



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO.118 OF 2011

IN THE MATTER OF THE ESTATE OF TIMOTHY MUTISYA WAUSI – DECEASED

RAEL WAVINYA MUTISYA.....1ST PETITIONER

DAVID KITULU MUTISYA.....2ND PETITIONER

VERSUS

LUKA MUTISYA.....1ST OBJECTOR

SHADRACK MBITHI MUTISYA.....2ND OBJECTOR

AND

RAPHAEL MWORIA

PETER KETYENYA RUTTO

INTERCOUNTY PROPERTIES LTD.....INTERESTED PARTIES

RULING

1. The Interested Parties herein filed a Notice of Motion Application dated 20th June, 2017 seeking to be enjoined into the suit as interested parties on the grounds inter alia that they had entered into an agreement of sale of land measuring 0.809 Hectares contained in **Kitanga Settlement Scheme Plot No. 17** with the 2nd Petitioner herein and therefore they require their interests to be safeguarded.

2. The Application was opposed by the Objectors on the grounds inter alia that the interested parties should wait for the succession process to be completed then they could lodge their claims against the concerned beneficiary who had sold land to them before the grant was confirmed; that the interested parties are not creditors of the estate of the deceased herein, that joining the interested parties would cause unnecessary delay with no fruitful outcome.

3. Parties herein agreed to have the Application determined on the basis of the affidavits in support or in opposition of the Application. This court reserved the matter for ruling on the 24/5/2018.

4. The Interested Parties Advocates vide a letter dated 7/5/2018 and received in court on 21/5/2018 made a request that the ruling herein be arrested since the interested parties are no longer interested in being enjoined in the suit. The letter further indicated that the Interested Parties have decided not to pursue the Application any further.

5. The letter aforesaid was not copied to the learned Counsels for the Petitioners and the Objectors and further the same did not expressly state that the Application was being withdrawn or abandoned. However going by the tenor of the letter it is clear that the intention of the Interested Parties is to withdraw or abandon the said Application dated 20/06/2017.

6. In the premises, I order that the Interested Parties Application dated 20/06/2017 is marked as withdrawn and or abandoned. As the Application had been opposed by the Objectors and as costs usually follow the event, I order that the costs shall be to the Objectors.

Orders accordingly.

Dated and delivered at Machakos this 24th day of May, 2018.

D. K. KEMEI

JUDGE

In the presence of:-

Munguti - for the Petitioners

Nzioka/ Nzikini - for the Objectors

Kalume for the Interested Parties

Josephine - Court Assistant