



THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. 16 OF 2019

MOSES MWANGI WAWERU (*Suing as the personal representative of the*

Estate of BARTHOLOMEW J WAWERU TITI (Deceased)..... **PLAINTIFF**

=VERSUS=

DOROTHY WAMUYU MUCHIRI.....**1ST DEFENDANT**

PETER GITHAIGA MUCHIRI..... **2ND DEFENDANT**

ZACHARIA MWEA**3RD DEFENDANT**

NJOROGE MWANGI also known as WAKIHINGI.....**4TH DEFENDANT**

MICHAEL KIRAGU KIMANI..... **5TH DEFENDANT**

PETER KINYANJUL.....**6TH DEFENDANT**

PURITY WANJIRA WAWERU..... **1ST INTENDED INTERESTED PARTY**

LAWRENCE NJERU WAWERU.....**2ND INTENDED INTERESTED PARTY**

RULING

1. Falling for determination in this ruling is a notice of motion dated 10/11/2021 brought by **Purity Wanjira Waweru** and **Lawrence Njeru Waweru**. They seek an order joining them as interested parties in this suit. The application is supported by an affidavit sworn on 11/11/2021 by **Purity Wanjira Waweru**. She deposes that she is the only surviving widow of the **late Joseph Waweru Titi** [the deceased] and that the plaintiff in this suit, **Moses Mwangi Waweru**, is her step son. She adds that through reckless and willful omission, the plaintiff filed **Gatundu CMC Succession Cause No. 34 of 2019** and obtained a grant dated 19/11/2019 without involving her as the only surviving widow of the late Joseph Waweru Titi. She further deposes that the dispute in this suit involves the same parties and issues as in **Thika ELC case No 240 of 2018** which was to come up for ruling on 10/2/2022.

2. The application was canvassed through brief written submissions dated 23/11/2022 filed by the firm of *Dola Magani & Co Advocates*. Counsel reiterated the relationship of the applicants to the deceased and added that the 1st applicant has a duty to oversee and advise on matters relating to the deceased's family. Counsel added that leaving the applicants out of this suit will prejudice them.

3. The plaintiff opposed the application through a replying affidavit sworn on 15/1/2021. He deposed that the applicant had through an application dated 7/5/2021 made an unsuccessful bid to revoke the grant of letter of administration relating to the estate of the deceased. He added that this suit was commenced by the deceased during his lifetime and he subsequently died on 27/7/2021. He deposed that this suit is about protecting the estate of the deceased and does not confer any personal inheritance benefits to him or to any other person. It was his case that the purpose of the application was to trigger an adjournment. He added that the application was misconceived, bad in law, and an abuse of the court process. He urged the court to dismiss the application.

4. In brief written submissions dated 14/1/2022, filed by the firm of *Waithira Mwangi & Co Advocates*, counsel for the plaintiff submitted that this suit does not relate to distribution of the estate of the deceased and that any reliefs achieved through the suit will be for the benefit of the estate of the deceased. Counsel added that the applicants had not demonstrated that they had a separate interest in the subject matter of the suit. She argued that the applicants had failed to demonstrate any prejudice they stood to suffer.

5. I have considered the application, the response to the application, and the parties' respective submissions. I have also considered the relevant legal framework and jurisprudence. The key question falling for determination in this application is whether the applicants have

satisfied the criteria for joinder, in the circumstances of the suit.

6. This suit was instituted by the deceased during his lifetime in 2016. He died in 2019. A grant relating to the deceased's estate was issued to **Moses Mwangi Waweru** who was subsequently substituted in place of the deceased, as a representative of the deceased's estate. The applicants are not co-administrators of the estate. They have not tendered evidence to demonstrate an independent interest in the suit property. The only ground they have advanced for seeking to be made interested parties in this suit is that they are widow and son, respectively, of the deceased. It is therefore apparent that the applicants have miscomprehended the law of succession.

7. I entirely agree with counsel for the plaintiff that this suit is not about distribution of the estate of the deceased. Any award made in favour of the estate of the deceased will be available for distribution by the succession court to the beneficiaries of the estate of the deceased. It will not be for the personal benefit of the administrator of the estate. Secondly, if the applicants have a legitimate basis as to why the plaintiff should not administer the estate, the proper forum to raise their grievances is the succession cause.

8. For the above reasons, it is my finding that the applicants have failed to demonstrate any independent interest in the suit property which would entitle them to be joined as interested parties in this suit. The interest of the estate of the deceased is represented by the administrator of the estate. Consequently, I find that the applicants have not satisfied the criteria for joinder, in the circumstances of this suit. The result is that the application dated **10/11/2021** is dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 17TH DAY OF FEBRUARY 2022

B M EBOSO

JUDGE

In the Presence of: -

Weyimi for the Applicants

Court Assistant: Lucy Muthoni