



Kihoro v Director-General , Department of Immigration (Civil Miscellaneous Application E254 of 2021) [2024] KEHC 4853 (KLR) (Civ) (12 April 2024) (Ruling)

Neutral citation: [2024] KEHC 4853 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL MISCELLANEOUS APPLICATION E254 OF 2021

AN ONGERI, J

APRIL 12, 2024

BETWEEN

WANYIRI KIHORO APPLICANT

AND

DIRECTOR-GENERAL , DEPARTMENT OF IMMIGRATION DEFENDANT

RULING

1. The application coming for consideration in this ruling is the one dated 6/7/2021 by the proposed interested party (IP) brought under article 159 of the [Constitution of Kenya](#) , sections 1A, 1B and 3, [Civil Procedure Act](#) order 1 rule 10 (2) and order 51 rule 1 of the [Civil Procedure Rules](#) and all other enabling provisions of the law seeking the following prayers;
 - i. That this honourable court do grant leave to Vanlata Santkumar Trivedi, the Administrator of the estate of Sanatkumar Shantilala Trivedi to be enjoined in these proceedings as an interested party.
 - ii. That costs of this application be in the cause.
2. The application is based on the following grounds;
 - i. That the information sought by the applicant relates to Sanatkumar Shantilal Trivedi, now deceased, who is the 3rd plaintiff in ELC Suit No. 517 of 2017 pending before the ELC court Nairobi.
 - ii. That the applicant is the administrator of the estate of the deceased having obtained a grant of letters of administration *ad litem* for purposes of prosecuting the ELC suit.



- iii. That the information sought is personal information it is necessary that the applicant be enjoined so as to shed light on the matter and to protect the integrity and privacy of the deceased's affairs and estate.
3. The application is supported by the affidavit of Vicata Sanatkumar Triuedi sworn on 2/7/2021 in which she deposed as follows;
- i. That I am the legal representative of the estate of Sanatkumar Shantilal Trivedi (deceased) hence competent and duly authorized to swear this affidavit. Annexed herewith and marked "VI-1" is a copy of the grant of letters of administration *ad litem*.
 - ii. That I am a widow of the deceased who was domiciled in Maryland USA and died on March 16, 2019.
 - iii. That the deceased was one of the plaintiffs in Nairobi ELC Suit number 517 of 2017 (formerly CMCC 1468 of 2008) which involves a property ownership dispute in respect of property LR No. 1/205. annexed hereto and marked vt-2 is a copy of the plaint.
 - iv. That the applicant seeks to obtain personal information about the late husband from the department of immigration that purportedly has an implication on the ELC suit.
 - v. That I, and by larger extent my family, are entitled to know the nature of information sought as well as the reasons the applicant seeks the said information.
 - vi. That I seek to be enjoined as an interested party in these proceedings so as to shed light on the matter and to protect the integrity and privacy of the deceased's affairs and estate.
 - vii. That it is therefore imperative that I be enjoined in the proceedings as an interested party to allow me defend the suit in the interest of justice.
 - viii. That I swear this affidavit in support of the application which is attached and urge the honourable court to grant it as prayed.
4. The respondent filed a replying affidavit dated 16/7/2021 in which he deposed as follows;

That I am the defendant in the above suit and the applicant in Misc. Civil application No. E254 and swear this affidavit in connection with a notice of motion application dated 6/7/2021 received by me via email on 7/7/2021 filed by Ms Judy Thongori Advocates on account of one Vanlata Santkumar Trivedi, who would want to be enjoined in my above application, directed at the director-General Department of Immigration, as an interested party.

That there are no provisions in law for an application to be made in response to another application and the applicant/ proposed interested party having been served on 10/6/2021 with the applicant/defendant application, and was represent in court before Chitembwe J, on 29/6/2021 when it was argued and did not file or utter a word during the proceedings or seek leave to file one should not be allowed, under undisclosed provisions of law to file an application in opposition to the applicant/defendant's application, contrary to order 51 rule 14 CPR, which provides on how a response should be made.

That in the main suit, that is, Nairobi ELC No. 517 of 2017 referred to above, the applicant/proposed interested party has previously filed a Notice of Motion application dated 5/5/2021 to join the suit as the substitute of the deceased 3rd plaintiff above and the application was dealt with by the honourable court on 16/6/2021, where the Court gave it



a hearing date on 23/9/2021 meaning that the applicant should await the outcome of that application first to join the suit as a 3rd plaintiff, if at all, meaning that her present application to join as an interested party is pre-emptive and should not be allowed.

That there are numerous issues surrounding the applicant/ proposed interested party which should be sorted first on 23/9/2021 during the hearing of her 5/5/2021 application, and as contained in the applicant/defendant grounds of opposition dated 14/5/2021 filed in that court in opposition as follows:-

That Vanlata Sanatkumar Trivedi's application was in violation of Kenyan and the US States of Virginia & Maryland post-humous documentation and laws of succession thereto, a matter which would be of interest to the two countries' law enforcement agencies.

