



**Abdalla v Hassan & 15 others (Civil Suit 210 of 2021)
[2024] KEELC 13742 (KLR) (9 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13742 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
CIVIL SUIT 210 OF 2021
LL NAIKUNI, J
DECEMBER 9, 2024**

BETWEEN

HUSSEIN TAREQ ABDALLA PLAINTIFF

AND

**DALAL JUMA HASSAN & 15 OTHERS & 15 OTHERS & 15
OTHERS DEFENDANT**

RULING

I. Introduction

1. The Ruling of this Honourable Court regards the hearing and determination of the Notice of Motion application dated 25th September, 2024 by the Sahar Ahmed Taleb, the proposed Defendant/Applicant herein. They brought the application under the provision of Section 1A (1), (2), (3), Sections 1B, 3A of *Civil Procedure Act*, Cap. 21, Order 1 Rules 3 and 10 (2) Civil Procedure Rules, 2010.
2. Upon effecting service, the 8th, 9th, 10th, 11th, 12th, 16th and 17th Defendants responded through grounds of opposition dated 5th October, 2024 and Replying Affidavit sworn by 16th Defendant on 5th October, 2024. The Plaintiff responded to the Application through a Replying Affidavit sworn on 28th October, 2024. The Honourable Court shall be dealing with these pleadings at a later stage in this Ruling hereof.

II. The Proposed Defendant/Applicant's Case.

3. The Proposed/Applicant sought for the following orders:-
 - a. That the Applicant be added to this matter as a Defendant.
 - b. That any other orders or directions that the Honorable Court deems to grant.



4. The application was based on the grounds, testimonial facts and the averments made out under the 7 paragraphed Supporting Affidavit of SAHAR AHMED TALEB the proposed Defendant/ Applicant herein sworn on the same day as the Application. The Applicant deponed as follows:-
- a. She was the mother of 2nd, 3rd and 4th Defendant. She referred to her list of documents, Number 1 to 3 showing her daughter Hindu, the 2nd Defendant born on 6th February, 1992 to herself and the deceased, Kamaldin Akasha Abdalla [hereinafter the “Deceased”] under Certificate of Birth No: 2119781. Her son the 2nd born, Abdulsalaam Abusodha, the 3rd Defendant herein born on 1st January, 1994 to herself and the deceased, under Certificate of Birth no: 2119299. Her 3rd born son, Akasha, the 4th Defendant, born on 14th May, 1997 to herself and the deceased, under Certificate of Birth No. 520229.
 - b. The Applicant was married to the Deceased, the father of the 2nd, 3rd and 4th Defendants on 21st December, 1990. She was thus the first wife of the deceased Kamaldin Akasha, who died on 28th March, 2002. She referred to her list of Documents, Nos 4, showing her certified translated marriage certificate.
 - c. For reasons of family jealousy and other reasons unknown to her, the sister to the deceased, the 16th Defendant herein and the 2nd wife to the deceased, the 1st Defendant, fraudulently and without any lawful authority, deceitfully obtained a grant from the High court in Mombasa in Mombasa Hg Ct Probate and Administration Cause No: 596/2007 by failing to disclose her existence at all to the High court in their Affidavits dated November 2007 filed in support of the Petition for letters of administration intestate. No judicial officer handling any of the proceedings to date seems to have asked the question, who was the mother of the 2nd, 3rd and 4th Defendants.
 - d. The deceitful practice of the 1st and 16th Defendants was repeated on 27th January, 2009 when the 16th Defendant filed another supporting affidavit seeking confirmation of grant.
 - e. She had gone to Egypt and had now come back to Kenya. She sought to be joined in this case in order to protect her husband’s share of the suit property which share had been mismanaged by the administrators of the Deceased’s estate, as shown briefly above, she had instructed her advocates to file an application in the Administration Cause No. 596/2007 to revoke the confirmed grant issued to the 1st and 16th Defendants.

