



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO. 531 OF 1995

IN THE MATTER OF THE ESTATE OF EDWARD KAMAU KARIUKI (DECEASED)

SARAH WAIRIMU KAMAU.....APPLICANT

VERSUS

JOSEPH NDUNGU KAMAU.....RESPONDENT

AND

KENNEDY KAHIHIA

JOSEPH NGUNGI NJENGA

EPHRAIM MUGO.....PROPOSED INTERESTED PARTIES

RULING.

1. Sarah Wairimu Kamau and Joseph Ndung'u Kamau are joint administrators of the Estate of Edward Kamau Kariuki (deceased).

The deceased's property known as **Bahati/Kabatini Block 1/1869** is the subject of this application.

2. On the **16/3/2016**, the Court (Ndungu J), made the following orders:

1. That this Honourable Court is hereby pleased to order cancellation of all titles arising from subdivision of Land Parcel number **Bahati/Kabatini Block 1/1869** and the same revert to as it is per confirmed grant.

The said subdivisions of the titles include

- 1). *Bahati/Kabatini Block 1/1425*
- 2). *Bahati/Kabatini Block 1/14220*
- 3). *Bahati/Kabatini Block 1/14221*
- 4). *Bahati/Kabatini Block 1/14463*
- 5). *Bahati/Kabatini Block 1/11833*
- 6). *Bahati/Kabatini Block 1/11694*
- 7). *Bahati/Kabatini Block 1/11696*
- 8). *Bahati/Kabatini Block 1/111832*

3. By a **Chamber Summons dated 23/8/2018**, the proposed interested parties claim to have purchased their respective land parcels from a beneficiary by name **James Gituro Kamau** to be excised from **Bahati/Kabatini Block 1/11694** and have since been in occupation and use up to 20/4/2017 when they state where issued with a letter from the Ministry of Lands and Physical Planning requiring them to surrender the

title deed following the above ruling dated **16/3/2016**. The title is a sub-division of the main, as stated as paragraph 2 above.

4. The supporting affidavit is sworn by **Ephraim Mugo** one of the four proposed interested parties on his behalf and on behalf of the other three proposed interested parties. It is averred that they purchased the said land parcel **No. Bahati/Kabatini Block 1/11695** a further subdivision. A title or official search has not been provided to the court.

5. They depone that they stand to suffer as they are in occupation of their land parcels and as they were not parties to the cause from which the orders of cancellation were given. They therefore seek to be enjoined so as to protect their interests therein while also seeking for an order of review, variation or discharge of the court orders dated 16/3/2016.

6. In reply to the application, **Serah Wairimu Kamau** one of the co-administrators of the Estate swore a Replying Affidavit on the **19/9/2019** opposing the application. She avers that the court orders were reached on merit, are competent and just, in the interest of the estate and the beneficiaries. It is further stated that the proposed interested parties have no valid claim as bona fide purchasers for value, as they failed to conduct due diligence hence their failure should not be visited upon the respondents as they would have found that the said Serah Wairimu Kamau holds ½ share while the respondent and co-administrator holds ½ share of Block 1/1869. Parties filed written submissions. I have considered them.

7. Issues for Determination.

1. *Whether the proposed interested parties ought to be enjoined into these proceedings.*

2. *Whether the orders issued on the 16/3/2016 should be reviewed, varied or set aside.*

Analysis and determination.

Joinder of proposed interested parties.

8. The principles upon which a party may be enjoined in a suit were laid down by the **Supreme Court of Kenya in Francis Kariuki Muruatetu & another Vs. Republic & 5 Others (2016) e KLR** as

(1) *The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.*

(2) *The prejudice to be suffered by the intended interest party in case of non-joinder must also be demonstrated to the satisfaction of the court. It must also be clearly outlined and not something remote.*

(3) *A party must set out the case and/or submissions it intends to make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replica, of what the other parties will be making before the court.*

9. The certificate of Confirmation of Grant dated 3/2/2010 confirms that the property at issue was given to the two co-administrators, at half share to each.

James Gituro Kamau the purported seller to the proposed interested parties does appear as a beneficiary of the deceased's estate in the confirmed grant, as a son of the first wife's house among other sons and daughters. This first house was duly represented by the second Administrator Joseph Ndungu Kamau.

