates. No orders as to costs.

Orders accordingly.

Ruling read and signed at Kisumu and delivered virtually this 27th November day of November, 2025.

**E. ASATI,
JUDGE.**

In the presence of:

Maureen: Court Assistant.

C. Obiero for the Applicant.

Kojo for the Respondent.