



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

ELC CASE NO. 165 OF 2013

ARTHUR NGUGI MBUGUA

SAMPSON KIMANI MBUGUA

MICHAEL MURIITHI MBUGUA.....PLAINTIFFS/REONDENTS

-VERSUS-

SAID JADI KONGO

ESHA HARUN KINGUNGE.....DEFENDANTS

CHARLES NGUGI MBUGUA.....INTERESTED PARTY/APPLICANT

RULING

1. The Applicant herein seeks to be joined as an interested party to these proceedings. He has therefore filed a chamber summons application premised under Order 1 rule 10 (2) and 25 of the Civil Procedure Rules, Section 1A, 3 and 3A of the Civil Procedure Act. Once joined, he seeks leave to file his documents. The application is supported by the grounds on the face of the application and his affidavit.
2. The application is opposed by the plaintiffs through a replying affidavit sworn by the 1st plaintiff. In the 1st plaintiff deposes the Applicant knew about this case as early as May 2014 and therefore he ought to have joined it then if he had any interest in this case and not wait until the plaintiffs' case is closed.
3. The Respondent further deposed that the Applicant has not annexed any statement to enable the parties or Court know what kind of evidence he wants to bring forward. He states that the application is malicious and an abuse of the Court process therefore ought to be dismissed.
4. The parties did not submit and asked the Court to rely on the pleadings as filed and make a determination. The plaintiffs closed their case on 7th July 2015. The three plaintiffs filed the suit as the administrators of the estate of Jotham Mbugua Mwenja – deceased. The Applicant avers that he is the 4th son of the 1st wife and the family spokesman as well as a beneficiary to the estate. He also stated that he recently learnt about this case and will suffer great loss unless he is given a chance to be heard.
5. In the supporting affidavit, he deposes that he learnt of the existence of the case through the 2nd

defendant. He also deposed that since he was not included in the suit as plaintiff or defendant or witness, it is paramount that he be allowed to testify since the suit revolves around a property.

6. The Applicant has not denied that the plaintiffs are the administrators of the estate of their late father. The Applicant has not disclosed how the orders sought against the defendants herein will adversely affect him. Since the matter relates to the property of a deceased person, the only persons authorised by law to bring suit is the administrators. By the Applicant seeking leave to file his documents in the proceedings, he seeks to be joined as party when no locus has been conferred upon him by law.

7. The Applicant's interests if any should be channelled through the succession cause and not in this suit. He also failed to disclose exact date when he learnt of the existence of this case. As a family spokesman, he should have been diligent enough to know if there were any disputes as regards the deceased's properties. The grants of the orders sought herein is at the discretion of the Court. I am not convinced that he has demonstrated any loss he is likely to suffer if he is not joined in these proceedings. Consequently I find no merit in the application dated 23rd September 2015 and proceed to dismiss it with costs to the plaintiffs.

Ruling Dated and Delivered in Mombasa this 22nd day of April 2016

A. OMOLLO

JUDGE