



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 240 OF 2013

IN THE MATTER OF THE ESTATE OF MUTUKU NYAGA (DECEASED)

HANNAH MICHERE GITHAKA.....APPLICANT

VS

CYRUS NYAGA NJAGE.....RESPONDENT

AND

FRANCIS MACHARIA KARANJA...PROPOSED INTERESTED PARTY

RULING

1. The Applicant filed a Chamber Summons under the provisions of Rules 49 and 73 of the Probate & Administration Rules of the Law of Succession Act;
2. The Applicant prayed for the following Orders;
 - (i) This Honorable Court be pleased to enjoin **FRANCIS MACHARIA KARANJA** as a respondent in this cause;
 - (ii) That the costs of the application be provided.
- 43 The applicant relied on the grounds on the face of the application and on the Supporting Affidavit made by **HANNAH MICHERE GITHAKA** and other grounds adduced at the hearing hereof;
4. The applicant depones that the subject matter relates to land forming part of the estate of the deceased; that she filed a Summons for Revocation of the Grant against **CYRUS NYAGA NJAGE** the respondent herein; that during its pendency the respondent proceeded to transfer the land to the Interested Party;
5. That it is therefore imperative and in the interest of justice that she be allowed to enjoin the Interested Party in these proceedings so that all issues against the parties may be heard together and one final determination be made;
6. Counsel submitted that the respondent and the Interested Party though they had been duly served with the Hearing Notice were absent; an affidavit of service in support was annexed to the application;
7. Counsel prayed that the application be allowed.

ISSUES FOR DETERMINATION

8. Taking into consideration the above submissions this court has only framed one issue for determination;

(i) Whether **Francis Macharia Karanja** should be enjoined to the revocation of grant proceedings;

ANALYSIS

9. The court has noted that the respondent and the proposed interested party were duly served and despite this being done were absent when the matter came up for hearing; thus the matter rightly proceeded for hearing in their absence;

10. Having perused the application it is noted that the application is made by the applicant and not the interested party himself; she seeks to enjoin him to the proceedings as a respondent; the applicant avers that the interested party ought to be enjoined so that the trial court can adjudicate on the issues which may affect his rights;

11. It is this court's considered view that even though the application is unchallenged that the main cause of action which is for the revocation of the grant as against the respondent **Cyrus Nyaga Njage**; and that the complete relief due to the applicant would also be as against him; in the circumstances of this case the rights and issues of the applicant and the respondent can be properly be adjudicated upon, decided and resolved without having to enjoin one **Francis Macharia Karanja**;

12. In any event the applicant has not demonstrated to this court how the joinder of **Francis Macharia Karanja** to the cause would enable the trial court to effectively determine the issues pertaining to the deceased's estate; and this court reiterates that the issues are as between the applicant and the respondent; and the reliefs sought are complete as against the respondent and no other party.

13. Further there is need to state that there are issues that may have to be adjudicated in the Environment and Land Court; and had this instant application been instituted by the said **Francis Macharia Karanja** this court would have been inclined to grant the order for joinder provided there was an averment in his affidavit that he was willing to transfer the subject matter into that court or dispose of it as the court may direct;

14. For the foregoing reasons this court finds that this is not an appropriate application to order for the joinder of the so called interested party.

DETERMINATION

15. The application for joinder is found not to be merited and is hereby dismissed.

16. There shall be no order for costs.

Orders accordingly.

Dated, Signed and Delivered at Nyeri this 30th day of March, 2017.

HON.A. MSHILA

JUDGE