



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC. CIVIL CASE NO. 7 OF 2003

IN THE MATTER OF ESTATE OF SAMUEL GUKEMBA (DECEASED)

JOSHUA SAMUEL NDIGAH.....1ST RESPONDENT

VERSUS

FAITH MURANGI KABIU.....2ND RESPONDENT

AND

JAMES MAKANGA NJERU.....INTERESTED PARTY/APPLICANT

RULING

1. The interested party/applicant herein filed the instant application and wherein he seeks for orders that he be enjoined in the suit as an interested party and further that the prohibitory order placed on Land Parcel No. Gaturi/Githimu/ 2023 be removed. He further prayed for the costs of the application.
2. The application is premised on the grounds on its face and further supported by the affidavit of the applicant.
3. The synopsis of the applicant's case is that he is the registered proprietor of the suit land having bought the same from Faith Murangi Kabiui the respondent herein. However, upon visiting the land's office, he discovered that the suit land had a prohibitory order which had been placed by one Joshua Samuel Ndigah (the respondent herein) through an application dated 14.01.2003 and which application was dismissed for want of prosecution vide the orders of 19.06.2014. As such, it is fair and in the interest of justice that the said prohibitory order be removed.
4. Despite the application having been served upon the respondent, the same was not opposed. However, this does mean that the application ought to be allowed without considering its merits.
5. The applicant herein seeks to be enjoined as an interested party. Joinder of parties in a succession cause is a matter of inherent jurisdiction of the court for purposes of ensuring the ends of justice are met and is ordinarily done under Section 47 and Rule 73 of the Law of Succession Act and Probate and Administration Rules respectively. This is since the provisions of the civil process relating to joinder of parties are not among the provisions so imported under Rule 63 of the Probate and Administration Rules. The rationale for the omission to import the said rules has something to do with the design of the probate process. Succession causes are not ordinary suits in the sense where there are two rival claimants, asserting certain rights. Rather, it is a cause designed for the sole purpose of facilitating succession to the estate of a deceased person. The ultimate goal being distribution of the estate amongst the persons, if they are more than one. (See the persuasive decision in **re Estate of Stone Kathuli Muinde (Deceased) [2016] eKLR**). As such, this court can invoke its inherent powers and order joinder of a party to a succession cause.
6. The Supreme Court in the case of **Trusted Society of Human Rights Alliance –vs- Mumo Matemo & 5 others [2015] eKLR** defined the term interested party in the following terms; -

“...Consequently, an interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause.”

7. In determining whether a person ought to be joined in a suit as an interested party, the test therefore ought to be whether the applicant is such a person who will be affected by the decision of the Court when it is made, either way or who feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause.

8. In the instant case however, other than the applicant having stated that he is the registered proprietor of LR Gaturi/ Githimu/2023 having purchased the same from the respondent herein, he did not attach any evidence as to the said purchase. He further did not annex any evidence as to him being the registered proprietor of the suit land as he deposed. It is my considered view therefore that on the balance of probabilities, the applicant did not satisfy the court that he is an interested party in the estate herein. He did not prove the nexus between him and the estate yet he is not a beneficiary of the estate of the deceased. Mere statement that he bought the suit land from the respondent herein is not sufficient to make him an interested party in the cause.

9. Having not satisfied the conditions for his joinder, it therefore means that this court will be undertaking an academic exercise in determining the other prayers in the application. The application ought to fail and be dismissed with no orders as to costs. The applicant herein does not have the locus standi to seek prayer number 2 having failed to prove his interest in the suit property herein.

10. The application is dismissed.

11. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 28TH DAY OF JULY, 2021.

L. NJUGUNA

JUDGE

.....**for the Respondents**

.....**for the Interested Party/Applicant**