



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 21 OF 2011

ESTATE OF JOHN MWENESI ADULU

Represented by

EBBY MUSIMBI MWENESI.....PLAINTIFF

VERSUS

SAUL EGUNZA BUNYALI.....1ST DEFENDANT

EBRAHIM OMWENYI AMBWERE.....2ND DEFENDANT

HARRY CITY AMBWERE.....3RD DEFENDANT

WEST KENYA SUGAR CO. LTD.....4TH DEFENDANT

PASSELS SIMIYU WANYAMA.....5TH DEFENDANT

AND

JACKSON KASASI

ADULU.....INTERESTED PARTY/APPLICANT

RULING

1. The application dated **20/1/2020** which was filed in court on the same date was brought by the interested party/applicant seeking the following orders:

(1) That the applicant be granted leave to be enjoined as an interested party to this suit and to file his pleadings according.

(2) That the costs of this application be borne by the plaintiff.

2. The applicant brought the application under **Sections 1A, 1B and 3A of the Civil Procedure Act, and Order 1 Rule 1, Order 51 Rule 1 of the Civil Procedure Rules.**

3. The application is supported an affidavit of the applicant sworn on **20/1/2020**. The grounds on which the application is made are that the intended interested party, being a brother to the deceased, has an interest in the suit land.

4. The plaintiff filed a replying affidavit on **3/2/2020** in which she responded to the application as follows: that the applicant is her uncle who settled on the ancestral land with his family but he is not a beneficiary of the deceased's estate as he was neither a child nor a dependant of the deceased; that the deceased settled **Dorcas Imali**, his second wife on **Plot No. 165 Ndalu Settlement Scheme** which measures **45** acres and that the allotment was in her name; that the land comprised in plot No. **147 Kamakoiywa Settlement Scheme** was reserved for the plaintiff's mother's family; that the only succession cause in respect of her father was **Kitale PMC Succession Cause No. 125 of 1994** and she was issued with a grant and certificate of confirmation and plot No. **147** was thereby transmitted to her; that no evidence of a grant in favour of Dorcas Imali is exhibited; that Dorcas Imali never became an administrator to the deceased's estate and could therefore not transfer plot No. **147** to the 1st defendant; that the applicant has had knowledge of this suit and no good explanation is given for the **9 year** delay that occurred before filing the application and that there are no good grounds to enjoin him into this suit as that will cause further delay.

5. I have perused through the court record and found no submissions on the part of the applicant. The respondent filed her submissions. I have perused the application and the grounds relied on by the applicant as well as the response by the respondent.

6. In my view the applicant has not sufficiently justified his application to be enjoined as a party in any capacity in this suit. The very fact that he is a brother to the deceased *per se* does not necessarily imply that he has an interest in the suit land; he has not shown that he was either a child or a dependant of the deceased or that he ever applied for a grant of letters of administration to the deceased Adulu's estate. He has also not demonstrated that Dorcas Imali ever became an administrator to the deceased's estate. I am persuaded that the plaintiff having taken out letters of administration is the proper party to agitate the suit. Joinder of the applicant in this suit as proposed by the application will not in my view assist this court to effectually and completely adjudicate upon and settle all the issues involved in the suit. Besides, the application has been brought after a long and unexplained delay.

7. Consequently, I dismiss the application dated **20/1/2020** with costs to the respondent only. The suit will be set down for further hearing on a date to be issued by the Deputy Registrar.

Dated, signed and delivered at Nairobi via teleconferencing on this 30th day of April, 2019.

MWANGI NJOROGE

JUDGE

Ruling delivered via teleconferencing in the presence of:

Mr Kiarie for the plaintiff;

Mr Teti for the 1st defendant;

Mr Arusei for the Interested Party

Mr Wekesa for the 5th defendant and

Mercyline Lubia, Deputy Registrar.

N/A for the 2nd -4th Defendants.