



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC NO. 31 OF 2019

ESTHER NZINGO KALUME (Suing on her own behalf and on behalf of the

Estate of Kavumbi Kalume Kitsaumbi (deceased)PLAINTIFF

VERSUS

LUCY NYAMBURADEFENDANT

RULING

(Lessor filing suit against an occupant of premises claiming that she is a trespasser and seeking orders of eviction against her; lease being between plaintiff as lessor and a deceased person; application by estate of the lessee seeking to be joined to the suit; estate of lessee having an interest in the subject matter of the suit and entitled to be joined as interested party)

1. The application before me is that dated 9 September 2021 filed by the defendant. It seeks orders that the estate of Svend Erick Wobbe (deceased) be joined as a party to this suit.

2. By way of background, this suit was commenced through a plaint filed on 26 February 2019 against two defendants. The first defendant was The Administrator of the Estate of Wobbe Svend Erik (deceased) (hereinafter the late Mr. Erik) and the second defendant was Lucy Nyambura. The plaintiff herself is suing as administrator of the estate of Kavumbi Kalume Kitsaumbi (deceased). Her case is that the late Kalume, on 30 November 2007, leased to the late

Mr. Erik the land now described as Subdivision No. 4595 (Original No. 3843/4) Section III Mainland North, for a term of 99 years from 1 January 2008 at a yearly rent of Kshs. 21,600/=. It is averred that the tenancy was trouble free from the years 2008 to 2013 and rent was paid as covenanted. It is pleaded that Mr. Erik died in 2014 and it is averred that thereafter the tenancy was abandoned and rent was not paid. The property was nevertheless occupied by the 2nd defendant. In the plaint, the plaintiff contended that the 2nd defendant is a trespasser and sought an eviction order against her and a permanent injunction to restrain her from the land. There was also a prayer to declare that the 1st defendant (The Administrator of the estate of Mr. Erik) has abandoned and fundamentally breached the tenancy.

3. The 2nd defendant (Lucy Nyambura) filed defence and claimed to be the daughter of the late Mr. Erik and the automatic heir and beneficiary of his estate. She pleaded that she is entitled to the lease as the late Mr. Erik had developed the property extensively. She also filed a counterclaim where she pleaded that she is eligible to the lease as heir and an entry to that effect be entered in the register of the suit land.

4. On 17 November 2020, the 2nd defendant filed an application to strike out the entire suit on the reason that no letters of administration have been issued in respect of the estate of the late Mr. Erik and therefore the suit was incompetent. I heard the application and delivered ruling on 10 May 2021. I found that there was no evidence of any grant of letters of administration for the estate of the late Mr. Erik. It was thus irregular for the plaintiff to sue "The administrator of the Estate of the late Mr. Erik" as 1st defendant. I therefore struck out the 1st defendant from the suit. I saw nothing wrong with the suit against the 2nd defendant as the claim therein was one of trespass against her. I directed that the plaint be amended to reflect this position. An amended plaint was filed on 27 May 2021 now having only Lucy Nyambura as the sole defendant and the claim against her was that she is in illegal occupation of the suit land.

5. This application was subsequently filed on 6 October 2021 and I have already mentioned that it seeks orders to have the estate of Svend Erick Wobbe as a party to this suit. The application is based on the grounds that the 2nd defendant has now obtained a limited grant of letters of administration ad litem to represent the estate of the late Mr. Erik and that the estate of the late Mr. Erik is a necessary party to the case.

6. The plaintiff has not filed anything to oppose the motion.

7. I have considered it. It will be noted that the plaintiff is the lessor of the suit premises. The 2nd defendant is an occupant and she claims to derive her right to occupancy from the claim that she is a daughter to the lessee. The lessee is deceased and but there is now an administrator of his estate. The situation here is akin to that of a lessor suing an occupant, and the lessee seeks to be joined to that suit, on the basis that he has interest in the disputed property. I am persuaded that the lessee would be an interested party to such dispute and would be permitted to adduce evidence either in favour of or against the defendant. It is on that reasoning that I allow this application. I direct that the applicant be joined to this suit as interested party. For the avoidance of doubt, the applicant is neither plaintiff nor defendant and will not therefore be filing any pleadings but will be permitted to adduce evidence in the suit. If the applicant feels that she has a claim of her own, the avenue is for her to file a fresh suit. There is also liberty for the plaintiff to seek to sue the applicant if at all the plaintiff feels that she has a cause of action against the applicant.

8. There will be no orders as to the costs of this application.

9. Orders accordingly.

DATED AND DELIVERED THIS 14TH DAY OF APRIL 2022.

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA