

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT AT HOMA BAY**  
**ELC LAND CASE No. 42 OF 2021**

**JOASH AGUTU ORENG.....1<sup>ST</sup>**

**PLAINTIFF**

**RUSALINA AGEKE NYAPARA.....2<sup>ND</sup>**

**PLAINTIFF**

**- VERSUS-**

**PHILGONA AJWANG OUMA (*sued as the legal representative of***

***PITALIS OUMA OWINO alias***

***PITALIS s/o OWINO (DECEASED)..... 1<sup>ST</sup>***

**DEFENDANT**

**SAMSON OGOLA MBEWA..... 2<sup>ND</sup>**

**DEFENDANT**

**ZAKARIA OKETCH OUMA..... 3<sup>RD</sup>**

**DEFENDANT**

**AND**

**GRACE AKINYI OMULO .....INTENDED INTERESTED  
PARTY**

**RULING**

**(On whether the intended interested party should be  
joined in this suit)**

**The Application**

1. The intended interested party/applicant filed a Notice of Motion application dated 29<sup>th</sup> September 2025, which application is expressed to be brought under Order 1 Rule 10(2), Order 51 Rule 1 of the Civil Procedure Rules, 2010; Rule 39 of the Civil Procedure (Court-Annexed Mediation) Rules, Sections 1A, 1B & 3A of the Civil Procedure Act and all other enabling provisions of the law.

2. She seeks Orders:

**a) That she be joined in these proceedings as an Interested Party.**

**b) That the Court takes judicial notice of the death of the 2<sup>nd</sup> Plaintiff, RUSALINA AGEKE NYAPARA, who died on 30th November 2022, and that any pleadings filed or proceedings purportedly conducted on her behalf thereafter are null and void for want of authority.**

**c) Partial Mediation Settlement Agreement dated 25<sup>th</sup> August 2025 be set aside.**

**d) That the costs of this application be in the cause.**

3. The application is premised on the grounds set out on the face of the application as well as well as the affidavit in support of the application sworn by the applicant, Grace Akinyi Omulo. Briefly, the applicant stated that the 2<sup>nd</sup> plaintiff, who is her mother, died on 30<sup>th</sup> November 2022, a fact that has never been brought to the attention of the court. She further stated that the advocates on record have continued to act on behalf of the deceased 2<sup>nd</sup> plaintiff without instructions or authority to plead.
4. The applicant stated that she is the daughter of the late Nyapara Mbogo who died in the year 1960 as well as the 2<sup>nd</sup> plaintiff. She also stated that the suit directly affects her interests in the estate/family land and added that her participation is necessary for the effective adjudication of all the questions involved in the matter.
5. The affidavit in support of the application reiterates the contents of the application save to add that the applicant annexed the following annexures to the affidavit: a copy of the 2<sup>nd</sup> plaintiff's death certificate marked GAO-1 and a copy of the applicant's birth certificate marked GAO-2.

## **Response to the Application**

6. The plaintiff /respondent filed a ground of opposition dated 27<sup>th</sup> October 2025. He opposed the application on two grounds, namely, the application is misconceived, fatally defective, bad in law, incompetent and otherwise an abuse of the court process. Secondly, the plaintiff/respondent stated that the applicant lacks legal standing to bring application, having instituted the application to protect the interests of her deceased parents and with no letters of administration whatsoever.

## **The Applicant's further Affidavit**

7. The Applicant filed a further affidavit dated 3<sup>rd</sup> November 2025 and deponed that she has locus standi as to be joined in the instant proceedings, having been issued with a limited grant of letters of administration ad litem in respect of the estate of the late Rusalina Ageke Nyapara in Mbita MCSUCC E014 of 2025 issued on 16<sup>th</sup> April, 2025. She annexed a copy of the Limited grant of letters of administration ad litem as annexure marked GAO-1

8. The applicant further deponed that the fact of the death of the 2<sup>nd</sup> plaintiff was well known to the plaintiff/respondent yet the same was deliberately concealed to the court. The applicant annexed a copy of the replying affidavit sworn on 10<sup>th</sup> June 2025 in Mbita MCSUCC E014 of 2025 as annexure GAO-2 to demonstrate such knowledge. Lastly, the applicant deponed that the plaintiff/respondent was fully aware of the fact that the applicant was the legal representative of the 2<sup>nd</sup> plaintiff's estate.

### **The parties' submissions**

9. The application was canvassed by way of written submissions. The applicant filed hers dated 3<sup>rd</sup> November 2025. She submitted that she is the daughter of the deceased 2<sup>nd</sup> plaintiff who died on 30<sup>th</sup> November 2022 but the fact of her death was not brought to the attention of the court by the plaintiff/respondent. She further submitted that inaction on the part of the plaintiff/respondent was deliberate and that the proceedings taken in the absence of the deceased 2<sup>nd</sup> plaintiff were a nullity.

10. As to whether the applicant had *locus standi* to bring the instant application, her answer was in the affirmative, having been issued with a limited grant of letters of administration ad litem for purposes of pursuing the instant suit.
11. Concerning whether the applicant should be joined as an interested party in the instant proceedings, the applicant referred this court to the Supreme Court decision in **Trusted Society of Human Rights Alliance V Mumo Matemu & 5 Others [2014] eKLR** for the test to be applied when determining whether or not to join an interested party. She submitted that had a direct interest in the suit since she is both a daughter of the deceased 2<sup>nd</sup> plaintiff as well as the legal representative of her estate. As such, she argued that her presence is necessary for purposes of safeguarding her family's legitimate interests as well as in assisting the court in effecting a just and complete adjudication of the dispute at hand.
12. The applicant wondered why the plaintiff/respondent, who claimed to have lived with deceased 2<sup>nd</sup> plaintiff for 40 years failed to notify the court of her demise and instead and even proceeded to amend the plaint in 2023 obtain an order in the

name of the deceased 2<sup>nd</sup> plaintiff. These actions, according to the applicant are manipulative and point to deliberate manipulation of facts on the part of the plaintiff/respondent that is targeted at benefiting himself

13. Lastly, the applicant argued that despite the plaintiff /respondent arguing that she (the applicant) was married by the year 1970, the truth of the matter is that she was born in 1961 and was not married in 1970 as deponed by the plaintiff/applicant as she was only 9 years of age. This deposition, the applicant argued, demonstrates some of the falsehood adopted by the plaintiff/respondent in his bid to benefit himself at the expense of the applicant and the estate of the deceased 2<sup>nd</sup> plaintiff.

