

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT VIHIGA
HCF MISC NO E002 OF 2024

NELSON AMENDI.....APPLICANT

VERSUS

JOHN AMENDI.....1ST RESPONDENT

**WASHINGTON AMENDI.....2ND
RESPONDENT**

AND

**BILLY AMUGUNE AMENDI.....PROPOSED INTERESTED
PARTY**

RULING

INTRODUCTION

1. In his Chamber Summons dated 13th December 2024 and filed on 14th December 2024, the Proposed Interested Party sought that he be enjoined as an Interested Party in this suit being the 2nd Objector in the primary suit, **Succession Cause No 89 of 2016** and son and beneficiary of Joash Amendi Lukasa (Deceased).
2. He swore an affidavit in support of the said Chamber Summons on 13th December 2024. He averred that he was one of the beneficiaries and son of the late Joash Amendi Lukasa (Deceased) and a dependent as per Section 29 of the Law of Succession Act, Cap 160 whose estate these proceedings related to.
3. He stated that the Administrators of the estate filed for Letters of Administration to confirm the Grant but without laying bare accounts of the estate and without informing the beneficiaries of the position of the estate and that they deliberately left out accounts of the estates which they had plundered.

4. He asserted that he filed an objection in **Vihiga Succession Cause No 89 of 2016** objecting to the way the estate was being administered and wasted without rendering accounts of the estate. He added that one of the Administrators who was challenging the Trial Court's Ruling dated 1st October 2024 by Hon J. A. Agonda (PM) solely went to confront the estate's tenants in the shops ordering them to deposit the rent to Equity Bank, Mbale Branch No 0960171524421 for distribution to the widows but which was in fact siphoned away as the widows never received any penny.
5. He asserted that it was the Applicant herein and one Linnet Mirehane who withdrew the money and utilised it by themselves leaving the widows who in fact were first in line of inheritance poor and suffering. He stated that it was then that he filed the Objection proceedings in **Vihiga Succession Cause No 89 of 2016** which now gave rise to the contested Ruling dated 1st October 2024. He added that his application which gave rise to this application was not opposed or controverted by all parties at the Trial Court. He questioned why the Applicant was appealing against an application he did not oppose.
6. He contended that the Applicant had moved this court deliberately leaving him out of the application and went against the 1st Respondent who did not raise the issue of funds at the Trial Court and the 2nd Respondent who died in 2001. He asserted that the application/appeal was made in bad faith to defeat the cause of

justice and meant to perpetuate the plunder of the estate and deprive the beneficiaries of their shares in the estate.

7. He argued that the application herein could not be properly prosecuted without his participation especially when the Ruling that granted him his prayers was being challenged and was the subject of this appeal. He stated that the action of the Applicant was tantamount to condemning him unheard.
8. He was emphatic that his interest in the suit was to protect his own interest and that of other beneficiaries and the estate as a whole. He asserted that his entry into the suit as an Interested Party would not prejudice the Applicant's case but that instead it would aid the court in arriving at the truth to make a just and fair decision.
9. The Intended Appellant swore a Replying Affidavit on 4th February 2025 in opposition to the Proposed Interested Party's application. The same was filed on 28th April 2025. He averred that the Proposed Interested Party's application was unmerited and dead upon arrival and ought not to have seen the light of day.
10. He stated that the deceased died intestate and was survived by four (4) houses. He asserted that each of the four (4) houses produced one member as an administrator to represent the house. He pointed out that the first house was represented by Washington Amendi and upon his demise, Linet Mirehani was appointed as an administrator to represent the first house, the second house was represented by John Amena Amendi, the third house was represented by George Adagi and upon his demise, Isaac Maleya

was appointed as an administrator to represent their house and that the fourth house was represented by Nelson Mbaja Amendi.

11. He asserted that the Proposed Interested Party was from the second house and was being represented by Administrator John Amena Amendi. He termed his application as an abuse of the court process as it amounted to frustrating the court and other beneficiaries. He argued that the application had been brought in bad faith for its reason was for one house to receive special treatment than the other houses which was against the spirit of the Family, Probate and Administration laws.
12. He contended that granting the prayers sought herein would create a vacuum for the remaining other beneficiaries to apply for the same and this would really delay the matter. He added that in the event this court granted the order as prayed, then it should drop John Amendi and appoint Bill Amendi as the representative of the second house.
13. The Proposed Interested Party's Written Submissions were dated 30th June 2025 and filed on 7th July 2025. The Intended Appellant's Written Submissions were dated 10th March 2025 and filed on 30th April 2025 while those of the 2nd Respondent were dated 20th April 2025 and filed on 11th May 2025. The Ruling herein is based on the said parties' Written Submissions which they all relied on in their entirety.

