



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 995 OF 1991

IN THE MATTER OF THE ESTATE OF MOHAMED TAYEBALI (DECEASED)

JOOZER MOHAMED TAYEBALI.....PETITIONER

VERSUS

JALAL MOHAMED TAYEBALI.....RESPONDENT

DAR-UL-HAYAT ENTERPRISES

LIMITED.....INTENDED INTERESTED PARTY

RULING

1. It is trite that an interested party is one who has a stake in the proceedings; one who will be affected by the decision of the court, and therefore ought to be heard on his interest before a decision is rendered in the matter (**Trusted Society of Human Rights –v- Mumo Matemo & 5 Others [2014]eKLR**).

2. The Court of Appeal in **Pravin Bowry –v- John Ward & Another [2011]eKLR** approved the holding of the Supreme Court of Uganda in **Deported Asians Property Custodian Board –v- Jaffer Brothers Limited [1999] IEA 55 (SCU)** that:-

“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 in that suit. Alternatively, a person qualifies, (on the application of a defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectively 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.”

3. Lastly, **Order 1 rule 10(2)** of the **Civil Procedure Rules** provides that-

“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.”

4. This dispute is over the estate of the deceased Mohamed Tayebali who died intestate on 20th August 1991. The present application relates to LR No. 209/7/2 in Parklands in Nairobi. The applicant Dar-Ul-Hayat Enterprises Limited has by application dated 24th November 2021 sought to be enjoined in the proceedings as an interested party because on 6th March 2020 orders were given, following application, to restrain it from collecting rent from the houses on the property. It was also ordered that the rent collected be deposited into the joint account of the advocates of the petitioner Joozer Mohamad Tayebali and respondent Jalal Tayebali. The property has 32 flats. The applicant states that this is its property, and yet the orders were given against it without notice and without being afforded a hearing.

5. When the petition for letters of administration intestate was filed the complaint was that this property had belonged to the deceased but that on 14th December 1990 his son Jalal Mohamed Tayebali (respondent) had transferred it to the company. The deceased was alive at the

time of the transfer.

6. Following the orders of 6th March 2020, the petitioner Joozer Mohamed Tayebali (he is the brother of the respondent) applied to have the respondent cited and punished for being in contempt of the orders. By ruling dated 29th November 2021, the court found that the respondent had disobeyed the orders and found him guilty of contempt of the court orders. He was asked to present himself to court to be punished for the contempt. He has not appeared.

7. The present application seeks that the implementation of the orders of 6th March 2020 be stayed pending the hearing and determination of the application. It also sought the review and setting aside of the ruling of 6th March 2020 and the consequential orders. At the time of the application, the contempt application had been heard but ruling had not been delivered. The application had sought that the ruling be deferred. Of course, that prayer was overtaken by events.

8. The response by the petitioner was that he lives in Flat No. 2F on the property; that the property belonged to the deceased; and that the respondent was a director in the company owning the property but that he had, after the death of the deceased, fraudulently changed directorship from himself and his wife Arifa Adnan to their son Idris Jalal Mohamed Tayebali. This had been done to defraud the estate and the beneficiaries of the property. He opposed the application which he said was intended to make sure that the respondent evades punishment following the contempt proceedings.

9. I note that Idris Jamal Mohamed Tayeb swore the supporting affidavit saying he was a director of the company.

10. I consider that Dar-Ul-Hayat Enterprises Limited, although mentioned throughout these proceedings, has never been a party in the proceedings. It is trite that a company is a different person altogether from its subscribers and directors. Jalal Mohamed Tayebali may have been a director in the company, but that did not make him the company. I find that for the effectual and complete determination of all the questions in this succession cause, the company has to be enjoyed as an interested party. The joinder is hereby sanctioned.

11. I grant leave to Dar-Ul-Hayat Enterprises Limited to bring an appropriate application for the review of the ruling of 6th March 2020 which it shall serve on all the beneficiaries of the estate of the deceased, because they are each entitled to be heard on the same.

12. Costs shall be in the course.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF FEBRUARY 2022

A.O. MUCHELULE

JUDGE