



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND AT THIKA

ELC NO. 240 OF 2018

DOROTHY WAMUYU WACHIRA.....PLAINTIFF

VS

**MOSES MWANGI WAWERU (suing as the personal representative of the estate
of BARTHOLOMEW WAWERU TITI, deceased).....DEFENDANT**

And

PURITY WANJIRA WAWERU.....PROPOSED INTERESTED PARTY/APPLICANT

LAWRENCE NJERU WAWERU...PROPOSED INTERESTED PARTY/APPLICANT

RULING

1. This matter was scheduled for hearing on the 12/10/2021 when the Applicants by way of notice of motion dated the 8/10/2021 and urged the Court to hear them on orders for joinder.
2. The application is supported by the affidavit of one **Dola Indidis, advocate** for the Applicants who stated that he is in conduct of the **Succ. No 34 of 2019** involving the Applicants. That the Defendant took out letters of grant of administration in the estate of **Bartholomew Waweru Titi** without involving the Applicants. That the matter involves basically the same parties and the same issues.
3. The application has not been opposed by the Plaintiff despite service.
4. The application is opposed by the RA sworn by **Moses Mwangi Waweru** dated the 12/10/2021. He stated that the application is filed in bad faith and calculated to delay the fair trial of the case. That it is in the knowledge of the Applicants that he was substituted in place of his deceased father and further stated that the Applicants have been working in cahoots with the Plaintiff and one **Peter Githaiga** since his father died.
5. That the application has no basis and does not lie in law and should be dismissed.
6. On 12/10/21 I directed the parties to file written submissions with respect to the application. However, on the 3/11/2021 only the Applicant had filed written submissions.
7. The Defendant's counsel Ms Waithera Mwangi informed the Court that she had filed written submissions on the 19/10/2021. The Court upon perusing the record informed the said counsel that the submissions were not on record. The counsel in response undertook to place them on record. As at the date of writing the ruling there are no submissions by the Defendant. In their absence, I will proceed on determine the application guided by the party's pleadings on record and the Applicants brief submissions dated 1/11/2021 which I have read and considered.
8. The key issue is whether the application is merited.
9. **Black's Law Dictionary 9th Edition at page 1232** defines an Interested Party as;

“A party who has a recognizable stake (and therefore standing) in a matter.”

10. Joinder of parties is governed by **Order 1 Rule 10 (2)** of the Civil Procedure Rules which provide that: -

“The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant, be struck out. And that the name of any person who ought to have been joined, whether as Plaintiff or Defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

11. The common test to apply in determining an application for joinder of parties is that a common question of fact or law would arise between the existing and intended parties. Ordinarily joinder of parties would be declined where the cause of action proposed or being sought is completely incompatible to or totally different from the existing cause of action or the relief.

12. I am guided by the decision of Gikonyo J in the case of **Lucy Nungari Ngigi & 128 Others vs. National Bank of Kenya Limited & Anor. Civil case No. 517 of 2014 (2015) eKLR** which stated as follows:-

“Joinder of parties is governed by Order 1 of the Civil Procedure Rules. In law, joinder should be permitted of all parties in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally; or in the alternative, where such persons brought separate suits, any common question of law or fact would arise. See also Order 7 Rule 9 of the Civil Procedure Rules. The Court may even on its own motion add a party to the suit if such party is necessary for the determination of the real matter in dispute or whose presence is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all questions involved in the suit. Therefore, joinder of parties is permitted by law and it can be done at any stage of the proceedings. But, joinder of parties may be refused where such joinder: will lead into practical problems of handling the existing cause of action together with the one of the party being joined; is unnecessary; or will just occasion unnecessary delay or costs on the parties in the suit. In other words, joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible to or totally different from existing cause of action or the relief. The determining factor in joinder of parties is that a common question of fact or law would arise between the existing and the intended parties.”

13. In the case of **Francis Kariuki Muruatetu & Anor. Vs Republic & 5 Others (2016) eKLR** the Court held that an Applicant must demonstrate the personal interest that he has in the matter by laying sufficient grounds before the Court; the prejudice he would suffer if he is not enjoined as interested party; set out the case that he intends to make before the Court and demonstrate the relevance of the evidence being proffered to the Court in determining the issue in controversy. In my own words, a party must disclose a cause of action which is either not before the Court or if it is before the Court, the nature of it is such that it cannot be effectually and completely determined by the Court without the party being heard.

14. The Applicants through their lawyer on record **Mr Dola Indidis** deponed that the Defendant in this case obtained limited grant of letters of administration ad litem on the 19/11/2019 in **CMCC No 34 of 2019** without involving the Applicants and that this suit involves the same matter and issues. They submitted that the Applicants are son and wife respectively of the deceased, Bartholomew Waweru and therefore have rights and interest in the property. There is no evidence laid before this Court to support this submission or to show the relationship between the deceased and the property and whether there are any rights or interests flowing from it. The Applicants failed to explain their stake in this matter. What is the personal interest in this case? They did not demonstrate what it is nor have they laid down sufficient grounds before the Court. There is no evidence to show that the succession case and this matter are similar.

15. This is the case of the Plaintiff in which she is seeking declaratory orders of ownership of the suit land among other prayers. The Defendant on the other hand claims eviction of the Plaintiff in addition to loss of income for the use of his land from 2015. The Applicants have not even attempted to explain how their presence before the Court is necessary in order to enable the Court effectually and completely adjudicate upon and settle all questions of ownership involved in the suit. Neither have they showed what prejudice they stand to suffer if the application is denied.

16. In the end I find the application without merit. It is dismissed with costs to the Defendant.

17. Orders accordingly.

DELIVERED, DATED AND SIGNED AT THIKA THIS 10TH DAY OF FEBRUARY, 2022 VIA MICROSOFT TEAMS PLATFORM.

J. G. KEMEI

JUDGE

Delivered online in the presence of:

Ms. Amolo holding brief for Gitonga for Plaintiff/Applicant

Ms. Mwito holding brief for Waithera Mwangi for Defendant/Respondent

Mr. Dola for Interested Party

Ms. Phyllis – Court Assistant