

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ELDORET
ELC CASE NO. 450 OF 2015

DINAH CHEPCHUMBA KASITET
MOHAMMED**1ST**
PLAINTIFF/RESPONDENT
ABDI DIIS
(Suing as the Administrator of the
Estate of the late JOSEPH KIPKORIR
KASITET- Deceased).....2ND
PLAINTIFF/RESPONDENT

-VERSUS-

RAHILA CHERUTO CHELANG'A.....1ST
DEFENDANT
SHAMIRA CHEPKEMEI 2ND
DEFENDANT
IBRAHIM KIPKORIR 3RD
DEFENDANT
MOHAMMED KIPKOSGEI
(Sued as the Administrator of the
Estate of the late
ISHMAEL JUMA KIPLAGAT CHELANG'A
- Deceased)4TH
DEFENDANT
NATIONAL LAND COMMISSION.....5TH
DEFENDANT
LAND REGISTRAR, UASIN GISHU COUNTY6TH
DEFENDANT
HON. ATTORNEY GENERAL 7TH
DEFENDANT
KOMORA HOLDINGS LIMITED..... 8TH
DEFENDANT/APPLICANT

RULING

1. The 8th Defendant (hereinafter referred to as **“the Applicant”**) did file a Notice of Motion Application dated 15.12.2025 (hereinafter referred to as **“the present Application”**) seeking the following Orders against the Plaintiffs (hereinafter referred to as **“the Respondents”**); -
 - a) **THAT this Application be certified urgent and be dispensed with in the first instance.**
 - b) **THAT this suit be and is hereby struck out with costs for having been filed by persons without the requisite locus standi;**
 - c) **THAT the costs of this application be borne by the Plaintiffs/Respondents.**
 - d) **THAT any other necessary Orders that this Court may deem fit to grant.**
2. The prayers sought in the present Application are premised on the following facts contained in the body of the present Application and the supporting affidavit sworn by one MOSES KIPTANUI; -
 - i. The Applicant did plead that the Respondents herein did institute the pending suit as the Legal Representatives and/or Administrators of the Estate of the Late JOSEPH KIPKORIR KASITET based on the proceeding known as ELDORET PROBATE & ADMINISTRATION CAUSE NO. 368 OF 2014.
 - ii. At the time of instituting this pending suit, one JOSEPH KIROP YEGO had also been appointed as the Legal Representative and/or Administrator of the Estate of the Late JOSEPH KIPKORIR KASITET in another proceeding before the KITALE HIGH COURT.
 - iii. Upon discovery of the two proceedings relating to the Estate of the Late JOSEPH KIPKORIR KASITET, the Court in Eldoret did transfer the proceedings known as ELDORET

PROBATE & ADMINISTRATION CAUSE NO. 368 OF 2014 to be consolidated with the proceeding before the KITALE HIGH COURT for purposes of hearing and determination.

- iv. The Respondents herein being aggrieved by the appointment of JOSEPH KIROP YEGO as the Legal Representative and Administrator of the Estate of the Late JOSEPH KIPKORIR KASITET did make an application before the KITALE HIGH COURT for revocation of the same.
 - v. The KITALE HIGH COURT upon hearing the Respondents Application seeking the revocation of JOSEPH KIROP YEGO as the Legal Representative and Administrator did made a finding that the same was not merited and therefore dismissed.
 - vi. In essence, the Applicant was of the view that the Respondents herein who are the Plaintiffs in this pending suit had no locus standi to institute any proceedings on behalf of the Estate of the Late JOSEPH KIPKORIR KASITET.
 - vii. Based on this ground, the pending suit before this Court is not properly before the Court and should be struck out forthwith.
3. The present Application was duly served on all the Defendants as well as the Respondents herein.
 4. The Respondents upon being served with the present Application did oppose the same through a Replying Affidavit 20.01.2026.
 5. In the Replying Affidavit dated 20.01.2026, the Respondents did plead the following facts in response to the present Application; -
 - i. To begin with, the Respondents did admit that at the time of filing the pending suit, the person known as JOSEPH KIROP YEGO had already been appointed as the Lega

Representative and/or the Administrator of the Estate of the Late JOSEPH KIPKORIR KASITET by the KITALE HIGH COURT.