III. The Responses by the 8th, 9th, 10th, 11th, 12th, 16th and 17th Defendants to the application

5. The 8th, 9th, 10th, 11th, 12th, 16th and 17th Defendants filed 7 Paragraphed grounds of opposition dated 5th October, 2024 in opposition of the application stating mainly that:-
- i. The Proposed Defendant/Applicant was divorced upon being issued with a talaq by the late Kamaldin Akasha Abdalla who was one of the Co-tenants of the suit properties.
 - ii. Upon the Proposed Defendant/Applicant being divorced, she was-no-longer entitled to the share of the estate of the deceased and thus the 1st Defendant(deceased 2nd wife) and 16th Defendant (Deceased biological sister) applied for a grant of representation as the deceased children were minors and the same was confirmed.
 - iii. The Kadhi’s court retained the role and jurisdiction of verifying whether the unilateral Talaq-meet the standards-of Muslim law and determining issues of inheritance for an Islamic estate as well as the Family court.



- iv. The issues brought up in the Proposed Defendant/Applicant's application revolved around issues of divorce and inheritance.
 - v. The Proposed Defendant/Applicant's application had been prematurely brought before this Honorable Court and can only be entertained upon conclusive determination at the Kadhi's court and Family court.
 - vi. In light of the above the jurisdiction and power of this Honourable Court had been improperly invoked.
 - vii. As such, the Notice of Motion application dated 25th September, 2024 was fatally defective and should be dismissed with costs.
6. The 8th, 9th, 10th, 11th, 12th, 16th and 17th Defendants filed a 22 paragraphed replying affidavit sworn by NARGIS AKASHA ABDALLA, the 16th Defendant on 5th October, 2024 opposed the Notice of Motion application dated 25th September, 2024 where the Deponent averred that:
- a. The Applicant was the first wife of the deceased-Kamaldin Akasha Abdalla who was one of the Co-tenants of the suit properties in dispute.
 - b. The Applicant was later on divorced as she was issued with a talaq and this automatically disqualified her from entitlement of the share of the deceased estate.
 - c. Upon the divorce and separation, the Applicant left the jurisdiction of the Republic of Kenya and deserted her children-the 2nd, 3rd and 4th Defendants and her brother the Late Kamaldin Akasha Abdalla, remarried the 1st Defendant Dalal Juma Hassan as his second wife.
 - d. The late Kamaldin Akasha Abdalla was - her biological brother, and bearing in mind that at the time of his death, his children were minors, his 2nd wife and herself were entitled to apply for a grant of representation.
 - e. A certificate of confirmation of grant was legally issued to them upon the court ascertaining, verifying and confirming all beneficiaries of the deceased estate.
 - f. There was no fraud or concealment of facts as alleged by the applicant as she was not entitled to a share of the deceased estate upon the divorce being issued.
 - g. This Court had no jurisdiction to hear and determine the matters raised by the Applicant as they fall within the ambit of the Family Court and the Kadhi's court.
 - h. Nonetheless, there was zero to no-chances of the certificate of confirmation of grant being revoked and the Application by the Applicant was not only mischievous but misleading to the Honourable Court.
 - i. The Application was pre-mature and the issues in-her-application-can only be entertained by this court upon conclusive determination at the Family and the Kadhi's court.
 - j. The Applicant had all along been aware of dispute relating to the suit properties as her children the 2nd, 3rd and 4th Defendants have been parties to this suit.
 - k. The Applicant had conveniently come to interfere with these proceedings after her children failed to file a defense and deliberately refusing to appear in court for the hearing despite the court's directions.



- l. The Applicant was keen on frustrating these proceedings and the 2nd, 3rd and 4th Defendants were using the Applicant to re-open the case and salvage themselves after judgment was entered against them in favor of the-Plaintiff.
- m. This explains the fact that the Applicant was also aware that the matter is just about to be concluded after the hearing proceeded and a judgment being set to be delivered on 20th January 2025.
- n. She opposed the Application to have the Proposed Defendant added as a party to this suit as she has no interest whatsoever and she was keen on frustrating the conclusion of this matter.
- o. This land dispute had been in court for 5 years with back and forth and no progress to settle this matter as the initial suit, being ELC Land Case NO.183 of 2019 being instituted in 2019.
- p. This matter was also referred to Mediation and the Applicant's children being the 2nd, 3rd and 4th Defendants refused to show up thus frustrating any Alternative Dispute resolution.
- q. Public interest requires and/ or demands that litigation must at some point come to an end.
- r. The Applicant's application was a waste of Court's time, had been brought in bad faith and the same ought to be dismissed with costs.

