



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

HC. MISC APP NO. 6 OF 2013

(Formerly H/Misc. No. 47 of 2010 Kerugoya)

CYRUS WAMBOKA NYAGA NJUE APPLICANT

V E R S U S

LUCY KANYUA NYAMU RESPONDENT

RULING

1. The Intended interested party Peter Gicheru Kathinya filed an application dated 29/11/2018 seeking that he be enjoined in the suit as interested party.

2. The grounds for seeking the above orders are that the suit property is family land whereby the deceased, their mother, the 1st respondent and himself contributed and purchased the suit land but agreed to have it registered under the deceased's name. That they buried all their relatives on the said parcel of land and he also acquired some properties with this late brother Murage Kathinja. That the 2nd respondent did not notify them of the institution of the succession proceedings and concealed that the deceased had no surviving brother/dependants.

3. The 2nd respondent filed replying affidavit stating that the applicant first appeared in court on 22/11/2018 to testify as a witness for the 1st respondent when the court ruled him out as a witness since his name was not among the witnesses listed. That the application is to indirectly allow him to give evidence in support of the 1st respondent. that the 1st respondent closed his case on 22/11/2018 and allowing the application will allow the 1st respondent to indirectly open his case.

4. The issue which arises is enjoining an Interested Party.

An interested party is one who has a stake in the proceedings, though he was not party to the cause *ab initio*. He is one who will be affected by the decision of the Court when it is made, either way. The Court should not act in vain by enjoining a party that clearly would have no interest in the subsequent proceedings. The court exercises discretion to enjoin the party in the suit.

5. Skov Estate Limited & 5 others v Agricultural Development Corporation & another [2015] eKLR

Justice Munyao Sila stated the following in dismissing an application for the applicants to be enjoined to the suit because they purchased the suit property from the plaintiffs' person;

6. **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.**

7. **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.**

8. In Marigat Group Ranch & 3 others v Wesley Chepkoiment & 19 others [2014] eKLR

The application before court was for prayers filed by 110 persons seeking to be enjoined as interested parties and Justice Munyao Sila was of the view that;

9. **For purposes of one who wants to be enjoined as an interested party, I think, that such person needs to fit himself into the catch words "whose presence before the court may be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit...". This is the same position I took in the case of Joseph Leboo v Director, Kenya Forest Service & Others (Eldoret ELC No 273 of 2013).**

10. **It should be appreciated that an interested party is not strictly plaintiff or defendant. The contest in a suit is between plaintiff and defendant and if any person has a claim over the subject matter, then such party needs to apply to be enjoined and considered as plaintiff or defendant, and not as interested party. An interested party would be a person who has a close connection to the subject matter of the suit yet not claiming any rights over it.....**

11. **It follows therefore that applications seeking to join proceedings as interested parties ought to be handled with caution so that a person does not come to a suit, disguised as an interested party, while all along he/she wishes to agitate rights of his/her own over the subject matter of the suit.**

12. This suit was instituted by the 1st respondent seeking to revoke and annul the grant issued to the 2nd respondent on ground of concealment of material facts and that the deceased had other beneficiaries including the interested party.

13. On 22/11/2018, the court ruled that the interested party was sneaked in because he was not on the list of witnesses. That the same is unprocedural and prejudicial and the leave to include the witness was declined. The interested party has now filed the application to be enjoined.

14. The interested party herein is seeking to be enjoined in order to agitate his rights over the suit land. However, the application is coming late in the day after he had not been allowed to testify for the 1st respondent whereupon the 1st respondent proceeded to close his case. To allow the said application at this time would be detrimental to the 2nd respondent and it would amount to opening the 1st respondent's case.

15. As stated by my brother Justice Munyao, a party need not be enjoined in a suit in order for him to benefit from the judgment of the court as a judgment or order does not only affect the litigants. A party seeking to be enjoined must demonstrate that his being joined will assist the court in the determination of the issues in dispute.

16. The applicant has not demonstrated that his being enjoined in the suit is necessary for the determination of the issues in dispute. He is motivated by other considerations but not to assist the court or to protect his interest in the subject matter.

17. The threshold for being enjoined is whether his presence in the proceedings is necessary in order for the court to determine the issues in dispute but on whims. The applicant has not met this threshold. I find that the application is without merits and so I dismiss it with costs.

Dated at Kerugoya this 24th day of January 2019.

L. W. GITARI

JUDGE