REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO.408 OF 2017 (OS)

IN THE MATTER OF A PORTION OF LAND REFERENCE NUMBER 9042/143 (I.R. NO. 48131)

AND

IN THE MATTER OF AN APPLICATION FOR DECLARATION THAT THE APPLICANTS HAS OBTAINED OWNERSHIP OF THE SUBJECT LAND BY WAY OF ADVERSE POSSESSION

BETWEEN

1. SARAH NYAWIRA RICHARD

2. JOHNSTONE OKASINDA OPARA

3. ZIPOORAH WANGARI CHEPKWONY

4. LINUS OUMA

5. ANTHONY MUTHAMA MUSYOKA

6. ELIZABETH MULISYA MUSYOKA

7. ROBERT KARIUKI WANJIKU

8. NICHOLAS CHELIMO KANDIE

9. NELSON HABELI OPATIA

10. AUGUSTUS M. MUTUA

11. PURITY WAMUYU GATUA

12. GIDION OMARE MBAKA

13. RICHARD KPKOECH KORIR

14. ROSE WAKARINDI

15. SAMUE K. TONUI

16. JOSHPAT K. MUTAI.....APPLICANTS

VERSUS

DINESH RAMJI KOTEDIA...RESPONDENT

RULING

1. This is the Chamber Summons dated 25th November 2019 brought under order 1 rules 10, 12 and 25 of the Civil Procedure Rules and Article 50 of the Constitution of Kenya, 2010.

2. It seeks orders:-

> ***1. Spent.***
>
> ***2. That the proceedings herein be re-opened for the purpose of taking further proceedings in respect of this application and any other application/s filed by the applicants herein.***
>
> ***3. That the respondent herein be substituted with his Guardians, Kapildev Dinesh Kotedia and Mitesh Dinesh Kotedia (the applicants' herein) and they be allowed to participate in these proceedings.***
>
> ***4. The costs of this application be provided for.***

3. The grounds one on the face of the application and set out in paragraphs (1) to (5).

4. The application is supported by the affidavit of Kapildev Dinesh Kotedia and Mitesh Dinesh Kotedia, sworn on the 25th November 2019.

5. The application is opposed. There is a replying affidavit sworn by Sarah Nyawira Richard, the 1st applicant/plaintiff sworn on the 18th February 2020.

6. On the 7th December 2020, the parties intimated to the court that they were relying on the affidavits sworn entirely.

7. I have considered the chamber summons and the supporting affidavit. I have also considered the replying affidavit. The issue for determination is whether this application is merited.

8. In the supporting affidavit, the deponents state in paragraph 3:

> "***That the respondent lacks mental capacity to manage his affairs as a result of illness, therefore on 21st November 2019, the honourable court in Nairobi High Court (Family Division) Miscellaneous Petition No. 177 of 2019 (In the matter of D.R.K also known as DRMK-A person suffering from mental disorder). By Kapildev Dinesh Kotedia, appointed us the joint guardians and managers of his Estate. We produce hereto as an exhibit, a copy of the order issued on 21st November 2019 marked KDK2".***

9. It is not in dispute that the suit property is registered in the name of the respondent.

10. In the circumstances, I find merit in this application, the same is allowed in the following terms:-

> ***(a) That the proceedings herein are re-opened for the purposes of taking further proceedings in respect of the originating summons.***
>
> ***(b) That the respondent is hereby substituted with his Guardians, Kapildev Dinesh Kotedia and Mitesh Dinesh Kotedia (the applicants herein) and they be allowed to participate in these proceedings.***
>
> ***(c) That the said guardians do put in affidavits in response to the originating summons herein and/or other documents within thirty (30) days from the date of this ruling.***
>
> ***(d) That the cost of this application do abide the outcome of the originating summons.***

It is so ordered.

Dated, signed and delivered in Nairobi on this 18th day of February 2021.

L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the Applicant

Mr. Kibet for the Respondents

Phyllis – Court Assistant