IV. The Replying Affidavit by the Plaintiff/Respondent

- 7. The Plaintiff/Respondent also filed a 15 paragraphed Replying Affidavit sworn by HUSSEIN TAREQ ABDALLA and dated on 28th October, 2024 in opposition of the application. He deposed that:
 - a. The instant suit was heard on the 25th September 2024 where two witnesses testified; himself for the Plaintiff and Nargis Akasha Abdalla on behalf of all the Defendants. Both parties closed their respective cases and the court granted parties further directions on the filing of submissions and a judgment date was reserved for the 20th January 2025.
 - b. The instant application dated 25th September, 2024 only sought for the addition of the applicant as an intended Defendant which was therefore inconsequential and trivial exercise for the reason that the applicant was not part of the transaction involving the sale and purchase of the subject property.
 - c. The Applicant claimed to be the mother of the 2nd, 3rd and 4th Defendants herein. There was no contention that the 2nd to 4th Defendants were legitimate beneficiaries to the Estate of their late father. Therefore, the shares in the property of KAMALDIN AKASHA (deceased) that devolved to his beneficiaries were legitimately sold to the Plaintiff herein.
 - d. He had no claim as the Plaintiff against the intended Defendant with respect to the subject matter to sustain the application for joinder pursuant to Order 1 Rule 3 of the Civil Procedure Rules that provides:-

“ All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.”



- e. The Applicant had failed to demonstrate any interest or stake she has with respect to property subject matter. There was no Draft Defence or Counterclaim annexed to the affidavit to demonstrate any triable issues.
- f. The Applicant had no locus standi in sue or be sued on behalf of the Estate of KAMALDIN AKASHA ABDALLA the applicant purported to come in her capacity as a widow to the aforementioned deceased and therefore she was required to have proper authority by way of grant of representation.
- g. In response to the averments of paragraphs 4 & 5 of the Applicants supporting affidavit dated 25th January 2024, it was the Deponent's contention that the Honourable court had no jurisdiction to consider and deliberate upon the issues raised therein as the same were within the purview of the Succession court.
- h. This Honourable Court had no jurisdiction to disturb the confirmation of grant or any other consequential orders in the Civil Case "Mombasa High Court Probate and Administration Cause 596/2007".
- i. The Application was defective as the supposed evidentiary material had not been properly adduced by way of affidavit evidence. The list of documents filed alongside the supporting affidavit are not exhibits for reasons that they were neither sealed under the seal of the commissioner of oaths nor marked for identification purposes. Rule 9 of the Oaths and Statutory Declarations Rules provide that:-

“...All exhibits to affidavits shall be securely sealed thereto under the seal of commissioner and shall be marked with serial letters of identification
- j. The Plaintiff herein was a third party to the proceedings concerning the contentions as between the applicant and the beneficiaries & Administrators of the Estate of the Late Kamaldin Akasha (the Defendants) in the suit property and therefore the inclusion of a further beneficiary is not necessary at this juncture of the proceedings. This is in accordance to Order 31 rule 1 of the civil procedure rules that provides as follows; ...In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a-third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit, but the court may, if it thinks fit, order them or any of them to be made parties.
- k. Equity aids the vigilant and not the indolent. The applicant was well aware of the suit in "Mombasa High Court Probate and Administration Cause 596/2007" as demonstrated in her supporting affidavit and therefore she cannot purport to clamor for her supposed rights that she neglected to agitate for in that cause.
- l. Furthermore, the applicant's biological children, the 2nd to 4th Defendants were involved as beneficiaries in the aforementioned probate cause and therefore she could not disavow their consent to the confirmation of the grant.
- m. The Applicant was thus frivolous and an abuse of court process for the orders sought herein were inconsequential and trifling.



V. Submissions

8. While all the parties appeared before the Honourable Court, it was directed that the Notice of Motion application dated 25th September, 2024 be disposed of by way of written submissions. Unfortunately, by the time of penning down the Ruling, the Honourable Court had not yet accessed the written Submissions by any of the parties herein. Pursuant the Court reserved to render its Ruling accordingly on 5th December, 2024 on its own merit thereof.

VI. Analysis and Determination

9. I have carefully read the pleadings herein being the Notice of Motion application dated 25th September, 2024 by the Proposed Defendant/ Applicant herein, the responses from the other parties, the relevant and appropriate provisions of *the Constitution* of Kenya, 2010 and the statutes.
10. For the Honourable Court to arrive at an informed, just, fair and reasonable decision, it has framed two (2) issues of the subject matter for its determination. These are:
 - a. Whether the Proposed Defendant/ Applicant can be added to this matter as a Defendant
 - b. Who will bear the Costs of this application?

ISSUE No. a). Whether the Proposed Defendant/ Applicant can be added to this matter as a Defendant

11. Under this Sub – heading, the Honourable Court has deduced the main substratum is whether the Intended Defendant ought to be joined in this suit. The concept and substratum of joinder of parties is solely governed by the provisions of order 1 rules 1 to 25 of Civil Procedure Rules, 2010 and which I must admit the parties herein , particularly the learned counsel for the proposed defendant, who came under order 1 rule 10 of the Civil Procedures Rules, 2010 have elaborately dealt with great admiration.
12. The intended or proposed Defendant, has argued that she was married to the deceased, the father of the 2nd, 3rd and 4th Defendants on 21st December, 1990. She was thus the first wife of the deceased Kamaldin Akasha, who died on 28th March, 2002. She referred to her list of Documents, Nos 4, showing her certified translated Certificate of Marriage. For reasons of family jealousy and other reasons unknown to her, the sister to the deceased, the 16th Defendant herein and the 2nd wife to the deceased, the 1st Defendant, fraudulently and without any lawful authority, deceitfully obtained a grant from the High court in Mombasa in Mombasa Hg Ct Probate and Administration Cause No: 596/2007 by failing to disclose her existence at all to the High court in their Affidavits dated November 2007 filed in support of the Petition for letters of administration intestate. No judicial officer handling any of the proceedings to date seems to have asked the question, who was the mother of the 2nd, 3rd and 4th Defendants.
13. Under the provision of Order 1 Rule 3 of the Civil Procedure Rules, a person may be joined in a suit as a Defendant against whom any right to relief arising out of an act or transaction is alleged to exist. The said provision provides as follows:

“ All persons may be joined as Defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.”



14. The provision of Order 1 Rule 10 (2) of the Civil Procedure Rules provides that a court may, either on application made by a party or without, allow joinder of a party whose presence it considers to be necessary in a suit. The full text of the Rule provides 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.”

15. The power of a court to order joinder is one based on its discretion. The discretion must however be exercised judiciously and in accordance with the parameters set out in Order 1 Rule 10 (2) of the Civil Procedure Rules. This position was ably elucidated in the case of: -“Civicon Limited – Versus - Kivuwatt Limited and 2 Others [2015] eKLR” as follows:

“Again the power given under the Rules is discretionary which discretion must be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”

16. In the case of “Joseph Njau Kingori – Versus - Robert Maina Chege & 3 Others [2002] eKLR” distilled the guiding principles in considering whether to allow joinder of an intending party as follows:

- “ 1. 1. He must be a necessary party.
2. He must be a proper party.
3. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.
4. The ultimate order or decree cannot be enforced without his presence in the matter.
5. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.”

17. Courts have held that a party is necessary to a suit where it is shown that the legal reliefs sought would directly affect the person sought to be joined, to avoid a multiplicity of suits or where it is shown that the Defendant cannot effectually set a defence unless that person is joined in it. This position was set out in the Ugandan case of “Departed Asians Property Custodian Board – Versus - Jaffer Brothers



Ltd [1999] 1 EA 55” quoted with approval by the Court of Appeal in “Civicon Limited – Versus - Kivuwatt Limited & 2 others [2015] eKLR” as follows:

“ A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involve in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involve in the cause or matter...For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the Court in that suit. Alternatively, a person qualifies, (on an application of a Defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.”

18. The Court of Appeal also quoted its earlier decision in “Meme – Versus - Republic (2004) KLR637” wherein it held that joinder will be permissible:
 - i. Where the presence of the party will result in the complete settlement of all the question involved in the proceedings;
 - ii. Where the joinder will provide protection for the rights of a party who would otherwise be adversely affected in law: and
 - iii. Where the joinder will prevent a likely course of proliferated litigation.
19. On the basis of the above legal provisions and authorities, this court must now consider whether the proposed Defendant, ought to be joined in this suit. As has been set out in detail, the question herein is whether the intended defendant is a necessary party to this suit, whether a relief flows from the proposed Defendant to the Plaintiff or whether its presence is necessary to settle all questions involved in this suit.
20. The Plaintiff’s suit is seeking for a declaration that the 1st to 15th Defendant who the Plaintiff purports that were in breach of their respective agreements of sale of their respective shares of the suit property. The Plaintiff’s suit is also seeking for a permanent injunction and restriction from the Defendants dealing or alienating the suit property.
21. According to the 8th, 9th, 10th, 11th, 12th, 16th and 17th Defendants in opposition to the Application the Proposed Defendant/ Applicant was divorced upon being issued with a talaq by the late Kamaldin Akasha Abdalla who was one of the Co-tenants of the suit properties. Upon the Proposed Defendant/ Applicant being divorced, she was-no-longer entitled to the share of the estate of the deceased and thus the 1st Defendant(deceased 2nd wife) and 16th Defendant (Deceased biological sister) applied for a grant of representation as the deceased children were minors and the same was confirmed.
22. The Kadhi’s court retained the role and jurisdiction of verifying whether the unilateral Talaq-meet the standards-of Muslim law and determining issues of inheritance for an Islamic estate as well as the Family court. The issues brought up in the Proposed Defendant/ Applicant’s application revolved around issues of divorce and inheritance. In their Replying affidavit the 8th, 9th, 10th, 11th, 12th, 16th and 17th



Defendants emphasized the same issue on the divorce of the Applicant to the deceased and reiterated that the prayers sought were issues that should be dealt with under succession.

23. The Plaintiff on the other hand argued that he had no claim against the proposed Defendant. The Applicant claimed to be the mother of the 2nd, 3rd and 4th Defendant herein. There was no contention that the 2nd to 4th Defendants were legitimate beneficiaries to the Estate of their late father. Therefore, the shares in the property of KAMALDIN AKASHA (deceased) that devolved to his beneficiaries were legitimately sold to the Plaintiff herein. The Applicant had failed to demonstrate any interest or stake she has with respect to property subject matter. There was no Draft Defence or Counterclaim annexed to the affidavit to demonstrate any triable issues.
24. According to the Plaintiff, the Applicant had no locus standi in sue or be sued on behalf of the Estate of KAMALDIN AKASHA ABDALLA the applicant purported to come in her capacity as a widow to the aforementioned deceased and therefore she was required to have proper authority by way of grant of representation. In response to the averments of paragraphs 4 & 5 of the Applicants supporting affidavit dated 25th January 2024, it was the Deponent's contention that the Honourable court had no jurisdiction to consider and deliberate upon the issues raised therein as the same are within the purview of the Succession court.
25. According to the Plaintiff, the Honourable Court had no jurisdiction to disturb the confirmation of grant or any other consequential orders in civil suit "Mombasa High Court Probate and Administration Cause 596/2007". The Plaintiff herein was a third party to the proceedings concerning the contentions as between the applicant and the beneficiaries & Administrators of the Estate of the Late Kamaldin Akasha (defendants) in the suit property and therefore the inclusion of a further beneficiary is not necessary at this juncture of the proceedings.
26. This is in accordance to the provision of Order 31 Rule 1 of the Civil Procedure Rules, 2010 that provides as follows:-

"In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit, but the court may, if it thinks fit, order them or any of them to be made parties.

