



**Chawana & another (Suing as the Administrator of the Estate of Johnstone Maganga Chawana) v Kisoi & another; Mohamed (Intended Interested Party) (Miscellaneous Civil Suit 3 of 2018) [2023] KEHC 23615 (KLR) (17 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23615 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
MISCELLANEOUS CIVIL SUIT 3 OF 2018  
GMA DULU, J  
OCTOBER 17, 2023**

**BETWEEN**

**ALFRED MAGHANGA CHAWANA ..... 1<sup>ST</sup> APPLICANT**

**FLORA NGUMBI CHAWANA ..... 2<sup>ND</sup> APPLICANT**

**SUING AS THE ADMINISTRATOR OF THE ESTATE OF JOHNSTONE  
MAGANGA CHAWANA**

**AND**

**SWALEH KASSIM KISOI ..... 1<sup>ST</sup> RESPONDENT**

**LAND REGISTRAR TAITA TAVETA ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**YUSSUF HASSAN MOHAMED ..... INTENDED INTERESTED PARTY**

**RULING**

1. In this Miscellaneous Civil Suit in which the substance relates to the matter of the estate of Johnstone Maghanga Chawana, an application under certificate of urgency dated 20<sup>th</sup> April 2022 was filed by Alfred Maghanga Chawana and Flora Ngumbi Chawana, and on 11<sup>th</sup> March 2022 in which orders were issued by this court as follows:-

1. That in the interim an order of injunction against the 1<sup>st</sup> respondent (Swaleh Kassim Kisoi) restraining him either by himself and or through his agents, relatives and or servants and or any other persons claiming purchaser's interest under him from selling alienating laying claim to, trespassing onto, developing, ploughing or in any other manner dealing with the portion of land parcel number Taita Taveta/Upper Kariokor/8 pending hearing of this application inter partes and or until further orders of this court (sic)



2. That this matter together with Petition Number 1 of 2014 in the matter of estate of Amina Wakio Juma be consolidated.
3. That mention on 10<sup>th</sup> June 2022. Notice to issue to the respondents.
2. For the record, the respondents named in the above application were only two, that is Swaleh Kassim Kisoi and Land Registrar Taita Taveta.
3. The above court orders precipitated the present application dated 10<sup>th</sup> June 2022 filed by Yussuf Hassan Mohamed the intended interested party. The applicant suing and claiming to have an interest in the estate of Amina Wakio Juma Mwakingie also known as Amina Binti Abdalla.
4. This is the application dated 10<sup>th</sup> June 2023, which is for determination today. The application was filed under Section 3A, 7, 63(e) and 80 respectively of the *Civil Procedure Act* (Cap.21) and order 1 rule 1 of the *Civil Procedure Rules* as well as article 159 of *the Constitution* of Kenya and seeks the following orders:-
  1. (Spent).
  2. That the applicant be hereby enjoined as interested party in this suit and be granted leave to file his pleadings in the matter.
  3. (Spent).
  4. That the cost of the application be provided for
5. The application has grounds on the face of the Notice of Motion that on 25<sup>th</sup> April 2022 an application was filed by administrator herein to the estate of Johnstone Maghanga Chawana for restraining orders and consolidation of this matter with Petition No. 1 of 2014 in the matter of the estate of Amina Wakio Juma, that 1<sup>st</sup> respondent is deceased, that the estate of Johnstone Maghanga is not a party therein and was not sought to be joined, and that the vendors of the subject property were the administrators of the estate of Amina Wakio and lawfully sold the property, and that the applicant had heavily invested and developed the said property having lawfully purchased the same.
6. The application was filed with a supporting affidavit sworn by Yussuf Hassan Mohamed the intended interested party on 10<sup>th</sup> June 2022 which amplifies the grounds of the application.
7. The application is opposed through a replying affidavit sworn on 14<sup>th</sup> July 2022 by Alfred Maghanga Chawana, in which it is deponed interalia that a purported sale of assets by administrator is illegal, and that it was not true that the 1<sup>st</sup> respondent was deceased or that the estate of Johnstone Maghanga is not a party in the suit.
8. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Garane & Somane Advocates for the intended interested party (applicant in the present application), and the submissions filed by S. M. Righa & company Advocates for the applicant.
9. Having considered the application, documents filed and the submissions of counsel on both sides, it is clear to me that there is a pending application yet to be heard and determined herein, wherein interim orders were issued.
10. It is also clear that consequent upon the interim orders issued, the intended interested party has applied to this court through the present application to be joined as a party herein, because he contends that he bought land through which the interim orders issued herein will affect him, and that he bought



that land in the estate of a totally different person Amina Wakio Juma, not in the estate of Johnstone Chawana Maghanga herein.

11. The considerations for joining an interested party in proceedings have been litigated and determined and by superior courts severally in Kenya all the way to the Supreme Court. In my view, it will suffice if I cite the case of *Eharub Ebrahim Khatiri = Versus= Nelson Marwa* (2017) eKLR wherein the High Court stated that:-

“As interested parties, the applicants need only demonstrate interest in the subject matter of the suit or in other relevant matter affecting the suit.....I find therefore that the applicants are “necessary parties” within the meaning of order 1 rule 10 of the *Civil Procedure Rules*.”

12. These present succession proceedings being unusually headed as a High Court civil Miscellaneous Cause, instead of Probate & Administration Cause, and the orders sought in the pending application being related to another succession cause in which the intended interested party claims to have an interest by way of purchase of land assets, I am of the view that the intended interested party has demonstrated sufficient interest to be enjoined herein as an interested party, in relation to matters relating to the estate of Amina Wakio Juma, and limited only to the alleged proprietary interest he claims to have acquired therein.
13. I thus allow the application and enjoin Yussuf Hassan Mohamed as an interested party herein to the extent mentioned in paragraph 12 above.
14. The costs of this application will follow the decision on the interested party’s claim herein.
15. I will hereafter give orders or directions on the pending application herein.

**DATED, SIGNED AND DELIVERED THIS 17<sup>TH</sup> DAY OF OCTOBER 2023 AT VOI.**

**GEORGE DULU**

**JUDGE**

**In the presence of:-**

Alfred – Court Assistant

Mr. Kertiony for Swaleh Kassim

Mr. Kiwinda for applicant

Mr. Abdullahi for intended interested party

