



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT NAIROBI

ELC NO 345 OF 2018

RUTH WAMBUI KIMANI (suing as an Administratrix of the Estate of the late

FRANCIS KIMANI MUNGUI ALIAS KIMANI MUNGAL...1ST PLAINTIFF

JOSEPH MWANGI NJERI.....2ND PLAINTIFF

-VERSUS -

AGNES KAGURE KARIUKI.....1ST DEFENDANT

THE CHIEF LAND REGISTRAR.....2ND DEFENDANT

FRANCIS KIMANI MUNGAL.....3RD DEFENDANT

KIMEMIAH ENGINEERING CO. LTD.....4TH DEFENDANT

AND

EDDY PETER NDUNGU KIMEMIAH..... 5TH INTENDED DEFENDANT

RULING

1. This is the Notice of Motion dated 20th August 2021 brought under order 1 rule 10, order 51 rule 1 of the Civil Procedure Rules, Section 1A, 1B, 3 and 3A of the Civil Procedure Act, Cap 21, Laws of Kenya, Article 159 (2d) of the Constitution and all the enabling provisions of law.

2. It seeks orders;

a. Spent

b. Spent

c. That this honourable court be and is hereby pleased to enjoin the interested co-plaintiff, herein EDDY PETER NDUNGU KIMEMIA, in this suit as the 5th Defendant.

d. Costs of this application be provided for.

3. The grounds are on the face of the application and are set out in paragraphs 1 to 12.

4. The application is supported by the affidavit of Joseph Mwangi Njeri, the 2nd Plaintiff/Applicant sworn on the 20th May 2021.

5. The application is opposed. There is a replying affidavit sworn by Agnes Kagure the 1st Defendant/Respondent herein on the 8th October

2021. She stated that she had authority of the 3rd Defendant to swear this affidavit.

6. The 2nd and 4th Defendants did not file any responses to the application.

7. The Notice of Motion was canvassed by oral submissions on 25th November 2021.

8. I have considered the notice of motion and the affidavit in support. I have also considered the replying affidavit and the rival submissions. The issue for determination is whether this application is merited.

9. The 2nd Plaintiff seeks that Eddy Peter Ndungu Kimemihah be made the 5th Defendant in this suit. The grounds advanced are that the 5th Defendant was the donee of the Power of Attorney that was used unlawfully transfer the suit property.

10. I have gone through the court record. There is a witness statement by Eddy peter Ndungu Kimemihah dated 3rd September 2019. He states that he is the Director of the 4th Defendant in this case. He states that he sold the suit property to Kimani Mungai on or about the year 1997.

11. It is not in dispute that the intended 5th Defendant is a witness in this case by virtue of being the director of the 4th Defendant. He is the sole witness I believe he will be able to answer all the questions from the 2nd Plaintiff's counsel when the time comes.

12. I find that it is not necessary for him to be made a party in this suit.

13. In conclusion, I find no merit in this application and the same is dismissed. Costs to abide the outcome of the main suit.

It is so ordered.

DATED, SIGNED AND DELIVERED NAIROBI THIS 24TH DAY OF MARCH, 2022

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Mirie for the 1st Plaintiff

Mr. Mariariia for the 2nd Plaintiff

Ms Shunda for Osundwa for the 1st and 3rd Defendants

No appearance for the 2nd and 4th Defendants

Steve - Court Assistant