



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

SUCCESSION CAUSE NO. 2 OF 2019

MBURA EDWARDAPPLICANT/INTERESED PARTY

VERSUS

PHILIP TUNGA MBARU RESPONDENT

Coram: Hon. Justice Nyakundi

Mbura Edward the objector

Khaminwa and Khaminwa Advocates for the petitioner

RULING

The applicant filed a Notice of Motion application dated 4th March 2020 under Order 1 rule 10 (2), 14 and 25 of the Civil Procedure Rules 2010, and section 1A, 1B and 3A of the Civil Procedure Act seeking for orders: -

- 1. That Mbura Edward be added as an interested party to the proceedings.**
- 2. That the Honourable Court does make any orders that it deems fit and just to grant.**

The current Notice of Motion application was grounded upon the grounds espoused therein and by the sworn affidavit of **Mbura Edward** dated 4th March 2020.

Background

On 19th July 2019, **Philip Tungu Mbura**, filed an application for citation to accept or refuse letters of administration under rules 22 and 22 of the Probate and Administration Rules dated 19th July 2019 against **Sharrif Ndole Mwakidudu, Luwali Ndole Mwakidudu and Kazungu Ndole Mwakidudu** being beneficiaries of **Ndole Mwakidudu (deceased)**.

Philip Tungu Mbura averred that he had entered into an agreement with the beneficiaries of **Ndole Mwakidudu** for the purchase of 6 acres of GEDE/DABASO/138 on 14th May 1983. That he had lived on the land for 25 years during which time he buried his wife, **Gladys Mercy Kabibi**, on the property developed it with his sons and even constructed his retirement home thereon.

However, during succession proceedings, the beneficiaries of **Ndole Mwakidudu** failed to disclose to the court that he was a bona fide purchaser of GEDE/DABASO/138 and that the grant was revoked. He now wanted the beneficiaries to accept the letters of administration failure of which the said **Philip Tungu Mbura** be appointed as the personal representative.

After the applicant in the present case, **Mbura Edward**, learnt about the said application he filed his application wanting to be enjoined in the citation application as an Interested Party.

Applicant's case

It was the applicant's case that he was a son of **Gladys Mercy Kabibi Mbura (deceased)** and the respondent. He stated that the widow of **Ndole Mwakidudu** and his late mother were present during the purchase of the suit property and that the men were only brought in to assist

on the legal aspect. That something changed at the advocates' office.

He averred that after his mother died, the respondent remarried and that he included his wife's name as the next of kin in the properties of the late **Gladys Mercy Kibibi Mbura**. That there was a real apprehension that if the Respondent was the sole beneficiary of the suit premises, he would evict the children out of the property. He stated that he was likely to suffer immensely if adverse orders are issued in respect to the suit property.

Respondent's case

The Respondent and his children namely, **Joseph Kombe, Mary Nazi, David Jefa & James Kalama** filed an affidavits dated 9th March 2020 on 10th March 2020 contesting the claim by the objector.

It was the respondent's case that the applicant was his son from his first marriage with **Gladys Mercy Kabibi Mbura (deceased)**. He bought GEDE/DABASO/138, the suit property, from the beneficiaries of **Ndole Mwakidudu** on 14th May 1983 a fact that the Respondent's children acknowledged. The respondent agreed with his late wife to build their retirement home on the suit property. That when his wife passed away, he agreed with his family to bury his wife on the suit property.

The respondent stated that he provided for his children educating them to tertiary level and had even bought rental houses in Mombasa with his children with his late wife pension after a discussion with his children. Further, he allowed his children with his deceased wife to construct their personal houses on the suit property and had never denied them access to the property.

The respondent contended that the applicant failed to prove his locus standi and what capacity he was bringing forth the application as the estate in issue is of the late **Ndole Mwakidudu**.

Determination

I have given due consideration to the application and the Supporting Affidavit as well as the Affidavits of the respondent and the only issue for determination is whether the applicant should be enjoined as Interested Party.

Order 1 rule 10(2) provides: -

"The court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just order.... that the name of any person who ought to be joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectively and completely adjudicate upon and settle all the questions involved in the suit, be added" (emphasis added)

The Supreme Court in the case of **Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 others** [2014] eKLR said: -

"[22] In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court's Ruling in the Mumo Matemo case where the Court (at paragraphs 14 and 18) held:

"[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..."

[23] Similarly, in the case of Meme v. Republic, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

"(i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;

(ii) joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;

(iii) joinder to prevent a likely course of proliferated litigation."

[24] We ask ourselves the following questions: (a) what is the intended interested party's stake and relevance in the proceedings? and (b) will the intended interested party suffer any prejudice if denied joinder?"

In the persuasive decision in **Skov Estate Limited & 5 Others v Agricultural Development Corporation & another** [2015] eKLR the court stated that;

"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.”

The applicant is seeking to be enjoined as an Interested Party as the beneficiary of the **Gladys Mercy Kabibi Mbura (deceased)**, who was the respondent’s wife, to preserve the suit property.

I have perused the record and noted that the respondent produced a sale agreement (PTM1) dated 14th May 1983 between him and the beneficiaries of **Ndole Mwakidudu** fore the suit property. There is no evidence that the respondent’s late wife took part in the purchase of the suit property. The applicant’s claim is based on mere speculation as seen from his affidavit dated 9th October 2020.

It is my considered view that the enjoinder of the applicant will not assist the court in settling all questions involved regarding citation application by the respondent against the beneficiaries of **Ndole Mwakidudu**. In any case, the decision of this court is not likely to affect him. He cannot purport to curtail the respondent from seeking rights that accrue from the administrator of the estate of the deceased who died intestate. The applicant has no locus standi in this matter as it appertains to the legal interest as prescribed by the respondent. **21st** Additionally, even if the court was to presume that the applicant had a beneficial interest in the suit property, he has not placed any evidence that the respondent would evict him from the land or. On the contrary, the respondent has allowed all his children including the applicant to construct on the suit premises, a fact that the applicant has not denied.

Considering the foregoing, this is not an appropriate application to order for the joinder of the so called Interested Party. The application for joinder is found not to be merited and is hereby dismissed. There shall be no order for costs.

It is so ordered.

JUDGMENT DELIVERED, DATED AND SIGNED AT MALINDI THIS 21ST DAY OF DECEMBER, 2020

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R. NYAKUNDI

JUDGE