



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 137 OF 2016**

**CARREN JEPKURGAT BIRIR.....PLAINTIFF**

**VERSUS**

**SYMON KIPLAGAT TALLAM.....1<sup>ST</sup> DEFENDANT**

**MADGALINA TUNGU KIPTALLAM.....2<sup>ND</sup> DEFENDANT**

**WILSON KIPROTICH CHESEREK.....3<sup>RD</sup> DEFENDANT**

**R U L I N G**

1. The application dated 10/4/2017 seeks an order that the applicant be granted leave to have one Wilson Kiprotich Cheserek be enjoined as the 3<sup>rd</sup> defendant in this suit, and that leave be granted to amend the plaint as per the draft annexed to the supporting affidavit.
2. The applicant's main ground for the application is that the proposed joinder would bring on board the Administrator of the Estate subject of these proceedings and that the real Administrator of the Estate was not known at the time of the institution of the suit.
3. A copy of the consent to the Confirmation of the Grant to the Estate of Solomon Cheptalam Chepyegon is annexed to the supporting affidavit. It names the proposed party as the person whom the beneficiaries have consented to have the Grant confirmed to.
4. The application is opposed by way of grounds of opposition filed by the 1<sup>st</sup> defendant. He states that the material placed before the court confirms that the intended defendant is not fit and proper to be enjoined in the matter and that joining the said Wilson Kiprotich Cheserek will only confuse and complicate the matters since he has also passed on. The 1<sup>st</sup> defendant also states that any claim if at all shall be in the Estate of the 2<sup>nd</sup> defendant and not Wilson Kiprotich Cheserek or any other party.
5. For records the claim against the 2<sup>nd</sup> defendant was withdrawn vide a Notice of Withdrawal of suit dated 1/11/2017. It is also noteworthy that the 1<sup>st</sup> defendant has not filed any affidavit or supplied any particulars to identify the Administrators of the Estate of the 2<sup>nd</sup> defendant whom he states are the right persons to be joined as parties in the suit.
6. The court notes that the 1<sup>st</sup> defendant is described in the plaint as a son to the deceased Solomon Chepkoimet Chebiegon, whose Estate is intended to be enjoined herein through the legal representatives of the Estate. The failure to provide information relating to the proper Administrators of the Estate, or indeed the true statutes relating to the succession issue, may be a mean act on the part of the 1<sup>st</sup> defendant.

However, it is upon the plaintiff to conduct a proper enquiry and locate the proper persons to enjoin in this suit. He has identified the said Wilson Kiprotich Cheseret. I therefore grant the application dated 10/4/2017. Each party shall bear its own costs.

**Dated, signed and delivered at Kitale on this 27<sup>th</sup> day of February, 2018.**

**MWANGI NJOROGE**

**JUDGE**

**27/2/2018**

Before - Mwangi Njoroge, Judge

Court Assistant - Collins/Picoty

Mr. Chebi for applicant

N/A for the Respondent

Applicant present

**COURT**

Ruling read in open court.

**MWANGI NJORGE**

**JUDGE**

**27/2/2018**