



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

In re Estate of Onesmus Miriti Ndege (Deceased) (Miscellaneous Succession Cause 17 of 2019) [2023] KEHC 2604 (KLR) (9 March 2023) (Ruling)

Neutral citation: [2023] KEHC 2604 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
MISCELLANEOUS SUCCESSION CAUSE 17 OF 2019**

LW GITARI, J

MARCH 9, 2023

IN THE MATTER OF THE ESTATE OF ONESMUS MIRITI NDEGE (DECEASED)

BETWEEN

JOCYLINE KAGENDO ADMINISTRATRIX

AND

DANIEL NDEGE MIRITI ALIAS MUTWIRI MIRITI ADMINISTRATOR

AND

DIDACOUS MURITHI KIRAITHE INTERESTED PARTY

RULING

1. This ruling relates to an oral application made on February 2, 2023 by Ms Wambui Gitau, learned counsel for the interested party. The application seeks for issuance of witness summons for the attendance in court of one Riungu Ndege.
2. The reason given for this application is that the said Riungu Ndege has been severally mentioned in these proceedings and that he is an important party to the matter.
3. The application was opposed by Mr. Mwanzia, learned counsel for the administrators. He submitted that he did not expect the said Riungu Ndege to be called as a witness and that the said Riungu Ndege had not written his witness statement.
4. I have perused the record. The central issue in these proceedings is whether the interested party is a bona fide purchaser of part of the deceased's estate. From the record, the said Riungu Ndege sought to be summoned is the brother to the deceased herein. He is the one who instituted these succession proceedings and was appointed as the administrator of the subject estate. His grant was however revoked on June 6, 2019 and an order was issued for the properties forming the subject of the estate to revert to the deceased.



5. This Court has been told that after the said Riungu Ndege obtained a grant of letter of administration in this cause, that the same was confirmed, and the interested party herein started the process of obtaining a title deed to the share of land which had been distributed to him from the estate. Further, that the interested party subsequently obtained a title deed to the land parcel LR Muthambi/ Upper Karimba/1790 measuring 0.08Ha.
6. It is my view that for the sake of justice any witness whose evidence is vital to a case ought to be called to testify for ends of justice to be met. However, the cardinal rule of procedure and evidence is that before witness summons are issued on application by a party, the party must lay the basis for relevance of the witness.
7. In the present case, this Court gave directions on October 15, 2020 that the matter would proceed by way of viva voce evidence. The parties were directed to file and serve affidavits for the witnesses they intended to call, together with documentary exhibits they would be relying on, at least 14 days before the date of the hearing.
8. The said Riungu Ndege was referred to in the evidence in chief and cross-examination of Didacous Murithi Kirathe (PW1). I have perused his witness affidavit that is dated June 92, 2021. There is no mention of the said Riungu Ndege in the said affidavit. However, the court record bears witness that the said Riungu Ndege listed PW1 as a dependant of the deceased and it is on that basis that PW1 consequently obtained title documents to land parcel LR Muthambi/Upper Karimba/1790. In the circumstances, it is therefore my view that the evidence of the said Riungu Ndege is relevant to this case. I find that the application has merits. No prejudice will be occasion to the respondent. I allow the application and order that-
 1. Summons do issue to the said Riungu Ndege to appear in court and adduce evidence.
 2. The applicant shall file affidavit evidence of the said Riungu Ndege and serve on the respondent.
 3. The applicant shall meet attendance to court costs for the said witness.
 4. In the event that the said Riungu Ndege fails to swear an affidavit, he shall be cross-examined by the parties.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 9TH DAY OF MARCH, 2023.

L.W. GITARI

JUDGE

