



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. MISC. APPLN. NO. 2 OF 2018

REPUBLIC.....APPLICANT

VERSUS

THE DEPUTY COUNTY COMMISSIONER

KITUI WEST SUB-COUNTY.....RESPONDENT

AND

MUTAMBA MUTISYA *(the legal representative of the Estate of*

MUTISYA LAYU *(Deceased)*.....**1ST INTENDED INTERESTED PARTY**

SARAH KALIMI MUSEE.....**2ND INTENDED INTERESTED PARTY**

BEATRICE WANGO MUTISYA.....**3RD INTENDED INTERESTED PARTY**

AND

EX-PARTE APPLICANT:

SHDRACK MWANGANGI NGILU MUTISYA

RULING

1. In the Notice of Motion dated 18th July, 2018, the 2nd and 3rd Intended Interested Parties are seeking for the following orders:

a. That the Honourable Court be pleased to grant leave to Sarah Kalimi Musee, the wife to the 1st son Mutisya Layu (deceased) and Beatrice Wango Mutisya the wife to the 2nd son Mutisya Layu (deceased) to be joined as the Interested Parties in this matter.

b. That the firm of Wakiaga Semekia be granted leave to be appointed as the advocate for the 2nd and 3rd Interested Parties in this suit.

c. The cost be in due cause.

2. The Application is supported by the Affidavit of the Intended Interested Parties' advocate who has deponed that the suit land is registered in the name of Mutisya Layu *(deceased)*; that Mutisya Layu *(deceased)* does not have a formal legal representative and that the acts of the Ex-parte Applicant and the purported legal representative of the deceased amounts to intermeddling with the Estate of the deceased.

3. According to the Advocate's Affidavit, the Intended Interested Parties are the wives of the 1st and 2nd sons of the late Mutisya Layu *(deceased)* and that they should be joined in the suit to represent the interests of the deceased's entire family. Sarah Kalimi Musee, the 2nd Intended Interested Party and Beatrice also swore Affidavits which are similar in all respects to the Affidavit of their advocate.

4. The Ex-parte Applicant/Respondent filed Grounds of Opposition in which he averred that the Applicants have not stated their interests in the subject matter so as to be enjoined as Interested Parties; that the Applicants were never parties before the Deputy County Commissioner, Kitui West Sub-County and that the Application is frivolous and an abuse of the court's process.
5. In his Affidavit, the Ex-parte Applicant deponed that he was awarded the suit land by the Land Adjudication Officer in Objection No. 469; that his late grandfather, Mutisya Layu, deceased, filed an Appeal to the Minister but died before the Appeal was heard and that when the Appeal came up for hearing, it is the Interested Party, who is the wife of the late Mutisya Layu, who substituted the deceased.
6. The Ex-parte Applicant deponed that the Intended Interested Parties (*the Applicants*) colluded with the Deputy County Commissioner to have the proceedings corrupted to reflect otherwise.
7. The Ex-parte Applicant finally deponed that the suit land does not form part of the Estate of the deceased and that by the time the illegal registration was done in respect of the suit land, there was in existence a court order.
8. The Ex-parte Applicant deponed that the Intended Interested Parties (*the Applicants*) have no legal capacity of being enjoined in the suit; that the proceedings herein relate to her late husband and that this court does not have jurisdiction to entertain succession proceedings.
9. The Intended Interested Parties' advocate submitted that the Applicants have an identifiable stake or legal interest in the proceedings before court by virtue of the fact that they reside on the suit land; that their late husbands participated in the proceedings before the Minister and that it is in the interest of justice that they are heard in this matter.
10. The Ex-parte Applicant's advocate submitted that the proceedings before the Minister were between the parties herein; that the Applicants should await for the decision herein and then move the Succession Court to have their interest dealt with and that the Application should be dismissed by the court.
11. In the Notice of Motion dated 7th February, 2018, the Ex-parte Applicant is seeking for an order of certiorari to quash the Judgment of the Deputy County Commissioner, Kitui West Sub-County in Appeal No. 91 of 1990 delivered on 26th July, 2017. The Ex-parte Applicant has also sought for an order of mandamus directing the Deputy County Commissioner to vacate his decision delivered on 26th July, 2017 in Appeal Case No. 91 of 1990.
12. The proceedings being challenged shows that the Appellant, Mutisya Layu, has since died. The proceedings further shows that before the Appeal was heard, the late Mutisya Layu was represented by his wife, who is the Interested Party herein. After hearing the Appellant's representative and the Defendant (*the current Ex-parte Applicant*), the Deputy County Commissioner Kitui West Sub-County, awarded the suit land to the late Mutisya Layu.
13. The Applicants/Intended Interested Parties are seeking to be allowed in the current proceedings because "*the acts of the Ex parte Applicants and that of the purported legal representative is intermeddling*", and that the suit before the court does not represent the interests of the deceased's entire family.
14. The Applicants have deponed that they are daughters-in-law of the late Mutisya Layu. The said Mutisya Layu was represented by his wife, the current Interested Party, when the matter was heard by the Respondent. Having represented the late Mutisya Layu in the proceedings before the Minister, the Interested Party is the person best placed to continue representing the late Mutisya Layu.
15. Indeed, the Applicants have not shown the interest or evidence that they intend to bring on board which will not be ventilated by the Interested Party. If the Applicants' argument is that the two parties are intermeddling with the Estate of the deceased, then they should move the Succession Court for appropriate orders and not this court.
16. The interests of the Applicants in this matter will be catered for by the Interested Party. The issue of whether they are entitled to the suit land will be dealt with by the Succession Court.
17. For those reasons, I dismiss the Application dated 18th July, 2018 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 1ST DAY OF NOVEMBER, 2019.

O.A. ANGOTE

JUDGE