14. The applicant concluded her submission by urging this court to allow the application.

15. The plaintiff/respondent filed his submissions dated 30<sup>th</sup> October 2025. He framed a single issue for determination by this court, being, whether the applicant is clothed with *locus standi* to bring the instant application. He relied on law society of Kenya v commissioner of lands & others Nakuru high court

civil case 464 of 2000 to define Locus stand as the right to appear before a court of law and be heard. He submitted that although the applicant is the daughter of the deceased 2<sup>nd</sup> plaintiff, no letters of administration had been attached to her application as to grant her the requisite *locus standi*.

### **Issues, Analysis and Determination**

16. The single most important issue that arises for determination in this application is whether the applicant should be joined as an interested party in this suit

17. Joinder of parties in provided in **Order 1 rule 10 rule (2) of the Civil Procedure Rules** provides which provides that:

*The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck off, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectively and completely to adjudicate upon*

*and settle all questions involved in the suit, be added (emphasis added).*

18. The **Constitution of Kenya (Protection of Rights and Fundamental Freedoms)** practice and procedure rules, 2013 defines an interested party as “a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation”
19. In **Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 others [2014] eKLR** the supreme court stated that:

*An interested party is one who has a stake in the proceedings, though he or she was not 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 she herself appears in the proceedings, and champions his or her cause*

20. In ***Murautetu and another v Republic; Kenya National Commission of Human rights & 2 others (interested parties); Death Penalty Project (Intended Amicus Curiae) Petition 15 & 16 of 2016) (Consolidated) [2016] KESC 12 (KLR) (Civ)***, the Supreme Court set out the test that courts should apply whether considering whether or not to allow an application for joinder of an interested party. Para 37 thereof outlines the following test:

- i. The personal interest or stake that the applicant has in the matter must be set out in the application;
- ii. The interest must be clearly identifiable and must be proximate enough to stand apart from anything that is merely peripheral;
- iii. The prejudice to be suffered by the intended interested party, in case of a non-joinder must be clearly outlined and should not be something remote;
- iv. A party must in its application/submissions set out the case and or submissions it intends to make before the court, and demonstrate the relevance of those submissions. The submission should not merely be a

replication of what other parties will be making in the court.

21. The Supreme Court in the **Muruatetu decision (supra)** further emphasized that an interested party may not frame its own issues for determination by the court or introduce new issues and that the stake that the interested party has cannot take the form of a new issue to be introduced before the court (paragraph 42). Moreover, the supreme court in the determined that the threshold for admission of interested parties is lower for civil cases where proof is on the balance of probabilities standard.
22. I have carefully considered the application as well as the response in totality. I have also considered the parties' submissions as well as the applicable law.
23. The applicant stated that she is the daughter of the deceased 2<sup>nd</sup> plaintiff and as such maintained that she has a direct interest in the estate of her deceased mother. She argued that her joinder would be necessary to enable her pursue her interests in the estate of her late mother.

24. The plaintiff/respondent did not deny that the applicant is a daughter of the deceased. His only issue was that the applicant did not have locus standi to make the instant application. The applicant clarified that, contrary to the plaintiff's /respondent's allegation that she did not have the locus standi to make the instant application, she had obtained a limited grant *ad litem* in Mbita MC MISC SUCC E014 of 2025 on 16<sup>th</sup> April 2025. As such she argued that she has locus standi to make this application.

25. This court finds that the applicant has *locus standi* as she has been issued with a grant of letters of administration *ad litem*, limited to pursuing the instant suit, as demonstrated in annexure marked GAO -1 in her further affidavit sworn on 3<sup>rd</sup> November 2025. The court also finds that the applicant's stake in the suit is well articulated, her interest is clearly identifiable as opposed to being remote and the prejudice that the intended interested party stands to suffer should the application not be allowed has been clearly elaborated. Equally, the court finds that the applicant does not seek to replicate arguments made by another party in this suit. Accordingly, the court finds that joining the applicant in the suit will be

necessary not only in safeguarding her interest in her deceased mother' estate but also in helping the court expedite the just and fair determination of the suit.

26. Consequently, the application dated is hereby allowed in part (give specific terms)

27. Concerning the proceedings and orders that were taken after the death of the 2<sup>nd</sup> plaintiff, the same were a nullity. They are hereby struck off the court record and set aside respectively.

28. Costs be in the cause.

29. The Interested Party to file and serve their documents within thirty (30) days of this ruling. This matter be mentioned on 5<sup>th</sup> March 2026 to confirm the compliance of the orders granted, and any taking of any further steps by any of the parties herein.

30. It is so ordered

Ruling dated, signed and delivered virtually via the Teams Platform this 11<sup>th</sup> day of December, 2025.

Hon. Dr. iur Nyagaka,

Judge

From 12:47 PM, in the presence of,

Ms. Oyala for GS Okoth for the Plaintiff /Resp

Mr. Ochieng Clark for the proposed Int. Party

Ms. Agade holding for E. Awino for the Respondent