



**In re Estate of Mbarire Muruangingye alias Andrea Njiru Mbarire (Deceased)
(Succession Cause 3 of 2019) [2024] KEHC 5890 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5890 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
SUCCESSION CAUSE 3 OF 2019
LM NJUGUNA, J
MAY 23, 2024
IN THE MATTER OF THE ESTATE OF MBARIRE
MURUANGINYE ALIAS ANDREA NJIRU MBARIRE (DECEASED)**

BETWEEN

EMILIO NJIRU 1ST ADMINISTRATOR

ELIJAH NJAGI 2ND ADMINISTRATOR

AND

JOSEPH KARIUKI NJIRU PROTESTOR

AND

ALEX MURIITHI NJIRU INTERESTED PARTY

RULING

1. Before the court is an application dated 26th October 2023 through which the applicants seek the following orders:
 1. Spent;
 2. That the interested party be granted leave to be enjoined in the suit;
 3. That this honourable court be pleased to grant the applicants leave to lift or set aside the orders dated 04th August 2022 to enable the beneficiaries to be heard on the mode of distribution of the estate;
 4. That this honourable court be pleased to add the name of the 3rd applicant as an administrator alongside the others to prevent misappropriation of the estate;
 5. Costs of the application be in the cause.



2. The application is premised on ground that there is an order directing all the beneficiaries to compensate the 3rd applicant all the money used from the year 2000 to date for the subject matter herein. That there is an order forbidding distribution of the estate until such time as the 3rd applicant is reimbursed by all the beneficiaries. The supporting affidavit was deposed by the interested party/2nd applicant on behalf of all applicants and he deposed that the partial mediation settlement agreement be set aside and the parties be allowed to canvas a new mode of distribution. That as things stand, the beneficiaries have not complied with the mediation agreement to reimburse the 3rd applicant all the expenses incurred in the property since the year 2000.
3. The respondents filed grounds of opposition to the application, stating that the 2nd applicant is in no way related to the deceased herein and that there is no ground for him to be enjoined as an interested party herein. That therefore, he has no authority to plead on behalf of any parties in the suit. That he seeks leave to apply for setting aside of the mediation settlement agreement but this is not procedural as the application is thus rendered amorphous since they have not annexed the substantive application for setting aside. That the applicants have also not annexed any court order showing that the 3rd applicant should be compensated. That they argue that the 3rd applicant will expedite distribution of the estate but they have not demonstrated as much.
4. The court directed the parties to file their written submissions but only the applicants complied.
5. In their submissions, the applicants urged the court to compel the respondents to reimburse the 3rd applicant's money used from 2000 to date. That a new mode of distribution should be adopted where the sons and daughters of the deceased all share the properties as appropriate.
6. The issue for determination is whether the application has merit.
7. There is in place, a partial mediation settlement agreement dated 04th August 2022. The same was adopted by the court as its order on 07th November 2022. The 2nd applicant herein seeks to be enjoined as an interested party in the proceedings. He has sworn the supporting affidavit to the application which also seeks to champion for the 3rd applicant's position in the estate and in the suit. In his application for joinder, the 2nd applicant has not demonstrated that he has a stake in the suit or in the estate.
8. According to Rule 2 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, 2013, an interested party is defined as "a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation." In the case of *Skov Estate Limited & 5 others v Agricultural Development Corporation & another* [2015] eKLR, the court in a persuasive decision stated the following in dismissing an application for the applicants to be enjoined to the suit because they purchased the suit property from the plaintiffs' person;

"In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in



a suit as interested party. In other words, there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.”

9. In this case, the 2nd applicant has failed to demonstrate that there is need to enjoin him as an interested party. I also note that he was not a party to the mediation proceedings either. That being said, it follows that the 2nd applicant, being a stranger to the suit, cannot depose facts on behalf of parties to the suit. Consequently, it is impossible for this court to go further and determine the issue of whether the mediation settlement agreement should be set aside, since the court has not been improperly moved.
10. In the end, I find that the application lacks merit and it is hereby dismissed with no order as to costs.
11. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 23RD DAY OF MAY, 2024.

L. NJUGUNA
JUDGE

1st administrator/respondent
..... 2Nd Administrator/respondent
..... Protestor/1St Applicant
..... Interested Party/2Nd Applicant
.....3Rd Applicant

