



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

C

EDWARD NJUGUNA KANGETHE.....PLAINTIFF
VERSUS
MOHAMED TWAHIR SHABAN.....DEFENDANT

RULING

1. The applicant one **HAJI OMARI** describes himself as the biological son and the Legal Representative of the estate of the late **TAABU YUSUF MARIGI**. He showed to the court a Grant of letters of Administration Intestate annexed to his application as an exhibit marked HOI in proof of his having been appointed such administrator. His prayer is that he be enjoined in this suit as an interested party so that he be enabled to protect the interests of the estate of his late mother over the suit land known as **L.R. NO. 36/1/133** situate in Eastleigh Nairobi. He swore the affidavit in support of the application and stated that his late mother Taabu Binti Yusuf alias Taabu Yusuf Mariga was the sole registered owner of the suit land herein and she never sold the same to anyone during her lifetime and that the original documents of title in respect of the same were in the applicant's custody.

The plaintiff through counsel filed a ground of objection that the application is incompetent in law and/or untenable. The defendant did not file any papers but opposed the application at the hearing.

2. At the hearing the application was opposed on the grounds that the applicant did not exhibit documents showing ownership of the suit land and that in any event the suit was spent as the plaintiff came to court seeking an order for vacant possession which order was granted. The applicant has filed a different application seeking the striking out of the suit which the plaintiff described as an exercise in futility. Counsel for the plaintiff in further opposition stated that Order 1 Rule 14 of the Civil Procedure Rules does not provide for a party known as an interested party and the only parties recognised by that Order are a Plaintiff, a Defendant and a Third party hence he saw the application as being one untenable in law. He further submitted that the proposed party would introduce a new cause of action which is not allowable in law. He referred the court to various authorities. Learned Counsel for the defendant Ms Khaemba associated herself with submissions of learned counsel Siagi for the plaintiff.

3. I have addressed myself to the application, submissions by all counsel, the facts of the case and the applicable law and I am now in a good position to determine this application. The first question to answer is whether the application brought under Order 1 Rule 14 is tenable seeing that the term 'Interested Party' is not mentioned in that Rule. What must be established before joinder, in whatever name, is whether **“the right to relief in respect of or arising out of the said act or transaction or series of acts or**

transactions, is alleged to exist or the suit is one where , if separate suits were brought against such persons any common question of law or fact would arise.” See the case of PETER & CO –VS- MANGALJI AND OTHERS (1969) E.A. 80 in the words of SHERIDAJ.

The applicant submitted that the suit land is the property of the deceased to whose estate he is the legal administrator. He added that the suit land was transferred to the plaintiff by the defendant following acts of fraud and collusion on the part of both the plaintiff and the defendant. In those circumstances the applicant, brings himself into the suit as a necessary party. I am unable to see how his cause of action would be different from that in and/or alien to the suit as, if he would establish that the suit land belonged to the deceased whose estate he represents then the defendant would of necessity have to prove that he had a property to pass to the Plaintiff. Consequently and empowered by the provisions of order 1 Rule 10(2) in these words,

“Order 1 rule 10(2). The court may at any stage of the proceedings, either upon or without 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 (underlinings mine for emphasis)

The applicant becomes a necessary party in this case.

4. The other question to answer would be whether the applicant has established requisite interest in the suit? I would think so.

He produced a Grant of Administration in respect of the deceased’s estate. That was not contested. Once he is joined he would of necessity have to prove his claim and be liable to costs if he proves none. It is true that Order 1 Rule 14 Civil Procedure Rules does not mention ‘Interested Party’. However, I would hesitate to deny a party the right to pursue his rightful claims on such a contention. Instead I would find support in Article 159 (1) (d) and Order 51 Rule 10 (2) Civil Procedure Rules and ignore technicalities and want of form so as to render justice. I so do. The latter motion dated 3/10/2011 having been withdrawn is of no consequence. And of course the suit is at such a point as the applicant may be joined to it.

5. In the result the application dated 2nd September, 2011 is hereby allowed.

Costs will be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF MARCH 2012.

**P.M. MWILU
JUDGE**

In the presence of:-

N/A Advocate for plaintiff

N/A Advocate for Defendant

Njuguna H/B for Nyaga Advocate for Applicant

Amos Njoroge - Court Clerk

P.M. MWILU

JUDGE