REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

Civil Suit 98 of 2005

JOHNSTONE MUSAMALI

WAKALIKHA..... .....PLAINTIFF

VS

1. PATRICK M. WAKALIKH.....1ST DEFENDANT

2. WEKESA K. WANAMI .....2ND DEFENDANT

3. AMOS WAFULA..... 3RD DEFENDANT

AND

BEN KHWATENGE SIFUMA ..... APPLICANT

RULING

The applicant/intended third party has moved the court under O 1 Rule 10 of the Civil Procedure Rules seeking to be enjoined as a party in this suit. He contends that the outcome of the case will affect him because he is in occupation of 1 acre excised from plot *LR. NO. NDIVISI/NDIVISI/596,* which is the subject matter of the said suit. He states that he purchased the same from the plaintiff for a consideration of Ksh.180,000/= which he paid in full. He claims that he has done extensive developments on the said plot and settled his family there. He concedes that he bought the same from the plaintiff in his capacity as an administrator to the estate of his late father.

The application was nonetheless strongly opposed by counsel for the defendants/respondents. He contended that the plaintiff had no capacity to sell the said property as he only had the temporary grant of the letters of administration which had not yet been confirmed. I have considered the application along with the 2 affidavits in support of the same and the grounds of opposition filed on behalf of the respondent. In my considered view, this is a very straight forward matter. A court is mandated by law to allow the enjoinment of any party to a suit if such enjoinment will clear the issues at hand and if it is in the larger interests of justice. Such a party must nonetheless have a valid claim which can stand the test of the law. The court will not enjoin a party who is either a busy body or whose claim or status in the said suit cannot be determined. In this case, the applicant claims to have bought land from the plaintiff. In the first place, the plaintiff had no land to sell to the applicant. He was just an administrator of the estate of the deceased. The land formed part of the estate of the deceased. The same cannot be sold or distributed before the Grant of Letters of Administration is confirmed. It matters not that the property being sold is being sold for the benefit of the estate.

Section 82 (b) (ii) of the law of Succession Act provides:-

"*No immovable property shall be sold before confirmation of the Grant."*

If any immovable property has to be sold, then the administrators would need to come to court for authorization to do so. For that reason, the said sale was a nullity as the same was contrary to the law. Secondly, even assuming that such authority had been given by the court, the property is agricultural land and there is no evidence that the consent to transfer the same to the applicant was obtained within 6 months of signing the agreement of sale. Section 6 of Cap 302 was therefore also flouted. The applicant has therefore no valid claim to defend in this suit as a co-defendant. If he has any claim against the plaintiff, then that should form a different cause of action. Bringing him on board in these proceedings will not help anybody including the applicant. He can rightly be called a trespasser on the Estate of the deceased who has no valid stake on that land. Accordingly, his application is devoid of merit. I dismiss the same with costs to the defendants.

W. KARANJA

JUDGE

DELIVERED, Signed and Dated at Bungoma this 23rd day of May, 2008.