LEGAL ANALYSIS

14. The Proposed Interested Party reiterated his averments in his affidavit evidence and submitted that he had demonstrated an identifiable stake that he had a legal interest and duty in the proceedings before the court as laid out in the Constitution of Kenya (Protection of Rights and fundamental freedoms) Practice and Procedure Rules, 2013 (Mutunga Rules). He added that his interest was sufficiently proximate due to the fact that he was a son and beneficiary of the estate of the deceased and that any orders that the court would give would directly affect him.
15. He pointed out that his input was also critical in assisting the court arrive at a just determination despite the presence of the Administrators. He asserted that where there was more than one administrator of the estate of a deceased, all the administrators had to act jointly because an administrator was in a position of a trustee for the beneficiaries as was held in the case of **Willis Ochieng Odhiambo vs Kenya Tourist Development Corporation & Another Kisumu HCCC No 51 of 2007** (eKLR citation not given).
16. He referred to Section 83 of the Law of Succession Act and faulted the Intended Appellant for withdrawing funds fraudulently and sought to be enjoined to avoid the estate from being wasted. He was emphatic that the estate did not belong to the administrators to do as they wished but rather, they administrators were required to hold the deceased's assets in trust of all the beneficiaries to the estate. He asserted that the Respondents were not bound to suffer any prejudice should the orders sought be

granted as the assets of the estate will be protected including the interests of all beneficiaries.

17. He pointed out that costs followed the event and in this regard placed reliance on the case of **Zebon Nguko Mote vs Ephantus Mote Wakaria Civil Application No 194 of 1997** (eKLR citation not given) where it was held that when an application was necessitated by the applicant's mistake, the respondent was entitled to costs. He further relied on the cases of **Devram Manji Daltani vs Danda (1949) 16 EACA 35** where it was held that a successful litigant could only be deprived of his costs where his conduct had led to litigation which might have been averted and **Universal Engineering Works vs Mohamedali Suleiman Essaji[1951] 2 LRK 99** where it was held that a successful party was entitled to costs unless there were good reasons to deprive him costs.
18. On his part, the Intended Appellant reiterated his averments in his affidavit evidence. He submitted that being dissatisfied with the Ruling delivered by Hon J. A. Agonda on 1st October 2024, he filed an Amended Notice of Motion dated 6th December 2024 seeking to extend time to file his Appeal and that the Proposed Interested Party filed his application herein seeking to be enjoined as an interested party.
19. He asserted that it was an established principle that the joinder or proposed joinder of an interested party should neither

involve nor entitle such a party to raise new issues or cause of action already pleaded by the primary parties in the suit.

20. He placed reliance on the case of **Francis Karioko Muruatetu & Another vs Republic & 5 Others[2016]eKLR**

where it was held that any party seeking to join proceedings in any capacity had to come to terms with the fact that the overriding interest or stake in any matter was that of the primary/principal parties before the court. He thus urged this court to dismiss the Proposed Interested Party's application.

21. On her part, the 2nd Respondent invoked the definition of "an interested party" by the **Black's Law Dictionary, 9th Edition at page 1232** which defined it as a party who had a recognisable stake and/or standing in a matter." She added that in the "Mutunga Rules", the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, Legal Notice No 117 of 2013, "an interested party" was defined as **"a person or an entity that has an identifiable stake or legal interest or duty in the proceedings and may not be directly involved in the litigation."**

22. She placed reliance on the case of **Kenya Medical Laboratory Technicians and Technologists Board & 6 Others vs Attorney General & 4 Others[2017]eKLR** where it was held that a person was legally interested in the proceedings only if he could say that it could lead to a result that would affect him legally by curtailing his legal rights.

23. She argued that a person seeking to be joined in a suit had to show that he had personal interest or stake in the matter, the interest had to be clearly identifiable and proximate enough, he had to show the prejudice he would suffer if the court did grant the joinder as was held in the case of **Murutetu & Another vs Republic; Kenya National Commission on Human Rights & 2 Others (Interested Parties); Death Penalty Project (Intended Amicus Curiae[2016] KESC 12 (KLR)**.
24. She asserted that the Proposed Interested Party had not established that he had identifiable stake in the suit herein and that further, his submissions were going to be a replication of the submissions by the parties. She added that the mere fact that the Proposed Interested Party was the beneficiary of the estate of the deceased did not entitle him to be enjoined as the Interested Party in the suit.
25. It was her contention that the joinder of the Proposed Interested Party would lead to imbalance whereby one family would have more than one representative. She added that no matter how close a beneficiary was close to the deceased, that did not grant him legal capacity to commence proceedings on behalf of the estate of the deceased as a beneficiary's interest could not supersede the mandate of the administrators of the estate of the deceased.
26. To buttress her point, she relied on the case of **Kiarie & Another vs Matiba (Being sued as the Executrix to the Estate of Hellen Wamere Dadet); Dadet (Proposed Interested Party)**