- ii. However, at the time the Respondents were appointed as the Legal Representatives of the Estate of the late JOSEPH KIPKORIR KASITET in the proceedings known as ELDORET PROBATE & ADMINISTRATION CAUSE NO. 368 OF 2014, they were not aware of the proceedings before the KITALE HIGH COURT and therefore were acting in good faith with a genuine intention.
- iii. The Respondents did confirm that upon discovery of the proceedings before the KITALE HIGH COURT, their proceedings known as ELDORET PROBATE & ADMINISTRATION CAUSE NO. 368 OF 2014 was transferred to the KITALE HIGH COURT and consolidated with the file that was already before it.
- iv. The Respondents being aggrieved by the appointment of one JOSEPH KIROP YEGO as the Legal Representative and/or Administrator of the Estate of the late JOSEPH KIPKORIR KASITET did file an Application seeking the revocation of the said appointment before the KITALE HIGH COURT.
- v. The Respondents did aver that their Application seeking to revoke the appointment of JOSEPH KIROP YEGO as the Legal Representative and/or Administrator of the Estate of the late JOSEPH KIPKORI KASITET was heard on merit and dismissed by the KITALE HIGH COURT.
- vi. The Respondents being aggrieved by the Ruling pronounced by the KITALE HIGH COURT, an Appeal has now been filed before the Court of Appeal.
- vii. The Respondents did plead that the pending Appeal before the Court of Appeal raises serious and arguable points of law and has a high chance of success.

- viii. The Respondents were of the considered view that any irregularity on the issue of representation of the Estate of the late JOSEPH KIPKORIR KASITET cannot extinguish the existence of a lawful cause of action and therefore render this pending suit annulity.
 - ix. The Respondents did plead that the Cause of Action against the Defendants was in relation to the ownership of the suit property and therefore the Court should proceed to hear and determine the substantive issues before it once and for all.
6. The Replying Affidavit sworn by the Respondents was duly served on the Applicant herein who did a Further Affidavit sworn on the 16.02.2026 in answer to the facts pleaded by the Respondents.
 7. In the Further Affidavit dated 16.02.2026, the Applicant did state as follows; -
 - i. The Applicant did state that the allegations that the pending suit was filed by the Respondents without knowledge of the proceedings before the KITALE HIGH COURT was not true.
 - ii. The Applicant did plead that the Respondents herein did make the Application for Revocation of the JOSEPH KIROP YEGO before the KITALE HIGH COURT on the 21.12.2014 even before the pending suit was filed by the same Respondents on the 21.12.2015.
 - iii. In essence, the Applicant did aver that the Respondents were fully aware that they were not the authorized Legal Representatives and/or Administrators of the Estate of the Late JOSEPH KIPKORIR KASITET at the time of filing the pending suit.
 - iv. Be as it may, the KITALE HIGH COURT did pronounce its Ruling as regards the Respondents application for revocation of JOSEPH KIROP YEGO appointment as the Lega

Representative and/or Administrator of the Estate of the Late JOSEPH KIPKORIR KASITET on the 27.10.2025.

- v. According to the Ruling pronounced on 27.10.2025 by the KITALE HIGH COURT, the Respondents' application was dismissed thereof and the appointment of JOSEPH KIROP YEGO as the Legal Representative and/or Administrator of the Estate of JOSEPH KIPKORIR KASITET confirmed.
 - vi. As regards the pending Appeal before the Court of Appeal, the Applicant was of the view that the Ruling which is the subject of Appeal had never been stayed, reversed and/or overturned and therefore was still binding and in force.
 - vii. The Applicant did plead that the issue of locus standi is one which goes to the issue of jurisdiction of the Court to entertain and determine the dispute before it.
 - viii. In essence, if the parties that have instituted the proceeding before the Court are not the correct and/or authorized parties, then such a cause of action cannot be sustained by the Court.
 - ix. In conclusion thereof, the Applicant did seek this Court to strike out the pending suit as sought in the present application.
8. The Further Affidavit hereinabove was duly served on the Respondents herein.
 9. The Court did direct that the present Application would be canvassed by way of written submissions.
 10. The Applicant herein did file its submissions dated 16.02.2026 in support of the present Application while the Respondents did file their submissions dated 25.03.2026 in opposition of the present Application.

11. The Court did peruse the present application in detail, the Reply by the Respondents, the Further Affidavit and the submissions by the Applicant and Respondents and identifies the issues for determination as follows; -

ISSUE NO.1- DO THE RESPONDENTS HEREIN HAVE THE CAPACITY TO INSTITUTE & SUSTAIN THE PENDING SUIT BEFORE THIS COURT?

ISSUE NO.2- IS THE APPLICANT ENTITLED TO THE RELIEFS SOUGHT IN THE PRESENT APPLICATION?

ISSUE NO.3- WHO SHALL BEAR THE COSTS OF THE PRESENT APPLICATION?

12. The Court having identified the issues hereinabove for determination, the same will now be discussed as follows; -

ISSUE NO.1- DO THE RESPONDENTS HEREIN HAVE THE CAPACITY TO INSTITUTE & SUSTAIN THE PENDING SUIT BEFORE THIS COURT?

13. The first issue and main issue in the present Application is whether or not the Respondents herein have the capacity and locus standi to institute and sustain the pending suit before this Court.

