



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**CIVIL CASE NO. E018 OF 2021 (OS)**

**IN THE MATTER OF SUMMONS FOR DECLARATION OF MATRIMONIAL PROPERTY**

**IN THE MATTER OF MATRIMONIAL PROPERTY ACT, 2013**

**IN THE MATTER OF MATRIMONIAL CAUSES ACT, 2014**

**IN THE MATTER OF ARTICLES 45, 28, 27, 40, 19 & 20 OF THE CONSTITUTION**

**BETWEEN**

**DKG.....PLAINTIFF**

**VERSUS**

**EG.....DEFENDANT**

**MMG & JMG THROUGH**

**THE NEXT OF KIN (KKG).....INTENDED INTERESTED PARTY**

**RULING**

1. The Court has considered the application by the intended Interested Party who alleges that he is the biological child of the plaintiff and the defendant to be joined in the suit so that he can protect the interests of minors allegedly adopted by the defendant on the principal ground that the plaintiff mother's suit will likely affect the property already registered in the names of the minors. The application is opposed by the plaintiff as a delaying tactic having been brought after the hearing of (and reservation of ruling on) the plaintiff's application for injunction against the defendant in which she seeks certain reliefs over property alleged to be acquired by her jointly with the defendant former spouse during coverture.

2. The intended Interested Party's applicant seeks the following specific reliefs: -

- i. That the Honourable Court be pleased to join the Applicant KKG on behalf of the minors herein as an interested party in this suit.*
- ii. That upon granting prayer 1 above, the Honourable Court be pleased to declare that the matrimonial properties are not available for distribution until the minors herein attain the age of majority or complete school.*
- iii. That the costs be provided for.*

3. The application for joinder of the intended interested party must be declined for three principal reasons. First, the intended interested party has no *locus standi* to file the application on behalf of the said two minors. The present proceedings are not substantively constitutional application for the enforcement of the bill of rights in which case "a person acting on behalf of another person who cannot act in their own name" may file an application for redress in accordance with Article 22 (2) (a) of the Constitution. The present proceedings are a civil suit (although reliance is made of constitutional rights to property etc.) in pleading a claim by a former spouse against another for determination of their rights/interest in matrimonial property.

4. In addition, it is the father, the defendant in this suit, who seeks to adopt the children and who has the *locus standi* to protect and pursue the interests of his adoptive children. It is established that the adoption proceedings are pending before the Court differently constituted. The intended interested party is not the guardian *ad litem* for the children in the adoption causes, and no such capacity or basis is shown for his prayer for appointment to sue on behalf of the minors.

5. Second, the application is redundant as the interests of the minors are already capable of protection without joinder of the intended interested party. If the object of the application is to secure protection and to preserve their rights in the properties where the minors are alleged registered proprietors, their adoptive father who has locus has already taken up the point in opposition to the application by the Plaintiff and no benefit will derive from such joinder of the intended interested party within the provisions of Order 1 Rule 10 (2) of the Civil Procedure Rules as he is neither an interested party in his own behalf and only purports to pursue the interest of his adoptive sister and brother nor is he a necessary party in the determination of the issues of matrimonial property between his two parents. If the Court at the hearing considers that the interests of the minors are different or in conflict with the interest of their adoptive father before the formal adoption order is made, the Court may at that point order that the Guardians ad litem in the adoption causes be joined in this matter.

6. Third, with respect to properties owned and registered in the names of the parents, the plaintiff and the defendant herein, the application is an abuse of process being an application by a child to compel gift by parent. In **MARY WAHITO MBUGUA vs PETER MBUGUA NJUHIGU & 5 others [1995] eKLR**, the Court of Appeal has adjudged as *totally frivolous* a child's application for injunction to stop a parent from dealing with property for which he is the registered proprietor so as to "*prevent her alleged right to inheritance being rendered nugatory*". Any objective of the intended Interested Party's application to pursue for himself and or his adoptive siblings an interest in their parents' property would be misconceived as the children cannot compel their parents to gift them property.

7. The joinder of the intended interested party will only lead to a delay in the adjudication of the dispute between the plaintiff and the defendant.

#### **ORDERS**

8. Accordingly, for the reasons set out above, the makes the following orders: -

*i. The intended Interested Party's application dated 22<sup>nd</sup> July 2021 is hereby declined.*

*ii. There shall be no order as to costs.*

*Order accordingly.*

**DATED AND DELIVERED ON THIS 12<sup>TH</sup> DAY OF AUGUST, 2021.**

**EDWARD M. MURIITHI**

**JUDGE**

#### **Appearances**

**M/S Kigora Mugambi & Co. Advocates for the Intended Interested Party**

**M/S Thangicia M. David & Co. Advocates for the Plaintiff**

**M/S Laichena, Mugambi & Yieko Advocates, LLP for the Defendant**