

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND ND COURT OF KENYA AT KISUMU**

**ELC APPEAL NO.E028 OF 2025**

ROSEMELL ACHIENG (Suing as the Lawful Attorney of

MODRICKS ODINDO ASIMBA .....APPELLANT

VERSUS

WELLS OIL LIMITED ..... 1<sup>ST</sup> RESPONDENT

SIDIAN BANK LIMITED ..... 2<sup>ND</sup> RESPONDENT

LAND REGISTRAR KISUMU.....3<sup>RD</sup> RESPONDENT

AND

JOSEPH AGUNDA OCHEMA ..... 1<sup>ST</sup> THIRD PARTY

BENARD OCHIENG OKECH ..... 2<sup>ND</sup> THIRD PARTY

**RULING**

1. This ruling is in respect of the Notice of Motion application dated 17<sup>th</sup> November, 2025 expressed to be brought by the proposed Interested Parties, pursuant to the provisions of sections 1A, 1B & 3A of the Civil Procedure Act, Order 1 Rule 10(2) Order 42 Rule 27 of the Civil Procedure Rules. The application seeks orders that:-

- (a) The estate of the late Absalom Okech Awuonda, deceased, through its legal representatives, Joseph

Oketch Kawuonda and Moses Teddy Oketch be joined in the appeal as an Interested Party.

(b) Costs of the appeal be provided for.

2. The grounds upon which the application was brought are that the dispute in the appeal revolves around the ownership of land parcel number KISUMU/NYALENDA "B"/1126 which was originally registered in the name of the deceased. That the trial court dismissed the Appellant's suit on the basis that the sale of the suit property to the Appellant's principal was unlawful having been executed without a grant of representation from the deceased's estate. That the estate of the deceased is a necessary and proper party for the effectual and complete adjudication of the issues before this court, particularly in relation to the root of title and lawful transfer. That the Respondent's claim to the suit property is also derived from dealings traceable to the same estate yet the estate was not represented at the trial to clarify the legitimacy of the competing transactions.

That the Applicants are the sons and beneficiaries of the late Absolom Okech Awuonda and are willing and competent to represent the estate in these proceedings and that no prejudice will be occasioned to the Respondents if the orders sought are

granted and that it is in the overriding interest of justice that all parties with a proprietary interest in the suit land are before the court to ensure a final determination of the dispute.

3. The application was supported by the contents of the Supporting Affidavit sworn by Moses Teddy Oketch on 17<sup>th</sup> November, 2025 and the annexures thereto.
4. The application was opposed vide the Replying Affidavit of Stephen Okello sworn on 19<sup>th</sup> December, 2025 and Edwin Karume on 2<sup>nd</sup> March, 2026.
5. The application was heard orally on 23<sup>rd</sup> March, 2026. It was submitted on behalf of the Applicant that the two proposed Interested Parties are the administrators of the estate of the deceased who was the original owner of the suit land. That the joinder will help the court adjudicate the dispute fairly.
6. On behalf of the Respondents, it was submitted that the proposed Interested Party had not demonstrated why they wished to join the proceedings at the appeal stage.

That a party seeking to be joined in an appeal must demonstrate and satisfy certain conditions. That they have not demonstrated what their presence in the appeal will help.

That joinder will complicate things at the appeal stage and invite the appellate court to go into matters it ought not go into.

7. I have considered the application, the responses thereto and the oral submissions made.

The powers of this court when sitting as an appellate court are spelt out in section 78 of the Civil Procedure Act. These are:-

- a) to determine a case finally;
- b) to remand a case
- c) to frame issues and refer them back for trial
- d) to take additional evidence or to require the evidence to be taken
- e) to order a new trial

The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, Legal Notice No.117 of 2013 defines Interested Party 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”.

Black’s Law Dictionary, 9<sup>th</sup> edition at page 1232 defines Interested Party as;

“A party who has a recognizable stake (and therefore standing) in the matter”.

The Supreme Court of Kenya in Communication Commission of Kenya & 4 Others -vs- Royal Media Services Limited & 7 Others [2014]eKLR held that;

“An Interested Party is one who has a stake in the proceedings, though he was not a 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 her cause.”

In the present case, the main ground upon which joinder of the estate of the deceased is sought is that the applicants are the administrators of the estate of the registered owner, deceased of, of the suit land and that the dispute resolved around ownership of the suit land.

The Appellant herein was the plaintiff in the suit before the trial court. He is the one who chose whom to sue and proceeded to file suit. The plaint which is on page 5 of the record of appeal shows

that the Appellant sued the Respondents herein only. It shows that the Appellant had brought the suit as the lawful Attorney of the estate of one Mordicks Odundo Asimba deceased whom the Appellant claimed was at all material times the lawful, legal and registered owner of all the parcel of land known as KISUMU/NYALENDA "B"/1126 having bought the same for valuable consideration from one Absolom Oketch Awuonda and issued with a title deed.

The Appellant's complaint in the suit was that the 1<sup>st</sup> Respondent had trespassed onto the land and that the Defendants had fraudulently colluded to deprive her principal, Mordicks Odundo Asimba, of the land.

The estate of the current Applicant did not feature in the plaint save for the fact that the suit land was bought from the deceased. A reading of the judgement of the trial court shows that the Appellant's suit was dismissed for lack of a good title as the seller of the land who sold the land to the Appellant was not the registered owner.

The Applicants do not claim any interest in the suit land on behalf of the estate of the deceased. All they seek to achieve by joinder into the proceedings is to explain the root of the applicant's title

Although the court has power to allow joinder at any stage of the proceedings, including the appellate stage, see Order 1 Rule 10 of the Civil Procedure Rules and JMK -vs- MWM & Another [2015]eKLR where the Court of Appeal held that;

“we would agree that Order 1 rule 10(2) of the Civil Procedure Rules contemplate an application for joinder of parties where proceedings are still pending before the court ..... the Court of Appeal of Tanzania in Tang Gas Distributors Limited -vs- said & Others [2014] E.A. 448 held that the court has power to add a party to proceedings at any stage. A party can be joined even without applying. Joinder can be done before or during trial. It can be done after judgement. It can be done even at the appellate stage.”

The test is whether the Applicant has a stake or an interest in the subject matter of the suit.

The pleadings and proceedings before the trial court show that the deceased on behalf of whose estate the application is made, ceased to own the land sometime in the year 1992 when the land was transferred to the Appellant.

The Applicants have not indicated that they are claiming any portion of the suit land.

This court is a court of record and in deciding the appeal, will be relying on the evidence and all material placed before the trial court.

The Applicants have not demonstrated what they will be adding to the material already on record.

I find that the Applicants have not demonstrated the grounds for joinder of the estate of the deceased at the appeal stage of the matter. The application is hereby dismissed.

Costs to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

Orders accordingly.

**Ruling dated and signed at Kisumu, read virtually this 7<sup>th</sup> day of May, 2026 through Microsoft Teams online application.**

**E. ASATI**

**JUDGE**

**In the presence of**

**Atika Court Assistant**

**Okumu for the Applicant**

**Oduor for the Respondent**

## **Kowinoh for the 1<sup>st</sup> Respondent**