14. According to the Applicant, the Respondents herein did institute this suit as the Legal Representatives and/or Administrators of the Estate of the Late JOSEPH KIPKORIR KASITET, who is claimed to have been the lawful owner of the properties known as LR.NO.ELDORET MUNICIPALITY BLOCK 6/26, 27, 28 AND 29 (hereinafter referred to as **“the suit properties”**)

15. The appointment of the Respondents herein as the Legal Representatives and/or Administrators of the Estate of the Late JOSEPH KIPKORIR KASITET was premised on the proceedings known as ELDORET PROBATE & ADMINISTRATION CAUSE NO. 368 OF 2014.

16. The Applicant did plead and submit that at the time of the Respondents being appointed as the Legal Representatives and/or Administrators of the Estate of the Late JOSEPH KIPKORIR KASITET, one JOSEPH KIROP YEGO had earlier been appointed as the Legal Representative and/or Administrator of the Estate of the Late JOSEPH KIPKORIR KASITET by the KITALE HIGH COURT.
17. Due to the existence of the Respondents' appointment and that of JOSEPH KIROP YEGO as Legal Representatives and/or Administrators of the Estate of the Late JOSEPH KIPKORIR KASITET, the proceedings known as ELDORET PROBATE & ADMINISTRATION CAUSE NO. 368 OF 2014 was transferred to KITALE HIGH COURT to be consolidated with the initial succession cause.
18. Upon consolidation of the proceedings known as ELDORET PROBATE & ADMINISTRATION CAUSE NO. 368 OF 2014 with the Succession Cause before the KITALE HIGH COURT, the Respondents herein did file an Application seeking the revocation of JOSEPH KIROP YEGO as the Legal Representative and/or Administrator of the Estate of the late JOSEPH KIPKORIR KASITET and their recognition as the legitimate Legal Representatives and/or Administrators of the Estate of the late JOSEPH KIPKORIR KASITET.
19. The Respondents' Application for revocation of JOSEPH KIROP YEGO as the Legal Representative and/or Administrator of the Estate of the Late JOSEPH KIPKORIR KASITET was heard on merit and dismissed on the 27.10.2025.
20. As such, the Respondents herein have no locus standi to institute any proceeding on behalf of the Estate of the Late JOSEPH KIPKORIR KASITET as they are not the authorized Legal Representatives and/or Administrators of the said Estate.

21. In conclusion, the Applicant was of the view that the pending suit had been instituted with strangers to the Estate of the late JOSEPH KIPKORIR KASITET and should therefore be struck out forthwith.
22. The Respondents on the other hand did not dispute the chronology of events as pleaded by the Applicant.
23. The Respondents however did state that at the time of being appointed as Legal Representatives of the Estate of the Late JOSEPH KIPKORIR KASITET through the proceedings known as ELDORET PROBATE & ADMINISTRATION CAUSE NO. 368 OF 2014, they were not aware of the pending Succession cause before the KITALE HIGH COURT.
24. In essence thereof, the Respondents did plead that their actions of instituting the pending suit was in good faith and without any malice.
25. Further to the foregoing, the Respondents did plead that the intention of filing the pending suit was to protect and preserve the assets of the Estate of the Late JOSEPH KIPKORIR KASITET against the Defendants herein.
26. In essence therefore, although the Respondents were ultimately declared not to be the authorized Legal Representatives and/or Administrators of the Estate of the Late JOSEPH KIPKORIR KASITET, the Court should not strike out the pending suit because the causes of actions therein survive even though they are not the lawful Legal Representatives and/or Administrators of the Estate of the Late JOSEPH KIPKORIR KASITET.
27. The Respondents did further plead and submit that the issue of who is the legitimate Legal Representative and/or Administrator of the Estate of the Late JOSEPH KIPKORIR KASITET was still under litigation as an Appeal had been

preferred to the Court of Appeal against the Ruling pronounced on the 27.10.2025 by the KITALE HIGH COURT.

28. As such, the striking out of the pending suit would be draconian and inconsistent with the Court's intentions of always sustaining matters with a view of hearing the same on merit and not technicalities.
29. To answer the question as to whether the Respondents had the locus standi and/or capacity to institute the pending suit, the Court hereby refers to **Order 4 Rule 4 of the Civil Procedure Rules, 2010** which provides as follows; -

“Where the Plaintiff sues in a representative capacity the Plaintiff shall state the capacity in which he sues and where the Defendant is sued in a representative capacity the plaintiff shall state the capacity in which he is sued, and in both cases it shall be stated how that capacity arises.”

30. In **Section 2 of the Civil Procure Act, Cap 21** which deals with Interpretation of various terminologies in the Act, the word Legal Representatives was provided as follows; -

“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.”

