



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

ELC CASE NO. 486 OF 2013

IN THE MATTER OF EMBU H.C.C CIVIL NO. 132 OF 2009

SIMEON NJERU DIFATHAPLAINTIFF/RESPONDENT

VERSUS

FROLENCE WANJA MWANIKI.....1ST DEFENDANT

VIRGINIA RWAMBA NJOKA2ND DEFENDANT

JOYCE WAMBIRO NJAGI3RD DEFENDANT

AND

LAURENZIA WANJUKI INTERESTED PARTY

RULING

This suit was filed at the High Court in Embu wherein the plaintiff sought an order to evict the defendants, their agents, servants and/or employees from a parcel of land known as KAGAARI/KANJA/397 as well as an order for damages for trespass.

A defence was filed jointly by the three defendants and thereafter, ELIAS MUGENDI NJERU and CATHERINE MARIGU MWANIKI were substituted in place of the deceased plaintiff vide an order dated 5th December 2012 before this case was transferred to this Court.

On 1st October 2013, the interested party herein namely LAURENZIA WANJUKI filed a Chamber Summons seeking to be enjoined as an interested party herein. The Chamber Summons does not state the provision of the law under which it is founded. The same is opposed and in their replying affidavit, ELIAS MUGENDI NJERU and CATHERINE MARIGU MWANIKI have stated that they are infact the administrators of the Estate of the late SIMON NJERU DIFATHA who was previously the plaintiff herein and that this application is bad in law, misconceived and an abuse of the Court process as the applicant is not even the administrator of the Estate of the late SIMON NJERU DIFATHA.

I have listened to the applicant in support of her application and also heard Mr. Kathungu for the plaintiff.

The applicant is a lay person and did not have the benefit of counsel and that explains why a

Chamber Summons was filed not even citing the relevant law. However, Mr. Kathungu did not take this up and even if he had, the Court would most certainly have found that lapse cured by Article 159 of the Constitution as well as the provisions of Order 51 of the Civil Procedure Rules.

Looking at the interested party's application, her supporting affidavit and her oral submissions in Court, she appears to hinge her application on the grounds:-

- a. ***That she is an administratrix of the Estate of the late SIMON NJERU DIFATHA and***
- b. ***That she has an interest in the dispute property that she needs to protect.***

On the ground that she is an administratrix of the Estate of the late SIMON NJERU DIFATHA, the applicant has not shown me any evidence appointing her as such. The only evidence I have on record is the grant of administration Intestate issued by the High Court in Embu Succession Cause No. 104 of 2011 wherein a grant of letters of administration was issued to ELIAS MUGENDI NJERU and CATHERINE MARIGU MWANIKI. The applicant is not one of those administrators.

That, however, is not the only reason she seeks to be enjoined herein. In her replying affidavit, she has made the following averments at paragraph 3

“That during the preparation of the suit herein, the defendant's advocate excluded me from the list/schedule of defendants with intention to infringe me my share”

The interested party has also attached to her application a letter of authority purportedly signed and thumb printed respectively by 2nd and 1st defendants herein authorizing her to act for them in some civil suit No. 21 of 2009 filed at the High Court in Embu. In her affidavit in support of this application, the interested party has also deponed in paragraph 5 that the 1st and 2nd defendants cannot read or write and the plaintiff is using that to defraud both herself and the other defendants of their share in the property subject of this suit.

Under Order 1 of the Civil Procedure Rules, a party who claims any relief in a suit may be enjoined therein. At this stage, it is not clear what the interested party's interest in the suit is. As I said, she is acting in person. She has however shown me various documents including a letter of authority given to her by the 1st and 2nd defendants who she says cannot read or write and whose rights and hers she seeks to protect. It would be an injustice to shut her out of a suit that she so passionately wants to participate in. No prejudice will be caused to the plaintiff herein and it should be the last resort to throw away a litigant who for good cause seeks to be enjoined in a suit more so where the suit involves land.

Accordingly therefore, I allow the application dated 1st October 2013 and order that the interested party herein be enjoined in this suit.

Having said so, it is clear from the pleadings that the suit involves a parcel of land within the jurisdiction of the Environment and Land Court at Embu. I accordingly direct that this suit be and is hereby transferred to the Environment and Land Court at Embu where it will be mentioned on 14th October, 2014 for further orders. Costs in the cause.

B.N. OLAO

JUDGE

29TH SEPTEMBER, 2014

Coram

B.N. Olao – Judge

Mwangi – CC

Interested party present

Mr. Kathungu present

Ruling delivered in open Court this 29th day of September,2014.

B.N. OLAO

JUDGE

29TH SEPTEMBER, 2014