



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.40 OF 2012

1. FATUMA MKOBA FARUMA.....PLAINTIFF

=VERSUS=

1. SAYYEDA FAHMEEDA BEGUM

2. THE COMMISSIONER OF LANDS.....DEFENDANTS

=AND=

1. IDI HASSAN MWACHITU

2. ALI HASSAN NZIMBA

3. RAMA HASSAN MANGALE

4. MOHAMED HASSAN NZIMBA.....INTERESTED PARTIES

R U L I N G

1. The Application by the Interested Parties is dated 10th October 2014. In the Application, the Interested Parties are seeking for the following orders:

(a) That the Applicants be enjoined in this suit as interested/Necessary Parties and be granted leave to file their pleadings.

(b) That the proceedings herein be set aside and the Applicants be allowed to participate in the suit as an interested and/or necessary party.

2. The Application is premised on the ground that the Interested Parties have been in uninterrupted occupation of approximately three (3) acres of land known as Mgomopatsa/Mazeras/522 for over twelve (12) years; that the Applicants were not aware of this suit; that the 1st Defendant died before the Plaintiff filed the suit and that the Applicants have no other place of residence.

3. In his response, the Plaintiff/Respondent has deponed that the Applicants father, now deceased, entered into a lease agreement with her husband in 1970 to put up a house on the land on condition that he pays ground rent; that after the Applicants' father died, the Applicants stopped paying the ground rent and that the Applicants abandoned the house which had been occupied by their late father.

4. According to the Plaintiff, she filed the suit as the administratrix of the estate of her late husband and that the Applicants' father could not pass onto the Applicants a better right because he was just a tenant.
5. It is the Plaintiff's/Respondent's case that all along, the Defendants were served and at no time did the 2nd Defendant inform her that the 1st Defendant was dead; that the District Land Registrar who declined to implement the order of this court is colluding with the Applicants to frustrate the execution process and that although the title deed in respect to the suit property was issued after the death of the 1st Defendant, it is not clear to whom the said title deed was issued to.
6. I have considered the brief submissions filed by the advocates.
7. The Plaintiff's claim is principally that the 1st Defendant fraudulently effected a transfer of the suit property from her late husband to herself.
8. In the Plaint, the Plaintiff sought for a declaration that her late husband is the lawful owner of the suit property.
9. From the beginning, the Plaintiff had a problem of effecting service on the 1st Defendant. When the matter came up for hearing, counsel for the Plaintiff informed the court that Meoli J had allowed service of process on the 1st Defendant by registered post on 8th May 2012. This court allowed the Plaintiff to proceed with formal proof on that basis.
10. I am now being informed that by the time the suit was filed, the 1st Defendant was actually dead.
11. Although the interested parties did not annex a copy of the Certificate of Death on the Application, they annexed a copy of the extract of the register for Mgumoposta/Mazeras/522 which shows that the 1st Defendant is deceased.
12. The Interested Parties are also claiming the interest on the suit property on the ground that they have lived on the suit property for more than twelve years.
13. Considering that if it is true that the 1st Defendant was by the time the suit was filed dead the suit will be a nullity and in view of the deposition by the Applicants that they have an interest in the suit property, I allow the Application in terms of prayer numbers 3 and 4.

Dated and delivered in Malindi this **24th** day of **July** 2015.

O. A. Angote

Judge