



**In re Estate of Oltokokoimerit Katiyu (Deceased) (Succession Cause
5 of 2020) [2023] KEHC 21147 (KLR) (13 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21147 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
SUCCESSION CAUSE 5 OF 2020
SN MUTUKU, J
JULY 13, 2023**

IN THE MATTER OF THE ESTATE OF OLTOKOKOIMERIT KATIYU (DECEASED)

BETWEEN

**ENASO ENE PERISUE MALEI 1ST ADMINISTRATOR
ROTIKEN OLE MERIT OLTOKOKOI 2ND ADMINISTRATOR**

AND

**WILLIAM SONYOI OLTOKOKOI 1ST RESPONDENT
JOHNSON NKATISON OLTOKOKOI 2ND RESPONDENT
JOSEPH BRADLEY WAWERU GITARI 3RD RESPONDENT**

RULING

1. This ruling relates to a Notice of Motion application dated September 5, 2022. It is brought by intended interested parties whose number exceeds one hundred (100) individuals. This does not appear on the face of the application, but it comes out clearly from prayer number five (5) of the application as “all persons whose names appear in Exhibit EKW19 in the annexed Affidavit of Ephantus Kariuki Wagaiyu in support of this application or who have subsequently purchased the plots subdivided from Kajiado/Kaputiei North/43966.” Exhibit EKW19 lists over three hundred persons, both natural and unnatural entities. It is my belief that these are the intended interested parties sought to be enjoined in this succession cause.
2. The application seeks 7 reliefs as follows:
 - i. That this matter be certified as urgent and be heard *ex parte* in the first instance.



- ii. That the matter be certified as urgent and be heard and determined on priority basis and in any event before the Ruling to the 3rd Respondent's application dated October 9, 2020 is delivered.
 - iii. That pending the hearing and determination of this application inter partes the Honourable court do stay the execution of the orders given by the Honourable Justice Chacha Mwita on April 23, 2020.
 - iv. That pending the inter partes hearing and the determination of this application, this Honourable court be pleased to use an interlocutory injunction restraining the Plaintiffs and the 1st and 2nd Respondents, their brothers, sisters, servants, agents, assigns, invitees and or any other person claiming under or through them from entering upon or trespassing, constructing any structures, occupying, cutting down trees, dealing, alienating, using or in any other way whatsoever interfering with the intended interested parties' quiet possession of all the parcels of land known as Kajiado/Kaputiei North/64760 to 65103 (formerly known as Kajiado/Kaputiei North/43966 before subdivision).
 - v. That all the persons whose names appear in Exhibit EKW19 in the annexed Affidavit by Ephantus Kariuki Wagaiyu in support of this application, or who have subsequently purchased the plots subdivided from Kajiado/Kaputiei North/43966 be enjoined in these proceedings as interested parties.
 - vi. That the Honourable court be pleased to issue any other or further or alternative orders as it deems just and appropriate in the circumstances.
 - vii. That costs of this application be in the cause.
3. The grounds in support of the application are found on the face of it and in the supporting affidavit of Ephantus Kariuki Wagaiyu, who describes himself as the Director/Shareholder of Langata Presbyterian Investment Ltd, the Company, one of the intended interested third party.
 4. I have understood the grounds in support of the application to mean that the Company bought Kajiado/Kaputiei North/43966 measuring 44.42 hectares from Joseph Bradley Waweru Gitari, the third respondent, for value in a clean transaction and caused the transfer of title to the Company in favour of the Company on 13th November 2013. The Company subsequently subdivided the land into 343 new titles, namely Kajiado/Kaputiei North/64760 to Kajiado/Kaputiei North/65103 which plots were sold to its members and third parties now seeking to be enjoined in these proceedings.
 5. It is their claim that they are bona fide purchasers for value without notice of any defects in the title; that the proceedings leading to the orders issued by this court (Justice Chacha Mwita) proceeded without their knowledge and participation as a result of which their interests were adversely affected and that they have an identifiable stake in these proceedings and should be enjoined as interested parties.
 6. The application is opposed through a Replying Affidavit of Enaso Ene Parisue Malei dated November 14, 2022 in which she states that the application is a scheme by the applicants to buy time and delay the conclusion of suit before the Environment and Land Court being ELC Cause No 27 of 2020 which suit resulted from the orders of Justice Chacha Mwita. She has deposed that the application is a waste of judicial time and an abuse of court process because the issue of the validity of the titles in question cannot be litigated in this court as it is an issue pending determination before the ELC.



7. The two administrators have filed submissions dated 10th February 2023. I did not see submissions by the intended interested parties or by the Respondents. I have read the filed submissions by the administrators, and I have understood the issues before me.