That the applicant/interested party was not the widow of the 3rd plaintiff in the above ELC suit as alleged, his widow being as Varsha.

That the applicant proposed interested party was not a Kenyan citizen, was not domiciled in Kenya, uses a contact Nairobi P. O. Box No 10064, but lives in the US, from where she has sworn her affidavits, without disclosing her exact location.

That Trivedi Sanatkumar Shantilal, in whose Estate she was able to obtain an interim grant of probate in Kenya was not Sanatkumar Shantilal Trivedi the 3rd plaintiff in the above ELC suit, and was known, to the applicant/defendant.

That at the time of death, the 3rd plaintiff was not domiciled in Kenya; and it is now claimed in Vanlata's affidavit, that he was domiciled in Maryland, and not Virginia, USA as stated in the late Trivedi's obituary dated 24/3/2019 annexed hereto and marked "WK la" issued in Fairfax, Virginia at the time.

That the applicant/proposed interested party affidavit in support of the Notice of Motion was illegal and in violation of statute and could not therefore support the motion dated 6/7/2021 ■

That the applicant should not have a duo identity in this suit, such that if successful in one application as a prospective substitute for the 3rd plaintiff would join as plaintiff, and in the other application, if successful, would join as an interested party, whose role, duties and obligations under the Civil Procedure Rules are not defined and would entrench mystery in this suit.

That contrary to what is claimed in the proposed interested party's application, the applicant/defendant herein, in his application dated 24/5/2021 is not seeking any personal information and seeks common information from the respondent, as contained in a Kenyan ID Card or passport, such that other information about the deceased 3rd plaintiff, which would not be relevant to the averments contained in the plaint, is of no interest to the applicant/defendant and this has already been stated in the said application and supporting affidavit.

5. The applicant filed a further affidavit dated 1/11/2021 in which she stated as follows;

That I am the Applicant/ Proposed Interested Party hence competent and duly authorized to swear this Affidavit.

That I have read, and had the contents of the Replying Affidavit dated 16th July 2021 explained to me by my Advocates and I wish to respond as follows:



That I am advised by my advocates on record, which advice I verily believe to be true, that the Court has discretion to join a party to a suit if the said party has a personal interest or stake in the matter.

That indeed I have personal interest in the matter, having been appointed the Administrator of my late husband's Estate and the information sought by the Respondent relates to my late husband's personal identification.

That further, the reasons for seeking such private information are unclear and it is imperative that I be granted a chance to protect the affairs and dignity of my late husband's Estate by participating in the suit.

That in response to the contents of paragraph 2 of the Replying Affidavit, I am advised by my Advocates on record, which advice I verily believe to be true that I have no capacity to file any response to the Application dated 24th May 20 21 as I am not a party to the suit and will only be joined as a party upon the Court allowing my application.

That the contents of paragraph 3 are not relevant to this particular suit as they touch a different pending suit, that is, ELC 517 of 2017. In any event, and without prejudice to the foregoing, there is no correlation between my application to be joined in these proceedings and my application to substitute the 3rd Plaintiff in ELC Suit 517 of 2017.

That in response to the contents of paragraph 4, I am advised by my Advocates on record, which advice I verily believe to be true that the averments are irrelevant to these proceedings for the following reasons:

- a. That Respondent raises issues regarding the ELC suit, which issues are rightfully before the ELC Court for determination and as such this Court lacks the jurisdiction to entertain the same.
- b. That the Respondent's objection as to my appointment as an Administrator of my late husband's Estate falls within the jurisdiction of the Family Court and if indeed the Respondent had a genuine claim he ought to have raised it in the Court vested with the requisite jurisdiction. Further, it is unclear as to which laws my application purportedly offends.

That in response to the contents of paragraph 4 ii, the respondent is attempting to mislead the Court by alleging unsubstantiated facts. Indeed, my nick name is Varsha, which name I have used for many years around my relatives and friends. It is strange that the Respondent has not tabled any evidence to show the purported wife he alleges exists. In any event, and as averred above, this Court lacks the jurisdiction to adjudicate on the issue.

That contents of paragraph 4 iii, are misleading to the Honourable Court as it is evident from my Affidavit that the same was sworn and notarized in Montgomery County, Maryland.

That in response to the contents of paragraph 4 iv, it is absurd that the Respondent claims that Trivedi Sanatkumar Shantilal is different from Sanatkumar Shantilal Trivedi and the basis of the alleged differentiation is order of appearance of the names.

