



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**ELC CASE NO. 15 OF 2019**

**MOSES MWANGI WAWERU (suing as the personal representative of the estate of  
BATHOLOMEOW J WAWERU TITI (deceased).....PLAINTIFF**

**VERSUS**

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

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

**ZACHARIA MWEA.....3RD DEFENDANT**

**NJOROGE MWANGI alias WAKIHINGI.....4TH DEFENDANT**

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

**PETER KINYANJUI.....6TH DEFENDANT**

**AND**

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

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

**RULING**

1. The notice of motion which falls for determination in this ruling is dated 10/11/2021. It was brought by **Purity Wanjira Waweru** and **Lawrence Njeru Waweru** [the applicant]. It is a replica of a similar application canvassed by the same applicants in **Thika ELC Case No 16 of 2019**. Submissions tendered by the applicants and the respondent in the two related applications are the same. The court rendered a ruling on the related application in **Thika ELC Case No. 16 of 2019** on 17/2/2022.
2. Through the notice of motion dated 10/11/2021, the applicants 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 omissions, the plaintiff filed **Gatundu CMC Succession Cause No 34 of 2019**, through which he obtained a grant of letters of administration dated 19/11/2019 without involving her yet she is the only surviving widow of the deceased. 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.
3. 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 had a duty to oversee and advise on matters relating to the deceased's family. Counsel added that leaving the applicants out of this suit would prejudice them.
4. The plaintiff opposed the application through a replying affidavit sworn on 15/11/2021. He deposed that the applicants had, through an application dated 7/5/2021, made an unsuccessful bid to revoke the grant of letters 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.

5. 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 obtained 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.

6. 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 ruling is whether the applicants have satisfied the criteria for joinder.

7. The principles that guide our courts when exercising jurisdiction to grant orders of joinder are well settled. A party making an application for joinder is required to demonstrate an identifiable interest or stake in the proceedings and further demonstrate that he would suffer prejudice if the plea for an order of joinder is declined. [See the Supreme Court of Kenya decision in *Francis Kariuki Muruatetu & Another v Republic; Petition No 15 of 2016*]. Secondly, under **Order 1 rule 10(2) of the Civil Procedure Rules**, a trial court is vested with discretionary powers to join a party whose presence before the court is necessary for the effectual and complete adjudication and settlement of all questions in the dispute.

8. 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 interest of the deceased's estate is represented by the administrator. The applicants are not co-administrators of the estate. They have not tendered evidence to demonstrate an independent interest or stake 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 apparent from the grounds advanced in the application that the applicants have mis-comprehended the law of succession.

9. 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 in this suit ought to 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.

10. 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. Further, there is nothing to suggest that the applicants are necessary parties for the effectual and complete adjudication and settlement of the questions in this dispute. Consequently, I find that the applicants have not satisfied the criteria for joinder. 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 21ST DAY OF MARCH 2022**

**B M EBOSO**

**JUDGE**

**IN THE PRESENCE OF: -**

**MS WAITHIRA MWANGI FOR THE PLAINTIFF**

**MS WEYIMI FOR THE 1ST DEFENDANT**

**MR DOLA FOR THE INTERESTED PARTIES**

**COURT ASSISTANT: LUCY MUTHONI**