

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
AT KAPSABET
ELC CASE NO. 63 OF 2021

JOSHUA KIPKEMEI CHUMO.....1ST
PLAINTIFF

WILSON CHUMO.....2ND
PLAINTIFF

DAVID CHUMO.....3RD
PLAINTIFF

-VERSUS-

JAPHET KIBIWOTT
LELEI.....DEFENDANT

BY WAY OF COUNTERCLAIM

-VERSUS-

JOSHUA KIPKEMEI CHUMO.....1ST

DEFENDANT

WILSON CHUMO.....2ND

DEFENDANT

DAVID CHUMO.....3RD

DEFENDANT

THE HON. ATTORNEY GENERAL.....4TH

DEFENDANT

AND

IRENE CHEPKEMBOI KOSKEI.....INTERESTED

PARTY/APPLICANT

RULING

1. By the Notice of Motion dated 21st July 2025, the Applicant/Intended Interested party, Irine Chepkemboi Koskei, who is acting in person is seeking the following orders;

- a) The applicant be joined in these proceedings as an interested party.
- b) Upon joinder, the intended interested Party be granted leave to participate fully in the proceedings herein.
- c) Costs of this application be in the cause.

2. The foundation of the application is the applicant's affidavit of ten paragraphs of even date and copies of three documents including a Limited Grant of Letters of Administration Ad Litem issued on 2nd July 2024 in Kapsabet CMC Ad Litem Cause No. E064 of 2024 (ICK-2) annexed thereto alongside six grounds which include;

a) The Intended Interested Party is the widow of the late Philip Kipkering Chumo (Deceased herein) whose estate has a direct interest in the subject property that forms the subject of these proceedings.

b) The Interested Intended Party holds a Limited Grant of Letters of Administration Ad Litem issued on 2nd July 2024 in respect of the deceased's estate, expressly for the purpose of representing the estate in these proceedings.

c) The Intended Interested Party has a genuine, identifiable interest in the subject matter of this suit, and her joinder is necessary to enable the court to effectively and completely adjudicate upon all questions involved.

3. By the replying affidavit of fourteen paragraphs sworn on 19th September 2025 and a copy of order in Eldoret Civil Appeal No. 281 of 2006; **Philip Chumo-vs-Kibiwott Chesilim Kosgei (JKL 1)** annexed thereto, the respondent/plaintiff in the counter claim, Japheth Kibiwott Lelei through Manani, Lilan, Mwetich & Company Advocates, opposed the application and sought dismissal of the same with costs. He averred in part, that the applicant has no stake, legal interest, or duty in the proceedings and will not be affected by the court's decision and should therefore not be allowed as an Interested Party. That the said Appeal abated after the family of the Deceased refused to substitute the Deceased who was the appellant thereof. That the applicant is calculated to reconvert the abatement of the appeal through the application.
4. Also, the Plaintiff averred that the application is late in time. That the same is a clear indication of the delaying tactics. That it is always at the beginning of the year that the applicant files a new application so as to delay the matter and continue to occupy and till the suit land.

5. The 2nd and 3rd Plaintiffs through Songok and Company Advocates, do not oppose the application as per their joint replying affidavit of sixteen paragraphs sworn on 23rd September 2025. They deposed that the Applicant is well versed with the issues as regards the case thus, her joinder to the suit and participation herein will assist the Honourable Court to effectively and completely adjudicate upon all the issues in controversy. That the application is made in good faith and in the interest of justice.
6. On 24th July 2025, the Court directed in part, that hearing of the application be by way of written submissions and to take precedence over hearing of this part heard suit.
7. In the Applicant's submissions dated 27th October 2025, reference was made to, inter alia, the orders sought in the application, the right to fair hearing under **Articles 50 (1) and 159 (2) (a) and (d) of the Constitution of Kenya 2010 and Order 10 Rule 2 of the Civil Procedure Rules 2010** on substitution and addition of parties. The applicant submitted that joinder should not be denied where it aids the court in reaching a just determination and promotes access to justice as held in **Trusted Society of Human Rights Alliance-vs-Mumo Matemu**

& 5 others (2014) eKLR. Further, she relied on the case of **Deported Asian Custodian Board-vs-Jaffer Brothers Ltd (1999) 1 E 55** that a necessary party is one whose presence enables the court to effectively and completely adjudicate upon the dispute as in the present matter.

