



**In re Estate of Njiru Kigetu (Deceased) (Civil Appeal E059 of 2023)
[2024] KEHC 10838 (KLR) (18 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10838 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL APPEAL E059 OF 2023
LM NJUGUNA, J
SEPTEMBER 18, 2024
IN THE MATTER OF THE ESTATE OF NJIRU KIGETU
(DECEASED)**

BETWEEN

NELSON NYAGA NJIRU APPELLANT

AND

LUCY WAWIRA NJIRU RESPONDENT

AND

MARY IKAMBA INTERESTED PARTY

GLADYS WANJOVI JEREMIAH IRERI INTERESTED PARTY

RULING

1. Before the court is an application dated 15th January 2024 through which the applicants seek the following orders:
 1. That the applicants be enjoined as interested parties in this appeal;
 2. That the applicants be allowed to participate in the proceedings herein; and
 3. That the costs of this application be in the cause.
2. The applicants stated that they are daughters of the deceased herein and siblings of the appellant and respondent. That they gave evidence at the lower court and they wish to participate in litigating the appeal. That it is in the interest of justice that they be enjoined in the suit since the outcome of the appeal directly affects them.



3. The appellant did not oppose the application but the respondent filed a replying affidavit in which she deposed that the applicants testified before the trial court and there is nothing valuable they wish to add in this appeal. That the applicants opposed the mode of distribution granted by the trial court and they have not demonstrated what stake they have in the appeal.
4. The application was canvassed by way of written submissions.
5. The applicants submitted that the judgment of the court will directly affect them since the subject of the appeal is distribution of the estate. They relied on Order 1 Rule 10 and order 42 Rule 22 of the Civil Procedure Rules and urged the court to enjoin them since they, too, are children of the deceased.
6. The respondent submitted that the applicants are, indeed, daughters of the deceased and that they testified at the trial court. That after determination of this appeal, the applicants will not be affected in any way and they have not demonstrated their stake in the appeal. She urged the court to dismiss the application.
7. The issue for determination is whether the application has merit.
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 held thus:

“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 to 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.”
9. In this case, the applicants are children of the deceased, whose estate is the subject of the appeal herein. The respondent does not dispute that the applicants participated in the trial court proceedings but she submitted that the applicants have no stake in the outcome of the appeal. It is my view that the applicants, as the children of the deceased, do have an identifiable stake and the outcome of the appeal will also significantly affect them since they were named as beneficiaries of a part of the estate by the trial court. Whether or not the appeal succeeds, the applicants will remain to be beneficiaries of the estate of the deceased by law.



10. In the end, I find that the application has merit and it is hereby allowed as prayed with no order as to costs.

11. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 18TH DAY OF SEPTEMBER, 2024.

L. NJUGUNA

JUDGE

..... for the Appellant

..... for the Respondent