31. A perusal of the Complaint dated 21.12.2015 indicates in the Title that the Respondents herein are suing as Administrators of the Estate of the Late JOSEPH KIPKORIR KASITET.
32. In the manner in which the capacity to sue on behalf of the Estate of the Late JOSEPH KIPKORIR KASITET did emanate from the proceedings known as ELDORET PROBATE & ADMINISTRATION CAUSE NO. 368 OF 2014.

33. It is an agreed fact by both the Applicant and the Respondent that the proceedings known as ELDORET PROBATE & ADMINISTRATION CAUSE NO. 368 OF 2014 was subsequently transferred to the KITALE HIGH COURT and consolidated with the Succession Cause that was already existing before the KITALE HIGH COURT.
34. Thereafter, it is also an agreed fact that the Respondents herein did challenge the appointment of JOSEPH KIROP YEGO as the Legal Representative and/or Administrator of the Estate of JOSEPH KIPKORIR KASITET as had been declared in the Succession Cause before the KITALE HIGH COURT.
35. It is further an agreed fact by both the Applicant and the Respondents that the application challenging the appointment of JOSEPH KIROP YEGO as the Legal Representative and/or Administrator of the Estate of JOSEPH KIPKORIR KASITET was dismissed on the 27.10.2025.
36. Clearly therefore, upon the pronouncement of the Ruling on the 27.10.2025 confirming JOSEPH KIROP YEGO to be the lawful and legitimate Legal Representative and/or Administrator of the Estate of the Late JOSEPH KIPKORIR KASITET, the Respondents' appointment as the Legal Representatives of the Estate of JOSEPH KIPKORIR KASITET was declared unlawful and of no legal basis.
37. As such, the Respondents herein no longer have the capacity to represent the Estate of the Late JOSEPH KIPKORIR KASITET as such capacity no longer exists.
38. In the absence of such a capacity, the Plaint filed on 21.12.2015 is irregular and incapable of being sustained as the Claimants thereof are not authorised to institute any proceedings on behalf of the Estate of the Late JOSEPH KIPKORIR KASITET.

39. The Respondents have sought to persuade the Court to sustain the pending suit based on the fact that the cause of action survives the Respondents herein.
40. While this is true, the Court would then be left with a suit that has no Plaintiff interested to prosecute the same.
41. If indeed the Estate of the late JOSEPH KIPKORIR KASITET is still interested in the prosecution of the pending suit, the right to file a competent and lawful suit is still open to them.
42. In the case of **MUMO MATEMU-VERSUS- TRUSTED SOCIETY OF HUMAN RIGHTS ALLIANCE & 5 OTHERS (2014) eKLR**, the Supreme Court did make the following finding; -
“The issue of locus standi raises a point of law that touches on the jurisdiction of the Court, and it should be resolved at the earliest opportunity.
- In Mary Wambui Munene v. Peter Gichuki Kingara and Six Others, Sup. Ct. Petition No. 7 of 2013; [2014] eKLR, this Court held (at paragraphs 68 and 69) that the question of jurisdiction is a “pure question of law,” and should be resolved on a priority basis”.***
43. In conclusion thereof, this Court hereby makes a finding that the Respondents do not have any locus standi and/or legal capacity to sustain the pending suit as they are no longer the Legal Representatives of the Estate of the late JOSEPH KIPKORIR KASITET.

ISSUE NO.2- IS THE APPLICANT ENTITLED TO THE RELIEFS SOUGHT IN THE PRESENT APPLICATION?

44. Based on the finding in Issue No.1 hereinabove, the Applicant’s prayer seeking to strike out the pending suit filed by the Respondents herein due to lack of locus standi and/or capacity is merited.

ISSUE NO.3- WHO SHALL BEAR THE COSTS OF THE PRESENT APPLICATION?

45. On the issue of Costs, the same are usually awarded to the winning party.
46. In the present Application, the Applicant has been successful in prosecuting the same and therefore entitled to costs.

CONCLUSION

47. In conclusion, the Court hereby makes the following Orders in relation to the present Application; -

A. THE APPLICATION DATED 15.12.2025 IS HEREBY ALLOWED.

B. CONSEQUENTLY, THE PLAINTIFFS' SUIT VIDE THE AMENDED PLAINT DATED 22.11.2018 BE AND IS HEREBY STRUCK OUT.

C. COSTS OF THE SUIT AND THE PRESENT APPLICATION TO BE BORNE BY THE PLAINTIFFS

DATED, SIGNED and DELIVERED at ELDORET this on this 15TH DAY OF APRIL, 2026.

**EMMANUEL.M. WASHE
JUDGE**

IN THE PRESENCE OF:

Court Assistant: Brian

Advocate for 8th Defendant/Applicant: Mr. Ogongo

Advocate for Plaintiffs/Respondents: Mr. Bett

Advocate for The 1st -4th Defendants: Ms. Rotich holding brief
for Mr. Martim

Advocate for the 6th & 7th Defendants: Ms. Odeyo.