



**REPUBLIC OF KENYA**

**IN THE HIGH OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO.344 OF 2003**

**IN THE MATTER OF THE ESTATE OF NKUMBUKA IKAMATI-DECEASED**

**IRENE KINANU**

**(Legal representative of the estate of Festus H. Nkonge(deceased)).....INTERESTED PARTY**

**VERSUS**

**SOPHIA NKUENE.....PETITIONER/RESPONDENT**

**M'IKIUGU M'MUCHAI.....PROTESTOR/RESPONDENT**

**RULING**

1. The court is called upon to determine summons dated 22/1/2021 whose substantial prayer is the joinder of the applicant in this cause as an interested party on the basis that he is interested in the estate as a purchaser of part of the estate property. The application is supported by the Affidavit sworn by the applicant and exhibiting among other documents; a limited grant ad litem over the estate of his father said to have purchased three acres of land from the deceased, a sale agreement, official search over the land showing a caution registered and claiming a purchaser's interests together with the letter from the chief showing the applicants father as a beneficiary.

2. It is contended in that affidavit that, the interested party's father (now deceased) purchased 3 acres from the deceased herein as per the annexed sale agreement and that the interested party, by virtue of being the legal representative of the estate of her deceased father as evidenced by the annexed limited letters of administration Ad Litem, wishes to be joined to this cause to defend her father's legal interest. She confirms that her deceased father had been following on the progress of this matter and even assisted the petitioner with payment of the legal fees, with the agreement that she would transfer 3 acres to him. Her deceased father is listed as a dependent in the chief's letter dated 29/3/2000, by dint of having purchased 3 acres from the deceased herein. After conducting an official search and visiting the locus in quo, she believes that it is for the just determination of the cause that she is joined in this cause. Since the application has been made in good faith, with the sole purpose of claiming her deceased father's interest from the estate of the deceased herein, it is in the best interest that the joinder is allowed.

3. In opposition to the application, Mrs. Kaume did not file a replying affidavit but opted to submit orally purely on points of law.

4. The court on 29/9/2021 heard oral submissions from Mr. Mwiti for the applicant, Mr. Karanja for the protestor and Mrs. Kaume for the petitioner. Mr. Karanja told court that he was not opposed to the intended joinder, because the order which set aside 3 acres and directed the parties to file an ELC suit, was in persona. Mr. Mwiti argued that the order issued by Gikonyo J was limited to the claim by Mr. Karanja. He claimed that his client was a purchaser of part of the estate of the deceased who wished to be joined to these proceedings. He cited the case of **In Re Estate of Nasotokini Ole Sane Alias Nasotokini Lesane (Deceased) (2019)eKLR**, where the judge said at paragraph 65 that administrators basically have no land of their own, but they are the voice of the dead, so their role is to execute and administer the estate on behalf of the deceased person, and therefore, they cannot take away what the deceased had legally given out. He submitted that the purchaser has a right to participate in the scheme of arrangements.

5. In response, Mrs. Kaume submitted that there was no similarity between the cited case and this case. In insisting that the protestor herein and a purchaser had been directed to go to the ELC court and prove his case there, she submitted that a different purchaser ought not to be treated any differently, as there should be uniformity and equality. In her view, the right to be joined is not an automatic one, and in any case, the interested party is not the purchaser, but rather her deceased father. She asserted that the claim was barred by the Limitation of Actions Act, as the sale is alleged to have been in 1977 yet the deceased died 20 years later. She questioned the court's jurisdiction to entertain the matter, because it is a claim on land. She faulted the interested party for both bringing the application too late in the day and failing to disclose her interest in order to be joined to these proceedings, and prayed for the dismissal of the application.

6. In rejoinder, Mr Mwiti, in imploring the court to be persuaded by the cited decision maintained that the facts of the cited authority were comparable with those of this case.

### **Analysis and determination**

7. I will start by addressing the contention by Mrs. Kaume that the matter is barred by the Limitation of Actions Act.

8. I draw reference from *In re Estate of Josephine Magdalena Motion (Deceased) [2016] eKLR* where the court observed that, “My reading of the actions to which that statute applies is that it does not include succession causes, or, at any rate, causes or actions governed by the Law of Succession Act. It covers such matters as actions founded on contracts and torts, actions to recover land and rent, actions to recover money, actions in respect of trust property or movable property of a deceased person, and related causes. In short, it envisages ordinary civil suits brought within the framework of the Civil Procedure Act and Rules. It does not envisage the special proceedings governed by such statutes as the Law of Succession Act. Even if the Limitation of Actions Act were to apply to the proceedings prescribed by the Law of Succession Act, which I hereby submit it does not, a summons such the one herein cannot be an action to which the Limitation of Actions Act applies, for it is an interlocutory application filed within a cause. An action in the context of the Limitation of Actions Act can only possibly refer to a cause or suit, not interlocutory applications within the cause or suit.”

9. Being persuaded by the decision, I find that the Limitation of Actions Act is not applicable in this succession causes.

10. The next contention is that the court lacks jurisdiction to entertain this matter, because it is a claim on land. I find the same to be wholly unfounded. I say so because the interested party is not claiming any interest in land but is only seeking to be joined in this cause, as an interested party, to defend her deceased father’s proprietary interest.

11. The remaining issue to be determined is whether the interested party is a necessary party to the suit, to justify her joinder.

12. The pre-requisites to be fulfilled before a party can be joined to proceedings were set out in *Skov Estate Limited & 5 others v Agricultural Development Corporation & another [2015] eKLR*, where the court stated;

**“In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party.**

**In other words, there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.”**

13. I fully agree with the thresholds set above which when applied to the facts of this case beg the question of what benefit would be derived by joinder of the applicant as an interested party in these proceedings. It is not an issue, and it can’t be an issue, in these proceedings whether there was sale or not and if the agreement of sale needs to be enforced. That remains a claim over title to land which is outside the court’s jurisdiction and must be left to fall for determination by the competent court. That being my appreciation, the presence of the applicant and his claim is most unsuited in this matter unless one was to set out on the frolic intended to blur and obfuscate the issues for determination being, the ascertainment of the estate property, the beneficiaries to the estate and what share each beneficiary gets.

14. Additionally, the court did direct on the 30.9.2019 that the question of purchasers rights by the protester be addressed at the Environment and Land court and the applicant told the court that a suit has been filed in Githongo Chief Magistrates Court. In my appreciation, the applicant’s claim is one on title to land and enforceability of a contract on sale of land. Those are claims that the law preserve for the Environment and Land Court. This court will have no jurisdiction if there was to be a contestation on whether the agreement is enforceable or indeed valid or just statute barred as contended by Mrs Kaume. However even on the concession by the applicant that he has filed a suit at the Environment and Land court to assert the rights of a purchaser is a reason enough to disallow the application because it is against the dictate that judicial time be used efficiently to have a single question be urged between two different courts at the same time.

15. In conclusion I do find that the claim sought to be pursued by the applicant as an interested party in this cause is not a succession claim but on one title to land and thus outside the jurisdiction of the court. It thus follows therefore that even if the applicant may be affected by the outcome of these proceedings, his participation would yield no benefit as to assist the court determine the disputes in the cause. The applicant is thus not a proper party for joinder as an interested party.

**16. For the foregoing reasons I find the application to lack merit and direct that it be dismissed with costs because in seeking to engage this court on the same matter he is engaging the Githongo Court, he is not acting in god faith and honest pursuit of the administration of justice.**

**DATED, SIGNED AND DELIVERED AT MERU THIS 22ND DAY OF NOVEMBER 2021**

**PATRICK J.O OTIENO**

**JUDGE**