



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1360 OF 2019

IN THE MATTER OF THE ESTATE OF JOHN MUTIO MUTUA (DECEASED)

SAPHINA MULEE MUTUA.....1ST INTENDED INTERESTED PARTY/APPLICANT

KILOMO MUTUA aka CHARLES...2ND INTENDED INTERESTED PARTY/APPLICANT

YVONNE MBITHE MATHEKA.....3RD INTENDED INTERESTED PARTY/APPLICANT

VERSUS

ANNE WANGUI MUTUA.....1ST RESPONDENT/CITOR

GABRIEL NZIOKO MUTINDA.....2ND RESPONDENT/EXECUTOR

RULING

1. The Chamber summons dated 8th July, 2020 was brought pursuant to **Section 47** of the Law of Succession Act, **Rule 63** and **73** of the Probate and Administration Rules, **Section 3 & 3A** of the Civil Procedure Act and all other enabling provisions of the Law. In their application, the applicants Saphina Mulee Mutua, Kilomo Mutua aka Charles and Yvonne Mbithe Matheka sought leave to be enjoined as interested parties in the cause.

2. In support of the application, the 1st intended interested party swore an affidavit dated 8th July, 2020 on her own behalf and on behalf of the 2nd and 3rd intended interested parties. She deponed that she is the elder sister of John Mutio Mutua the deceased herein and that the 2nd intended interested party is their younger brother. Further that the 3rd intended interested party is her daughter and a niece to the deceased. She averred that she is among the beneficiaries under the will of the deceased dated 17th August, 2019 and contended that after the deceased's demise, his last will and testament was read to his family members who are parties in these proceedings.

3. She averred that the intended applicants have brought the application for joinder to ensure that their interests are secured when the Court settles the disputes arising when the will of the deceased is propounded. Further that their joinder will enable the Court to settle all the disputes and determine the beneficial interest of each beneficiary to the estate of the deceased. She asserted that the participation of the intended interested parties will not occasion any prejudice to the parties already on record. She urged the court to afford them an opportunity to be heard by being enjoined in the cause as they will be adversely affected by any decision of the Court if they are left out.

4. From the record, no response was filed by any of the parties' herein in support or in opposition to the application. On 14th July, 2021 when the matter was before Court, learned Counsel Mr. Mwangi holding brief for Mr. Chege for Jeff Mutua who is one of the beneficiaries, indicated that he had no objection to the application for determination.

5. Although the application has not been challenged, this Court has to determine whether the application meets the threshold for the grant of the orders sought. The issue for determination is whether the applicants should be enjoined as interested parties in the succession cause. The Law of Succession Act and the Probate and Administration Rules do not have provisions of joinder of parties in succession matters. However, **Rule 73** provides for the inherent powers of the Court to make any order for the interests of justice to be met.

6. The Black's Law Dictionary 10th Edition defines at Page 1298 an "interested party" as:

"A party who has a recognizable stake (and therefore standing) in a matter"

No doubt, a party maybe said to have a recognizable interest in a matter if the outcome of such matter or proceeding is likely to adversely affect their interest.

7. Under the Constitution of Kenya (Protection of Rights and Fundamental freedoms practice and procedure Rules 2013), **Rule 2** defines “interested party” as: -

“A person or entity that has an identifiable stake or legal interest in the proceedings before the Court but is not a party to the proceedings or may not be directly involved in the litigations.”

8. I am in agreement with the summation of Gitari J. in the case of AMM vs JMN [2019] eKLR where the Judge had this to say about an interested party: -

“An interested party is one who has a stake in proceedings, though he was not a party to the cause ab initio. He is one who will be affected by the decision of the Court when it is made, either way. The Court should not act in vain by enjoining a party that clearly would have no interest in the subsequent proceedings”

9. In succession causes, persons who would be outright interested parties are beneficiaries, spouses, children, creditors and any other person who has a legal claim to an estate. From the application, the intended interested parties claim to be beneficiaries of the estate of the deceased. They averred that in his last will and testament, the deceased had bequeathed to them some of his assets as evidenced in the will attached. These claims were not disputed. Although the will is yet to be propounded, a perusal of the document attached indicates that indeed there are some assets supposedly bequeathed to the applicants by the deceased. They have therefore established that they have an interest in the succession cause before court.

10. On whether, the other parties would be prejudiced with the joinder, the applicant pleaded that no prejudice would be occasioned on the respondents. On their part, the respondents did not demonstrate that that they will suffer any prejudice if the applicants are enjoined in the cause.

11. In light of the foregoing observations, it is my finding that the applicants have convinced the Court that they merit to be enjoined to proceedings involving the estate of the deceased where their beneficial interests will be determined. Consequently, the chamber summons dated 8th July, 2020 is hereby allowed with no orders as to costs.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 5TH DAY OF OCTOBER, 2021.

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L. A. ACHODE

HIGH COURT JUDGE

In the presence ofAdvocate for the Interested Parties.

In the presence ofAdvocate for the Applicant.

In the presence ofAdvocate for the Executor.

In the presence ofAdvocate for the Petitioner.