



Macharia v Maina (Sued as legal representative of the estate of Jeremiah Muriithi Macharia); Maina (Intended Interested Party) (Environment & Land Case 132 of 2017) [2023] KEELC 18593 (KLR) (6 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18593 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE 132 OF 2017**

JM MUTUNGI, J

JULY 6, 2023

BETWEEN

JAMES MAINA MACHARIA PLAINTIFF

AND

IRENE NJERI MAINA RESPONDENT

**SUED AS LEGAL REPRESENTATIVE OF THE ESTATE OF JEREMIAH
MURIITHI MACHARIA**

AND

LUCY WAKIURU MAINA INTENDED INTERESTED PARTY

RULING

1. The court on July 15, 2022 delivered a judgment against the defendants and ordered as follows:-
 1. That Jeremiah Muriithi Macharia, now deceased held land parcel number Kiine/Ruiru/29 in trust for himself and the plaintiff.
 2. An order for determination of the trust by having parcel No Kiine/Ruiru/29, shared equally by the plaintiff and the defendant.
 3. The defendant to surrender the original title deed and execute all the necessary statutory documents for subdivision and transfer of half portion of the suit property to the plaintiff failing which the Land Registrar, Kirinyaga County is directed to dispense with the production of the statutory documents and transfer half the suit land No Kiine/Ruiru/29 in favour of the plaintiff.



2. The intended interested party, Lucy Wakiuru Maina, has *vide* a notice of motion dated April 12, 2023 expressed to be brought under article 50(1) of the Constitution, order 1, and order 40 rule 1 & 4 of the Civil Procedure Rules prayed for the following orders:-
 1. ----- spent
 2. ----- spent
3. That the County Surveyor Kirinyaga be restrained from going on with subdivision exercise on the suit land on April 18, 2023 until the parties agree on where the boundaries are to run owing to the homestead area location.

That The Intended Party Be Enjoined In This Suit.

4. That the court be pleased to review its orders and order to the effect that the trust is determined in favour of the 3 children in the plaintiff's household.

That Each Party Bears Its Own Costs.

5. The application was premised on the grounds set out in the body of the application and the affidavits sworn in support by the defendant and the intended interested party. The basis of the application basically is that the subdivision could affect the family homestead and as regards the intended interested party, that she was a sister of the plaintiff and was also a sister to the defendant's father. In essence it was the intended interested party's position that she was entitled to a share of her deceased father's estate and hence the dissolution of the trust should have factored her so that the suit land was ordered to be subdivided into three parts so that she was included as a beneficiary of the dissolved trust.
6. The plaintiff/respondent filed a replying affidavit in opposition to the application. The plaintiff averred that the application had been overtaken by events as the land the subject matter had been subdivided and new titles issued and that survey had been carried out on the ground. The plaintiff stated that following the subdivision he was issued title and was now registered owner of land parcel number Kiine/Ruiru/2342 measuring 0.69 hectare or thereabouts. The plaintiff exhibited certificates of official search dated 18/4/2023 for land parcels Kiine/Ruiru/2341 & 2342 which show the defendant and the plaintiff are the registered owners of the parcels of land respectively.
7. The plaintiff further averred that there was no basis laid to warrant a review of the judgment herein and none of the conditions upon which review could be granted had been satisfied. That regarding joinder of the intended interested party to the suit, the plaintiff averred the intended interested party had all along been aware of the suit and that she had even made a witness statement, in support of the defendant's case in which she took the position that the land the subject matter of the suit belonged to the defendant absolutely and ought not to be shared to the plaintiff.
8. The parties advocates on May 11, 2023 agreed to rely on their filed pleadings relating to the application and invited the court to render its ruling on the basis of the application and the affidavits filed in support and in opposition.
9. I have carefully considered the application dated April 12, 2023, the grounds set out on the face of the application, the affidavit in support of the application and in opposition. The following facts emerge from the pleadings, that the deceased Jeremiah Muriithi Macharia and the plaintiff were brothers and that the deceased was registered as owner of land parcel number Kiine/Ruiru/29. The plaintiff instituted the instant suit claiming the deceased held the land in trust for himself and the plaintiff. The plaintiff sought an order determining the trust and for the land parcel to be shared equally between



the plaintiff and the deceased estate. After the suit was heard, the court on July 15, 2022 delivered a judgment in favour of the plaintiff holding the deceased held the land in trust for himself and the plaintiff and ordered that the land be shared equally between the plaintiff and the defendant. A decree was issued which apparently was executed and the plaintiff and the deceased wife were registered as proprietors of land parcel No Kiine/Ruiru/2342 & 2341 respectively measuring 0.69 Ha each.

10. The application to join Lucy Wakiuru Maina as an interested party in the suit is belated and cannot be granted. The judgment entered in the suit has been executed and there is now no pending suit. The joinder of a party in a suit is predicated on there being ongoing proceedings that have not been concluded. Of course where a judgment is set aside and/or reviewed and proceedings are renewed a party may be joined in order to ventilate their interest in the matter. Order 1 rule 10(2) of the [*Civil Procedure Rules*](#) provides for joinder of parties. It provides as follows:-

10(2) The court may at any stage of the proceedings, either upon or without the 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.

11. In the present matter, the judgment having been executed, there is no pending suit and the court has become functus officio in regard to the matter. The intended interested party was without doubt aware of the pendency of this suit as she even made a witness statement on November 12, 2021 in support of the defendant's defence. She was aware of the plaintiff's claim and chose not to apply to be joined in the proceedings but to support the defendant's case. Her application to be joined is clearly an afterthought and is unsustainable.
12. The defendant/applicant further sought to have the court review its orders to the effect that the trust be determined in favour of the 3 children in the plaintiff's household. The defendant never urged this position at the trial. The conditions that an applicant for review ought to satisfy are set out under the provisions of order 45 rule 1 of the [*Civil Procedure Rules*](#). The conditions include the discovery of new and important evidence that was not available during the trial, an error or mistake on the face of the record, and/or any other sufficient cause to justify a review. In the instant matter there is no discovery of any new evidence and neither has the applicant demonstrated there was an error or mistake apparent on the face of the record that would justify a review of the judgment. The applicant has further not shown there was some other sufficient cause that could warrant review of the judgment. Simply put, the applicant has not satisfied any condition that could warrant a review of the judgment and decree.
13. I accordingly find the notice of motion dated April 12, 2023 to be devoid of any merit and I dismiss the same. The parties are close family members and for that reason I make no order for costs. Each party to bear its own costs.

RULING DATED, SIGNED AND DELIVERED AT KERUGOYA THIS 6TH DAY OF JULY 2023.

J. M. MUTUNGI

E.L.C - JUDGE

