



**In re Estate of M'mwongo Kichiu (Deceased) (Probate & Administration
335 of 2014) [2022] KEHC 11818 (KLR) (17 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 11818 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
PROBATE & ADMINISTRATION 335 OF 2014
EM MURIITHI, J
AUGUST 17, 2022**

BETWEEN

ROSALIA WAIRIMU MAINA PETITIONER

AND

DIANA NYAGUTHII OBJECTOR

AND

JOSHUA MWITI KIRAI INTENDED INTERESTED PARTY

RULING

- 1 The Court of Appeal (Aske-Makhandia, Ouko (as he then was) and M'Inoti, JJA)) in *Civicon Limited v Kivuwatt Limited & 2 others* [2015] eKLR considered the court's power under order 10 rule 2 of the *Civil procedure Rules* of joinder of interested and necessary parties, and held as follows:

“Again, the power given under the rules is discretionary which discretion must of necessity 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. In the same vein, a party seeking joinder who fails to establish any right over or interest in the subject matter cannot be enjoined. *This court in Meme vs Republic (2004) KLR 637* considering an application for joinder 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.

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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.”

- 2 The beneficiaries of the estate of the deceased who are named in the Petition do not object to the interested party application.
- 3 It is the objector who opposes the application on the ground that the interested party is an intermeddler having purchased the land not from the deceased owner but other beneficiaries of the estate.
- 4 The objector’s interest in the estate is that she is a bona fide beneficiary as a child of the deceased an allegation which has not been accepted by the respondent beneficiaries. By her summons dated October 31, 2019 which has not been heard, the applicant who state to be a child of one Maina M’Muwongo, said to be a deceased son of the deceased subject of these proceedings seeks principally for the court “to declare the applicant as a beneficiary of the Estate of the deceased and to allocate a portion of the estate to her.”
- 5 If the court determines that she ought to have been included in the estate, then she gets to share the estate with the other beneficiaries who allegedly sold some assets to the intended interested party. If she is not successful in proving her case, then the beneficiaries would be entitled to deal with the estate as whole as they have desired including completing the sale to the intended interested party.
- 6 In either occasion the court will have dealt with the full dispute at one go and avoided a multiplicity of suits.
- 7 In this succession case, the applicant’s claim to the estate asset by sale from the beneficiaries. I consider that to a sufficient interest in the succession proceedings to warrant the joinder of the applicant, whose has an interest in the estate, but which “need not be the kind that must succeed at the end of the trial.” Joinder of the applicant will obviate multiplicity of suits over the estate asset. The court finds that the intended interested party has an interest in the suit property. The Interested need not be one which must eventually succeed. But it is an interest over which the court can make a composite determination together with the other disputes on the rightful heir and therefore share of the beneficiaries to the estate.

Order

- 8 According, for the reasons set out above, the court allows the application for joinder of the intended interested party.



- 9 The second limb of the applicant's prayers in the summons dated July 4, 2022 shall be heard alongside the Objection proceedings herein.
- 10 For that purpose, the interested party now joined shall file a replying affidavit to the objector's objection within 14 days, and the Objection shall then proceed to hearing on the basis of oral evidence of the parties on a date to be fixed.
- 11 The parties' respective affidavits will serve as witness statements for the parties and the parties are at liberty to exchange statements of other witnesses within 30 days from the filing of the intended interested party's Replying Affidavit aforesaid.

Order accordingly.

DATED AND DELIVERED THIS 17TH DAY OF AUGUST 2022.

EDWARD M MURIITHI

JUDGE

APPEARANCES:

Petitioner in person.

Ms Kithaka advocate for objector.

Mr Thangicia advocate for intended interested party.