[2023] KEELC 21074 where it was held that the mandate to act for or on behalf of the estate of a deceased was granted to a Legal Administrator or Executor as long as the Grant had not been revoked. She asserted that the Proposed Interested Party did not have the *locus standi* to institute or defend suit on behalf of the deceased's estate as he had not obtained a limited or full grant of letters of administration as was held in the case of **Rajesh Pranjivan Chudasama vs Sailesh Pranjivan Chudasama**[2014]eKLR.

27. She was emphatic that joinder of a party was not to be undertaken for the sake of it and/or for cosmetic purposes as was held in the case of **Kiarie & Another vs Matiba (Being sued as the Executrix to the Estate of Hellen Wamere Dadet); Dadet (Proposed Interested Party)** (Supra). She asserted that the Proposed Interested Party had not met the threshold for joinder as the Interested Party and that his application was unmerited. She urged the court to dismiss the same with costs.
28. Notably, **Black's Law Dictionary, 9th Edition**, defines, an "Interested Party" **as a party who has a recognizable stake (and, therefore, standing) in a matter.**
29. The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (hereafter the "Mutunga Rules") further defined an "Interested Party" as 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.

30. This court also had due regard to the case of **Muruatetu & Another vs Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae)** (Supra) where the Supreme Court laid out the elements applicable where a party was seeking to be enjoined in proceedings as an interested party.

31. The court pointed out that one must move the court by way of a formal application and that joinder was not as of right, but that the same was at the discretion of the court. It added that sufficient grounds had to be laid before the court, the basis that the personal interest or stake that the party had in the matter had to be set out in the application, the interest had to be clearly identifiable and had to be proximate enough to stand apart from anything that was merely peripheral, the prejudice to be suffered by the intended interested party in case of non-joinder also had to be demonstrated to the satisfaction of the court and lastly a party was required to set out the case and/or submissions it intended to make before the court, and demonstrate the relevance of those submissions. Such a party was also required to demonstrate that the submissions it was intending to make was not merely a replication of what the other parties would be making before the court.

32. It was not disputed that the Proposed Interested Party was a beneficiary of the deceased's estate. It was clear from the

submissions of the Intended Appellant and the 2nd Respondent that each of the four (4) houses that survived the deceased had a representative among the administrators that were chosen to represent the estate. It was evident that the Proposed Interested Party was from the second house which was being represented by Administrator John Amena Amendi.

33. Having said so, it was evident that the Ruling the Intended Appellant wanted to appeal emanated from the Proposed Interested Party's application in **Vihiga Succession Cause No 89 of 2016**. The Intended Appellant could not, therefore, appeal against the said Ruling against the Proposed Interested Party to his exclusion. There was no guarantee that the submissions that the Administrators would file would be the same submissions that the Proposed Interested Party would have filed. His involvement in the intended appeal was proximate as it could be.

34. The fact that there would be imbalance in the representation of the four (4) houses in the matter was neither here nor there. The proposed representation did not have any beneficiary from any house to seek redress from the court if they were aggrieved in the manner that the deceased's estate was being run. The choosing of representatives was in the mind of this court to avoid convoluting the matter but not to oust the right of any beneficiary from approaching the court for reliefs.

35. It was the considered opinion of this court, therefore, that the Proposed Interested Party had shown the personal interest he had in

this matter. Indeed, he would be prejudiced if he was shut out from participating in proceedings that directly concerned him. On the other hand, the Intended Appellant and the Respondents would not suffer any prejudice if the Proposed Interested Party was enjoined in these proceedings for the just determination of the issues that were before the court for determination.

DISPOSITION

36. For the foregoing reasons, the upshot of this decision was that the Proposed Interested Party Chamber Summons application dated 13th December 2024 and filed on 14th December 2024 was merited and the same be and is hereby allowed in terms of Prayer No (2) therein.

37. As this was a family matter, this court deviated from the general rule that costs follow events so as to preserve the family ties and hereby directs that each party will bear its own costs.

38. It is hereby directed that the matter be mentioned on 25th May 2025 for further orders and/or directions.

39. It is so ordered.

DATED and **DELIVERED** at **VIHIGA** this **23rd** day of **March** 2026

J. KAMAU
JUDGE