That in response to the contents of paragraph 4 vi, it is extremely insulting and appalling that the Respondent would go to such great lengths to perpetuate falsehoods about my late husband. The Court should take note that the obituary attached does not mention anywhere that the deceased lived in Virginia.

That in response to the contents of paragraph 4 vi, the claims that my Affidavit is illegal are misplaced, unfounded and baseless.



That in response to the contents of paragraph 5, I do not hold any duo identity as purported, as I am the only Administrator of my late husband's Estate and therefore competent to present the current application as well as the application in the ELC Suit. In any event the outcome in the ELC Suit has no implication in this instant application.

That in response to the contents of paragraph 6, I reiterate the contents of paragraphs 4, 5 and 6 of my Supporting Affidavit and further state that contrary to the Respondent's averments, the information sought relates to my late husband's identification information which undoubtedly is personal information.

That the Respondent has not demonstrated that he shall suffer any prejudice if my application is allowed.

6. The defendant did not participate in this application. The proposed Interested Party applicant and the plaintiff filed written submissions in the application dated 6/7/2021 as follows:
7. The proposed interested party submitted that the current suit has neither been heard nor finalized, therefore within the definition of "a matter that is alive as per the Court."
8. Counsel further submitted that the application states clearly the interest or stake that the party has in this case, being to obtain information, and to shed light on the matter to protect personal information. She contended that the Applicant, being the Administrator of the Deceased's estate has the duty to protect the integrity and privacy of the deceased's affairs and estate.
9. The Respondent submitted that there are no provisions in law for an application to be made in response of another application. He added that the proposed interested party had filed an application in the primary ELC suit to substitute the 3rd Plaintiff, over whose estate she is an administrator, meaning that her current application to join the current proceedings are pre-emptive and should not be allowed.
10. He further submitted that the applicant is actually not the widow of the deceased as there was another widow in the ELC case. Further, the Applicant is not a Kenyan Citizen and is not domiciled in Kenya, which has not been disclosed in her affidavits. The supporting affidavit is thus illegal and in violation of statute.
11. He further submitted that contrary to what has been claimed in the application, the Defendant is not seeking any personal information but rather common information from the Respondent, as contained in the ID Card and passport.
12. The sole issue for determination in this application is whether the proposed Interested Party should be enjoined as a party to this suit.
13. The governing legal provisions for joinder of parties is as follows;
14. Order 1 Rule 10(2) of the *Civil Procedure Rules* provides: (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.
15. It is not in dispute that Sanatkumar Shantilal Trivedi (deceased) was the husband of the proposed interested Party.



16. The proposed Interested Party as the personal representative of Sanatkumar Shantilal Trivedi (deceased) has a stake in the suit.
17. In the case of *Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others* [2014] eKLR the Supreme Court set out the factors to be considered for joinder of Interested parties as follows –(a)What is the intended interested party’s stake and relevance in the proceedings?
And
(b)Will the intended interested party suffer any prejudice if denied joinder?
18. Again, in *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others* [2017] eKLR Mativo J.(as he then was) observed as follows: -

“The test is not whether the joinder of the person proposed to be added as an interested party would be according to or against the wishes of the petitioner or whether the joinder would involve an investigation into a question not arising on the cause of action averred by the petitioner. It is whether the intended interested party has an identifiable stake, or a legal interest or duty in the proceedings. In determining whether or not an applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party the true test lies not so much in an analysis of what are the constituents of the applicant’s rights, but rather in what would be the result on the subject-matter of the action if those rights could be established. It is a mandate of the court that as far as possible all matters in controversy between the parties should be completely and finally determined and all multiplicities of legal proceedings concerning any of the matters be avoided. In this regard, it would be appropriate and in the interest of justice that all matters touching and concerning the subject matter of the suit in the case at hand be determined finally and completely to avoid litigating over the same matters again.”
19. It is not in dispute that Santatkumar Shantilal Trivedi (deceased) passed away and that Vanlata Santkumar Trivedi, the Administrator of the estate of Sanatkumar Shantilala Trivedi seeks to be enjoined in these proceedings as an interested party.
20. It is a mandate of the court that as far as possible all matters in controversy between the parties should be completely and finally determined and all multiplicities of legal proceedings concerning any of the matters be avoided.
21. I find that it is in the interest of justice to allow the Administrator of the estate of Sanatkumar Shantilala Trivedi(deceased) to be enjoined in these proceedings as an interested party.
22. I allow the application dated 6/7/2021 and direct that the proposed Interested Party Vancata Sanatkumar Trivedi be and is hereby enjoined as an Interested Party to this case.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 12TH DAY OF APRIL, 2024.

.....
A. N. ONGERI
JUDGE

In the presence of:

..... for the Applicant



..... for the Respondent

NAIROBI HIGH COURT CIVIL MISC. APPL. NO. E254 OF 2021	0
--	---