10. By a court order dated the **29/7/2010**, Maraga J (as he then was) directed that the land parcel **Bahati/Kabatini Block 1/1869** be subdivided to facilitate transmission to the beneficiaries as per the confirmed grant. Following an order of Emukule J dated **30/1/2014**, the suit parcel was ordered to be subdivided accordingly, giving rise to the two portions to each of the co-administrators, and the eight subsequent subdivisions.

11. The proposed interested parties subdivision **Bahati/Kabatini Block 1/1165** is not among the above sub titles. This is confirmed by the ruling dated 16/3/2016 (Hon. Ndungu J).

I have seen some sale agreements entered into between the said James Gituro Kamau as the vendor and the proposed interested parties in respect of sub-divisions from **Land Parcel Block 1/11695**. The co-administrator, Sarah Wairimu Kamau further depones that the proposed interested parties have no good title to the portions they lay claim on as the main title was to be subdivided in two equal portions as per the confirmed grant, and therefore any further subdivisions were obtained in disregard to the court orders.

I have stated above that the portion/title that the proposed parties lay claim on is not part of the subdivisions of the main title, which the court has, in any event, ordered cancelled for having been obtained illegally, and contrary to court orders.

12. In the case **Skov Estate Ltd & 5 others Vs. Agricultural Development Corporation & another (2015) e KLR**, Sila Munyao J rendered that

“----for one to convince the court that she/he needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary to be enjoined so that the court may settle all questions involved in the matter. A mere interest, without

demonstration that the pressure of such party will assist in the settlement of the questions involved in the suit is not enough to entitle one to be enjoined in the suit as an interested---"

As held in the **Francis Karioko Muruatetu (Supra)**, the interest must be clearly identifiable and demonstrated and that the proposed interested party's interest will assist the court to settle the issues in dispute.

13. Due diligence is a very important component while dealing in land matters, more so disposition of land. The applicants purport to have bought the portions between the period January 2013 and May 2013, when this succession cause was in progress, pending conclusion in court. The vendor as a beneficiary knew or ought to have known that there were disputes in court as to the distribution of the Estate. They obtained the title during the pendency of the dispute. Had the proposed interested parties conducted sufficient due diligence, they would have found that the vendor had no clean title whose interest he could pass to them at the time.

14. The dispute in this cause, is between the Administrators of the Estate, not third parties. Once this issue is resolved, the applicants will have an opportunity to chase after their interest from the said James Gituro Kamau who sold the land parcel to them.

Their preserve in court by a joinder, in my view, will not be of any assistance to the court, nor will it assist it to resolve the deceased's Estate disputes between the Administrators and/or beneficiaries.

15. I am alive to the fact that an interested party may be joined to court proceedings at any time including at the appellate stage, so long as such joinder will not prejudice or cause injustice to the other parties.

The court must consider whether the joinder is intended to vex the parties or convolute the proceedings with unnecessary new matters and grounds not contemplated or envisaged in the proceedings – **Central Kenya Ltd Vs Trust Bank & 4 Others CA No. 222 of 1998**.

16. I am not persuaded that the proposed interested parties have sufficient interest in the subject matter that would necessitate their joinder. In the premises, I find no merit in the proposed interested parties application for joinder.

Review, variation and or discharge of court orders dated the 16/3/2016.

17. The background leading to the orders aforesaid have been set out above. The power to review a court order, ruling or judgment is donated to the court under **Order 45 of the Civil Procedure Rules. Rule 1** gives the parameters under which a review/variation may be allowed. The Order envisages that a party who has been a party to the proceedings and is aggrieved, not a non-party to the proceedings, may apply.

Rule 2(b) provides for discovery of new and important matter that, upon exercise of due diligence, during or before the proceedings, could not be produced by the party against whom the decree was passed, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.

18. The applicants have shown nothing new that was not in their knowledge during the hearing of this succession cause.

The Orders of the 16/2/2016, in my view were granted with a view to preserve the deceased's estate from illegal subdivisions and sale by the Administrations and or beneficiaries contrary to the terms contained in the confirmed Grant of Letters of Administration.

19. None of the Administrators or the beneficiaries find fault, or error with the court orders. They are not parties to this application for review or variation.

Having found that the applicants, being the proposed interested parties are not necessary parties to this cause, I find no reason whatsoever to interfere with the 16/3/2016 court orders.

20. Consequently the proposed interested parties application dated 23/8/2018 is dismissed in its entirety with no orders as to costs.

Orders accordingly.

Delivered, signed and dated at Nakuru this 12th Day of March 2020.

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J.N.MULWA

JUDGE.