



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 513 OF 2012 (OS)

JOSEPH CHEGE NJUGUNAPLAINTIFF

VERSUS

JORETH LIMITEDDEFENDANT

GEOFFREY MURIGI NJUGUNA.....1ST INTERESTED PARTY

HENRY KARIUKI NJUGUNA.....2ND INTERESTED PARTY

RULING

Background

1. Coming up for determination is an application dated 14th September 2021 by Geoffrey Murigi Njuguna and Henry Kariuki Njuguna seeking the following orders:

i. Spent

ii. That the 1st and 2nd applicants being interested parties be enjoined in these proceedings.

iii. That costs of this application be provided for.

2. This application supported by the sworn affidavits of Geoffrey Murigi Njuguna and Henry Kariuki Njuguna is premised on grounds that the Applicants are sons of the deceased Njuguna Gichunji (*former Plaintiff who was substituted by his son Joseph Chege Njuguna- the current Plaintiff*) and beneficiaries of his estate who as such have an interest in the suit property Plot No. 589, Thome Farmers No. 5 Limited being a portion of LR No. 1330. They aver that they were unaware of the current suit as the Plaintiff (their brother) kept them in the dark.

3. They contend that they have obtained letters of administration ad litem in order to prosecute this suit and that they had also filed a protest in **Succession No. 130 of 2018** in the Senior Principal Magistrate which was instituted by the Plaintiff Joseph Chege Njuguna and Francis Kimani Njuguna (brothers) without their knowledge.

4. They further state that they have substantial interest in the suit as the outcome would affect them directly noting that the suit property was also the subject of the protest.

5. The Plaintiff/Respondent in his replying affidavit dated 5th November 2021 countered the application stating that the same should be dismissed because matters relating to the estate of the deceased were being handled in **Succession Cause No. 130 of 2018** at the Githunguri Senior Principal Magistrate which is the forum in which the applicants should ventilate their claims.

6. He added that the letters ad litem claimed by the Applicants had been obtained fraudulently vide **Misc. Succession Cause No. E048 of 2021** without disclosing that there was an ongoing case **Succession Cause No. 130 of 2018** which they were well aware of as they signed a consent before the local chief. The Respondent also pointed out that he had applied for revocation of the said interim grant at the Githunguri Court.

7. He noted that the Applicants were aware of the suit during their father's lifetime and the Respondent was substituted as the plaintiff after their father's demise following an award of limited grant. He stated that he applied for the limited grant because during their father's lifetime he was given the suit property and the Applicants were given properties in Nakuru and Gachika.

8. The application was canvassed by way of written submissions.

Applicants' submissions

9. The Applicants in the undated written submissions filed on 7th December 2021 submitted that they ought to be enjoined as interested parties since they are necessary parties for a complete and effectual adjudication of the dispute as per **Order 1 Rule 10(2)** of the **Civil Procedure Rules** and as held in the case of **Moses Wachira vs Niels Bruel & 2 Others [2015] eKLR** which cited the Supreme Court decision in **Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 Others [2014] eKLR**. It was also submitted that the joinder should be freely allowed if it does not occasion prejudice to the parties and that their absence in the proceedings would jeopardise their interests and rights as sons of the deceased and to this end, they cited the case of **Central Kenya Ltd v Trust Bank & 5 others [2000] eKLR**.

Plaintiff's/ Respondent's Submissions

10. In his written submissions dated 7th December 2021, the respondent stated that although **Order 1 Rule 10(2)** and **13** of the **Civil Procedure Rules** permits joinder of parties whose presence is necessary for the adjudication of suits, the Applicants presence was not necessary in the determination of the suit at hand since the claim was for adverse possession which was commenced by their late father and substituted by the current Plaintiff/Respondent with full knowledge of the applicants adding that the Applicants claim should be ventilated in the **Succession Cause 130 of 2018** which was pending before the Senior Principal Magistrates Court, Githunguri. Reference was made to the case of **Communications Commission of Kenya & 4 Others v Royal Media Services Limited & 7 Others [2014] eKLR**.

Analysis and Determination

11. The issue for determination is; *whether the court should allow the Applicants' prayer for joinder in the suit.*

12. A perusal of the record reveals that the initial Plaintiff died on 2.5.2016. The suit was revived by the current Plaintiff vide the orders given on 17.1.2018. This was after the current Plaintiff had presented a grant issued on 31.8.2017 which was issued for purposes of substituting the Plaintiff in this suit. The current Applicants claim to have obtained letters of administration for purposes of prosecuting this suit. It is clear that the issue raised by the Applicants lies in the ambit of probate and administration. As long as the grant issued to the current Plaintiff on 31.8.2017 stands, this court cannot purport to entertain other parties on the basis of issuance of another grant.

13. Secondly, this is a case of adverse possession and the current Plaintiff was only substituted to step in the shoes of the former Plaintiff. Thus ultimately, the rights and or liabilities that shall accrue in the final analysis shall fall on the estate of the deceased Plaintiff. I must however point out that the Plaintiff appears to be holding onto a false representation that he will own the suit land if the Plaintiff's case succeeds. Whether the current Plaintiff (Joseph Chege) was given the suit land while the interested parties were given land elsewhere is not an issue for determination by this court on account of want of jurisdiction. It follows that the outcome does not affect the interested parties and their interests lies in succession cause once the question of adverse possession is determined. The Plaintiff was only substituted to prosecute the suit.

14. I therefore find the application dated 14.9.2021 is not merited. The same is dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JANUARY, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Kingara for the Plaintiff/Respondent

Mrs. Otembo holding brief for Mrs. Koech for the Defendants

Kirahu Kamunya for the 1st & 2nd Interested Parties/Applicants

Court Assistant: Eddel Barasa