Analysis and Determination

8. I have read the record of the court in this matter. I have noted that the deceased died on August 14, 1987 intestate leaving behind 10 beneficiaries including the widow. From the averments of the administrators, four of those beneficiaries, including the widow, have passed on. The deceased left one parcel of land known as Kajiado/Kaputiei North/800 measuring about one hundred and twenty-five (125) acres.
9. Court record shows that the 1st and 2nd Respondents, two of the beneficiaries of the estate of the deceased, petitioned the Chief Magistrates Court and obtained a grant on February 13, 2004. The grant was issued and subsequently confirmed, and a Certificate of Confirmation issued on June 8, 2008. It seems that the two administrators sold the land, or part of the land as they claim, to the 3rd Respondent without involving the other beneficiaries. The issuance of the grant to the two and subsequent confirmation was contested by the other beneficiaries. This contestation gave rise to Summons for Revocation of the Grant dated April 4, 2019 brought by the current administrators, Enaso Ene Parisue Malei and Rotiken Ole Merit Oltikokoi.
10. The main reason for seeking revocation was that the 1st and 2nd Respondents obtained the grant fraudulently by excluding the other beneficiaries and concealed material facts from the court that they had not consulted the rest of the beneficiaries nor sought their consent and that they further applied for the confirmation of the grant without the knowledge of the other beneficiaries.
11. Hon. Justice Chacha Mwita agreed with the Applicants in that Summons and revoked the grant and set aside the Certificate of Confirmation. He also issued orders transferring Chief Magistrate's Succession Cause No 16 of 2003 to the High Court for hearing and determination. He issued a new Grant of Letters of Administration jointly to the current administrators and directed that the two were at liberty to move the ELC on the issue of the title to land (subject of the succession cause) issued to the 3rd Respondent. The Judge further issued a restriction on any transactions relating to the subdivided parcels of land being Kajiado/Kaputiei North/43966 and 43967 being subdivisions of the original title Kajiado/Kaputiei North/800 pending final determination of the ELC matter.
12. While making the above orders, Justice Chacha Mwita stated that he could not deal with the issue of cancellation of title as the court with jurisdiction to do so is the ELC Court which court would also determine the issue of validity of title having been transferred to the 3rd Respondent.
13. From the contents of the application and submissions, it is clear to me that the administrators have since lodged a suit at the ELC Court being ELC Cause No 27 of 2020 seeking determination of the issue of validity of the suit property. I have noted that the intended interested parties are party to the ELC suit through the Company. The administrators have stated that the matter before the ELC is partly heard and was pending defence hearing as at the time of canvassing this application.
14. It is clear to me that this succession cause is pending determination as regards confirmation of the grant issued on April 23, 2020. In the meantime, the estate of the deceased, comprised in the subdivided titles, remains unascertained until the final determination of the ELC Cause.
15. The administrators have submitted that the intended interested parties herein are parties to the ELC Cause and have an opportunity to ventilate their issues in that court. They state that this court did not revoke the titles and that this matter is being argued before the ELC. It is their argument that the



applicants were not necessary parties before this court sitting as a probate and administration court. They relied on *In re Estate of Martinus Okore & 2 others* [2019] eKLR where the court stated that:

“The duty of a Succession Court is principally to protect estates of deceased persons which it has jurisdiction over and to oversee the transmission of those estates to the lawful beneficiaries..... However, if a dispute arises on the ownership of the land subject of the succession proceedings and/or the declaration of trusts over the land in issue, then such a dispute transcends the jurisdiction of a Succession Court courtesy of Article 165 (5) of the Constitution, Section 13 of the Environment and Land Court Act, No 19 of 2011 among other relevant legal provisions.”

16. The administrators have argued further that the applicants are coming to court late; that they knew that the grant had been revoked and are parties and have been participating in the ELC matter where the proceedings before the High Court together with the order revoking the grant have been filed and that the applicants have filed a defence before the ELC court and have participated in the plaintiffs’ case. It is argued further that the orders sought to be stayed have been implemented in that the grant has been revoked and the certificate of confirmation set aside; that the administrators have filed a matter before the ELC challenging the titles as directed by the court to which the applicants have filed a defence and therefore staying those orders would jeopardize the ongoing proceedings at the ELC. It is their case that the order restricting transactions on the parcels of land was necessary to preserve the estate of the deceased as parties litigated before the ELC.
17. With restraint, given that the titles subdivided from the parcel of land forming the estate of the deceased are subject to litigation before the ELC, I have considered this matter. I cannot say much lest my pronouncements be taken to be prejudicial to any party before the ELC. Suffice is to state that the intended interested parties have an opportunity to ventilate their issues before the ELC.
18. What are the principles governing joinder of parties as interested parties to a suit? In *Attorney General v David Ndii & 73 others* (Petition 12 (E016) of 2020) [2021] KESC 17 (KLR), the Supreme Court of Kenya held that:

“This court has laid down the guiding principles applicable in determining an application to be enjoined as an interested party in Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others SC Petition (Application) No 12 of 2013. The principles were affirmed in the case of Francis Kariuki Muruatetu & another v Republic & 5 others (supra) where the court stated: “.... One must move the Court by way of a formal application. Enjoinder is not as of right, but is at the discretion of the court; hence, sufficient grounds must be laid before the court, on the basis of the following elements:

- (i) The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
- (ii) The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
- (iii) Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the court”



19. My understanding of the issues being raised by the applicants is that they have an identifiable stake or interest in the estate of the deceased. But clear reading of the pleadings shows that the claim by the intended interested parties is not against the estate of the deceased. They do not claim to have bought land from the deceased before he died. They are third parties who claim to have bought land from the 3rd Respondent who in turn is said to have bought the suit land from 1st and 2nd Respondents, who are two of the surviving beneficiaries of the deceased. The two respondents admitted to this court that they did not involve their siblings, the other beneficiaries, in selling the land which forms the estate of the deceased, to the 3rd Respondent.
20. I do not agree with the intended interested parties that they have met the threshold for admission as interested parties in this Succession Cause. As stated by the Supreme Court in the above cited case, “they have failed to establish a personal interest or stake that is proximate enough to occasion any prejudice to it, if not enjoined in these proceedings.”
21. The applicants will have the opportunity to defend their claim to the titles before the ELC. As far as this court is concerned, there is no prejudice to be suffered by the applicants in this court’s actions in declining to grant the prayers sought in this application. Consequently, the Notice of Motion dated September 5, 2022 is hereby dismissed entirely. The applicants will pay the costs of this application.
22. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 13TH DAY OF JULY 2023.

S. N. MUTUKU

JUDGE

