



**CM Ongoto Advocates v Njoroge & another; Njoroge (Sued as the administrators of the Estate of Jemimah Njeri Njoroge (Deceased) (Interested Party) (Environment and Land Miscellaneous Application E006 of 2021) [2023] KEELC 17576 (KLR) (23 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17576 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E006 OF 2021  
CG MBOGO, J  
MAY 23, 2023**

**BETWEEN**

**CM ONGOTO ADVOCATES ..... ADVOCATE**

**AND**

**RUTH WANJIRU NJOROGE ..... 1<sup>ST</sup> JUDGMENT DEBTOR**

**NYALGUNGA TRADERS AUCTIONEERS ..... 2<sup>ND</sup> JUDGMENT DEBTOR**

**AND**

**KENNETH MWAURA NJOROGE (SUED AS THE ADMINISTRATORS OF THE ESTATE OF JEMIMAH NJERI NJOROGE (DECEASED)) ... INTERESTED PARTY**

**RULING**

1. Before this court for determination is a notice of motion application dated December 19, 2022 expressed to be brought under Section 11 of the *Advocates Remuneration Order* (sic), Order 22 Rule 2, Rule 52 and Order 40 of the *Civil Procedure Rules* seeking the following orders:-
  1. Spent.
  2. Spent.
  3. That this honourable court be pleased to issue an order staying any further proceedings consequential to the certificate of taxation issued by the Deputy Registrar in this matter pending the hearing and determination of this application.
  4. That this honourable court be pleased to grant leave to the applicant/interested party herein to be enjoined as a party to this suit for the purpose of proper and just adjudication of this matter.
  5. The costs of this application be in the cause.



2. The application is premised on the grounds on its face and more particularly as set out in the affidavit.
3. The application is supported by the affidavit of the applicant sworn on even date. The applicant deposed that he is the administrator of the estate of the deceased and that on December 16, 2022 he received information that the 2<sup>nd</sup> respondent was at his place of work and residence in parcel no LR Sigona/33 to attach the properties they could lay their hands on as a result of the proclamation of attachment reference number 319.
4. The applicant further deposed that the assets proclaimed belong to the estate of the deceased including motor vehicle registration number xxxx and that the judgment debtor/3<sup>rd</sup> respondent is not a beneficiary of the estate of the deceased. Further, that the said proclamation is misconceived and offends Section 45 of the [Law of Succession Act](#).
5. The applicant further deposed that LR Sigona/33 belongs to the late Joseph Muiruri Njoroje and in view of that, there is need for him to be enjoined to ventilate his case as the administrator of the estate of the deceased and it is the rule of natural justice that he is accorded a hearing.
6. The respondents did not file any reply to the application.
7. The application was canvassed by way of written submissions.
8. The applicant filed written submissions dated March 17, 2023. The applicant submitted that he was aggrieved by the decision of the 1<sup>st</sup> respondent to instruct the 3<sup>rd</sup> respondent to recover costs in the sum of Kshs 484,342.60/- that was awarded in the ruling dated October 18, 2021 and feared that his siblings were at a great risk of being dispossessed which is an infringement of their rights of inheritance in the estate of the late parents.
9. The applicant raised three issues for determination as listed below:-
  - i. Whether the proclamation of attachment dated December 16, 2022 was properly served according to the [Auctioneers Act](#).
  - ii. Whether the Auctioneers had proper records on whose properties were vulnerable for attachment.
  - iii. Whether the auctioneers had documentation of properties to be attached by way of determining which belongs to who.
10. The applicant did not submit on any of the issues that he raised for determination. However, the applicant submitted that the instant application has been made without delay and it is in the interest of justice that the orders sought are granted and that this court has jurisdiction to hear and determine the application.
11. The applicant further submitted that on a balance of probability he has proven his case and is therefore entitled to the orders sought. The applicant relied on the case of [Justin Kithinji Nderi & 2 Others versus Director of Public Prosecutions & Another, Njiiru Micheni Nihiga \(Interested party\) \[2020\]eKLR](#).
12. I have considered the application and the written submissions filed by the applicant and, in my view, the issue for determination is whether the application has merit.
13. Order 1 Rule 10(2) of the Civil Procedure Rules provides: -
  - ' (2) 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.'

14. In the case of *Meme v Republic*, [2004] 1 EA 124, the High Court observed that a party could be joined in a matter for the reasons that:

- ' (i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
- (ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) Joinder to prevent a likely course of proliferated litigation.'

15. It is the mandate of the court that as far as possible all matters in controversy between the parties should be completely and finally determined and all multiplicities of legal proceedings concerning any of the matters be avoided. In this regard, it would be appropriate and in the interest of justice that all matters touching and concerning the subject matter of the suit in the case at hand be determined finally and completely to avoid litigating over the same matters again.

16. In this case, the applicant contended that the proclaimed assets belong to the estate of the deceased and it is in the interest of justice and that he is joined. This court is satisfied that there is need for the applicant to be joined in these proceedings as he has an identifiable stake.

17. The upshot of the above finding is that the application is allowed as follows:-

- i. That the applicant is joined as an interested party in this proceedings.
- ii. An order of stay of execution order on proclamation of attachment number 319 dated December 16, 2022 is hereby issued.
- iii. Costs in the cause.

It is so ordered.

**DATED, SIGNED & DELIVERED VIA EMAIL on this 23rd day of MAY, 2023.**

**HON. MBOGO C.G.**

**JUDGE**

**23/5/2023**

**In the presence of:**

**CA:T.Chuma**