27. I have opined before in this Court in the case of "Izera Enterprises Limited – Versus - Image Font Limited; Sagalla Ranchers Limited (Proposed Interested Party) (Environment & Land Case 113 of 2021) [2022] KEELC 12585 (KLR) (28 April 2022) (Ruling)", that:-

“

“33. It is trite law that on the decision for joinder, court has discretionally power to do so. Which means it should be applied capriciously and judicially without any biases or abuse of the power. What to be considered for joinder are the following facts. Firstly, it is based on the principles of natural Justice – not to be condemned unheard and accorded an opportunity to be heard (principle of audi alteram partem).

Suffice to say, a court even on its own motion (suo moto) can add a party to the suit of such a party is necessary for the determination of the real matter in dispute (add value) or whose presence is necessary in order to enable the court to effectively and completely adjudicate



upon and settle all questions involved in the suit. Therefore joinder of parties is permitted by law and it can be done at any stage of the proceedings.”

28. But, joinder of parties may be refused where such joinder would lead into practical problems of handling the existing cause of action together with the one of the party being joined, is unnecessary or will just occasion unnecessary costs on the parties in the suits – or just being a nuisance on rocking the boat from the bottom. In other words, joinder of parties would be declined where the cause of action being proposed or the relief sought is incompatible to or totally different from the existing cause of action or the relief. The determining factor in joinder of parties would be a common question of fact or law would arise between the existing and the intended parties. (See “Lucy Nangari Ngigi & 128 others – Versus - National Bank of Kenya Limited & another (2015) eKLR”).
29. The above illustrated legal litimus test on joinder is what I shall apply to the instant case. In consideration and application of all the facts stated here, this court strongly holds that the proposed intended Defendant has not made a strong demonstration to be joined in the instant case. The court has not seen that need for them added as a party to the suit is necessary for the determination of the real matter in dispute (add value) or whose presence is necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit. While arriving at this rather difficult decision, the court has not been persuaded with any empirical documentary evidence as such for the following reasons.
30. The Court is not satisfied that the that the Intended Defendant is a necessary party to this suit. The proposed Intended Defendant has not furnished the Court with any document showing that she is a legal administrator of the estate of the deceased nor that she had shares in the suit property. Secondly it is clear from the documents and annexures on record that as at the time of his death, the proposed Defendant was not married to the deceased therefore she had no rights to his property most especially after the letters of grant of the administration of the estate of the deceased were issued.
31. For this reason, therefore, and taking that the Court cannot allow the Notice of Motion application dated 25th September, 2024 by the proposed intended Defendant to be joined in these proceedings. It cannot succeed.

ISSUE No. b). Who will bear the costs of the application

32. It is trite law that the issue of Costs is at the discretion of the Court. Costs mean the award that is granted to a party at the conclusion of a legal action and proceedings in any litigation. The proviso of Section 27 (1) of the *Civil procedure Act*, Cap. 21 holds that Costs follow the events. By the event, it means the outcome and the results of the legal action.
33. In the instant case, the application by the intended Defendant/ Applicant herein dated 25th September, 2024 has not been successful. The Intended Defendant shall pay the costs of this application.

VI. Conclusion & Disposition

34. Consequently, upon the elaborate analysis of the issues raised herein, the Honourable Court based on the principles of preponderance of Probabilities and balance of convenience, it proceeds to make the following orders:-
 - a. That the Notice of Motion application dated 25th September, 2024 by the Proposed Defendant/ Applicant herein lacks merit and hence it be and is hereby dismissed with costs.
 - b. That unless otherwise stated, the Judgment date in this matter remains as scheduled being 20th January, 2025.



c. That Intended Defendant shall pay the costs of this application.

It is so ordered accordingly

RULING DELIVERED THROUGH THE MISCROFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS 9TH ... DAY OF DECEMBER 2024.

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HON. MR. JUSTICE L. L. NAIKUNI
ENVIRONMENT AND LAND COURT AT
MOMBASA

Ruling delivered in the presence of:-

- a. M/s. Firdaus Mbula – the Court Assistant.
- b. Mr. Lorot Advocate for the Plaintiff/Respondent.
- c. Mr. Ongamo holding brief for Mr. Byrant Advocate for the Proposed Defendant.