8. By the submissions dated 12th November 2025, Learned Counsel for the Respondent/Plaintiff in the counter claim referred to the application, the replying affidavit and this court's ruling of 4th June 2025 whereby a similar application dated 18th March 2025 by the Applicant was struck out. That at the time of institution of the suit, title deed to the disputed land and eviction order had already changed and been issued to the 1st Plaintiff namely Joshua Kipkemei Chumo and the 4th Defendant, Mary Chepngetich. That the Applicant is neither a purchaser nor owner with title. That Applicant has no identifiable personal stake in the land in dispute and her joinder is not necessary and implored the Court to dismiss the application. Counsel relied on the case of **Re NMH (Minor) (2020) KEHC 430 (KLR)** on an interested party in a suit to buttress the submissions.

9. The submissions dated 23rd September 2025, Learned Counsel for the 2nd and 3rd Plaintiffs supported the application. It was their submission that the estate of the Deceased would suffer if the applicant who is the Administrator thereof, is not allowed to join the suit. Reliance was made on, inter alia, **Articles 50 (1) and 159 (2) (supra) and Trusted Society case (supra)** to fortify the submissions.

10. In the foregone, is the application merited?

11. The Applicant has sought to be joined to the present proceedings as an interested party. In **Black's Law Dictionary 10th Edition at page 965**, the term 'Joinder' means;

'The uniting of parties or claims in a single lawsuit'

12. It is the Applicant's position that she is the widow of the Deceased. That she is obtained a certificate of death **(ICK-1)** and Limited Grant of Letters of Administration Ad Litem **(ICK-2)** annexed to her affidavit in support of the application. She set out her interest in the matter in her affidavit and grounds in support of the application.

13. In the case of **Trouistik Union International & another-vs-Jane Mbeyu & another (1993) eKLR**, the

Court of Appeal held that the estate of the deceased person vests in the administrator after obtaining a grant of letters of administration thereof; see also **Omari Kaburu-vs-Industrial & Commercial Development Corporation (2007) eKLR.**

14. Similarly, *in* the case of **Rajesh Pranjivan Chudasama vs Sailesh Pranjivan Chudasama (2014) eKLR,** the Court of Appeal held;

‘.....the position in law as regards locus standi in succession matters is well settled. A litigant is clothed with locus standi upon obtaining a limited or full grant of letters of administration in cases of intestate succession.....’

15. It must be noted that the applicant has attached a copy of Limited Grant of Letters of Administration Ad Litem dated 2nd July 2024 marked as **‘ICK-2’** annexed to the affidavit in support of the application issued to the applicant in respect of the Estate of Philip Kipkering Chumo (Deceased) in Kapsabet CMC Ad Litem Cause No. E064 of 2024. Therefore, the applicant is the Legal Representative of the Estate of the Deceased.

16. Under section 2 of the Civil Procedure Act Chapter 21 Laws of Kenya, the term 'Legal Representative' means;

'A person who in law, represents the estate of a deceased person, and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.'

17. It is trite law that in a formal application for joinder of parties to a suit, a right at the discretion of the Court be founded upon elements, inter alia, that the applicant has personal interest or stake in the matter and that the same must be set out or identifiable in the application but not something remote and not be prejudicial to the applicant; see **Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated)) [2016] KESC 12 (KLR).**

18. Notably, the 2nd and 3rd plaintiffs are in support of the application. So, the application is partially unopposed.

19. In the premises, the applicant has established that she is the Legal Representative of the Estate of the Deceased hence, has personal interest or stake in the matter which is not remote as set out in the application and that prejudice is likely to occasion on her if she is not joined in these proceedings. Therefore, the respondent's assertion of delay fails to displace the application which I find to be substantially unchallenged, solid and meritorious noting all the Constitutional and Statutory provisions and authorities cited in the parties' respective submissions.

20. Thus, the application dated 21st July 2025 is hereby allowed in terms of prayers 1 and 2 sought therein as set out in paragraph 1 (a) and (b) hereinabove with costs in the cause.

21. It is so ordered.

DATED and **DELIVERED** at **KAPSABET** this **25th** day of **NOVEMBER 2025**.

HON. G. M. A ONGONDO

JUDGE

In the presence of;

1. Ms Jeruto Learned Counsel for the Respondent/Defendant in main suit and the Plaintiff in the counterclaim.
2. Walter, Court Assistant