

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
KAKAMEGA
ELCLA CASE NO. E081 OF 2024

FREDRICK MUTACHI LUMUNYASI:.....1ST
APPELLANT

JOTHAM BARASA LUSASI:.....2ND
APPELLANT

VERSUS

MARY **BEATRICE**
SOITA:.....RESPONDENT

AND

CAROLYNE **NANZALA** **ISAAC:.....INTENDED**
INTERESTED PARTY

RULING

Introduction

1. Before court is a Notice of Motion dated 11th July 2025 filed by one Carolyne Nanzala Isaac the applicant, seeking the following orders;

a) Spent

b) That the applicant to be made party to the suit as interested party.

c) That the cost hereof be provided for.

2. The application is anchored on the supporting affidavit sworn by the applicant on 11th July 2025. The applicant's case is that she is the widow of the late Francis Nambosio. That on 26th May 2006 they bought the land at Shivanga and settled in as spouses without any dispute. That in the same year, her husband was murdered by his own family members.
3. That the 1st appellant is supposed to curve out land from parcel No. N. Kabras/Malava/3809 to her as the next of kin of her deceased husband. That upon murdering her husband, the family chased her away to take up the deceased's property. That she is staying on rented premises with orphans without assistance from Mary Beatrice Soita and the entire family.
4. No response was filed in respect of the application.

Analysis and determination

5. The court has carefully considered the application and the only issue that arises for the court's determination is whether the applicant has met the threshold for joinder to these proceedings as an interested party.
6. Order 1 Rule 10 (2) of the Civil Procedure Rules provides for the Power of Court to join a necessary party to proceedings before court as follows;

“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 out, 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 effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

7. Therefore, the court has jurisdiction either on its own motion or on application of a party to join any person to proceedings pending before it if that joinder will assist

the court to effectually and completely determine all questions arising in the suit.

8. For an applicant to be joined to a suit as an interested party, they must have a recognizable stake in the proceedings before court.
9. In the case of **EG v Attorney General; David Kuria Mbote & 10 others (Interested Parties) [2021] eKLR**, the Court of Appeal reiterated the conditions for joinder of a party as follows;

“The core of the court’s power to join a party to any proceedings including at the appellate stage, as aptly discussed in Hamisi Yawa & 36,000 others v Tsangwa Ngala Chome & 19 others [2018] eKLR, is to bring on board a necessary party for purposes of determining the real issue(s) in dispute. Also, a joinder of a party is not an automatic right, but one which is granted upon exercise of the discretion of the court concerned. Nonetheless, the court exercises such discretion under defined parameters, that is, it must be satisfied that: -

a) The Intended party has a personal interest or stake in the matter in question; and that

interest is clearly identifiable and proximate enough and not merely peripheral.

b)The Intended party's presence would enable court to resolve all the matters in the dispute.

c)The intended party would suffer prejudice in case of non-joinder.

d)The joinder of the intended party will not vex the parties or convolute the proceedings with unnecessary new matters and grounds not contemplated by the parties or envisaged in the pleadings."

10. In the instant case, the applicant stated that together with her husband, they purchased the land at Shivanga and settled thereon but were latter chased away by her late husband's family after they murdered him. She maintained that she was the next of kin of her husband. No evidence was attached to show the alleged purchase or that Francis Nambosio is deceased or that she has a grant of representation in that regard. Besides, nothing in respect the parcel of land No. N. Kabras/Malava/3809 was availed. Therefore, the applicant failed to demonstrate the nexus between her alleged claim and the issues in this appeal. Besides, the

applicant did not state why she failed to seek joinder in the trial court, as her claim was not an issue before the trial court and there is no basis for raising it at this stage.

11. In the premises, I find and hold that the application dated 11th July 2025 lacks merit and the same is hereby dismissed. I make no order as to costs.

12. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA
IN OPEN COURT/VIRTUALLY THROUGH
MICROSOFT TEAMS VIDEO CONFERENCING
PLATFORM THIS 25TH DAY OF FEBRUARY 2026**

A. NYUKURI

JUDGE

In the presence of

The respondent in person

No appearance for the applicant

No appearance for the appellants

Court Assistant: Delphine

