



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 181 OF 2015**

**LUCIA WANGESHI KAMAU.....PLAINTIFF**

**VERSUS**

**JARED RODRICK NYAUNDI .....1<sup>ST</sup> DEFENDANT**

**JOHN KAMAU GICHIGO.....2<sup>ND</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR NAKURU.....3<sup>RD</sup> DEFENDANT**

**R U L I N G**

1. Before me for determination is the proposed 2<sup>nd</sup> plaintiffs Chamber Summons Application dated 10<sup>th</sup> April 2019 expressed to be brought under Order 1 Rules 10 & 25 of the Civil Procedure Rules, Section 1A, 1B, 3, 3A and 63(e) of the Civil Procedure Act and all other enabling provisions of Law. The application prays for the following orders:-

*1. That the Applicant herein, WANJIKU KAMAU be granted leave to be enjoined as the 2<sup>nd</sup> plaintiff.*

*2. That upon the grant of prayer (1) above, the said proposed 2<sup>nd</sup> plaintiff be granted leave to amend the plaint within such time as may be directed by this honourable Court in the best interest of justice*

*3. That costs be provided for.*

2. The Chamber Summons is predicated on the grounds set out on the body of the application and on the affidavit sworn in support by the Applicant. The gist of the applicant's application is that she is one of the widows of the late Johana Kamau Mwathi who died intestate.

3. That the plaintiff, Lucia Wangeshi Kamau, secretly filed Kitale P&A No. 41 of 2006 and obtained title to the suit properties **Nakuru Municipality Block 2/80 & 81** by transmission pursuant to a certificate of confirmation of Grant issued on 6<sup>th</sup> July 2009. That the applicant filed objection proceedings in the succession cause and vide a ruling delivered on 25<sup>th</sup> June 2015 the certificate of confirmation of Grant was annulled and a redistribution of the deceased estate was directed. The applicant was declared a beneficiary of one of the suit properties as a trustee for the 1<sup>st</sup> house of the deceased. The applicant seeks joinder in the suit so as to protect her interest as a beneficiary to a portion of the suit properties.

4. The plaintiff has opposed the proposed 2<sup>nd</sup> plaintiff's application for joinder and has filed a replying affidavit sworn by her on 20<sup>th</sup> December 2019. The plaintiff concedes that she was appointed a Co-administrator of the deceased estate vide a Grant of letters of Administration issued in Kitale succession cause No.41 of 2006 on 6<sup>th</sup> July 2009. Pursuant whereof she acquired the suit property by way of transmission. She affirmed that the applicant instituted objection proceedings in the succession cause which resulted in the certificate of confirmation of Grant issued on 6<sup>th</sup> July 2009 being cancelled and annulled and an order for the redistribution of the deceased estate being ordered.

5. The plaintiff/respondent further averred that following the redistribution of the deceased estate, the applicant was declared to be a beneficiary of portions of the suit parcels of land as per the certificate of confirmation of Grant re issued on 22<sup>nd</sup> January 2019 to the plaintiff/respondent and the Co-administrator. Under the reissued certificate of confirmation of Grant both House one ( 1<sup>st</sup> widow ) and House no 2 ( 2<sup>nd</sup> Widow) were each awarded one half share of land parcels **Nakuru Municipality Block 2/80 and 2/81** (stadium flats No.703 Nakuru). The plaintiff states that the applicant's position as regards the deceased estate is that of a beneficiary and as such she lacks the capacity to represent the deceased estate. She contends that under the Law of succession Act Cap 160 Laws, it is only a duly appointed

legal administrator who has the power and capacity to represent and act on behalf of a deceased estate. In this regard the plaintiff cites the provisions of Section 82(a) of the Law of Succession Act to buttress her argument.

6. The 1st defendant filed a replying affidavit in opposition to the applicant's application and like the plaintiff his contention was that the applicant lacks the *locus standi* to be enjoined as a party in the suit since her interest are represented in the suit by the plaintiff who is the administrator of the deceased estate.

7. The 2<sup>nd</sup> defendant equally opposed the applicant's application and filed grounds of opposition dated 18<sup>th</sup> November 2019. The thrust of the 2<sup>nd</sup> defendant's grounds of opposition is that the applicant lacks the requisite *locus standi* to be enjoined to the suit having regard to the provisions of the Law of Succession Act, Cap 160, Laws of Kenya notably Sections 80(2) and 80 (a) thereof.

8. It is not disputed that the applicant was the widow of Johana Kamau Mwathi (Deceased) and/or that the plaintiff was appointed Co-administrator of the deceased estate. At the time the present suit was instituted, the plaintiff did not commence the suit in her capacity as the administrator of the estate of the deceased. The plaint dated 24th June 2015 filed on the same date does not show the suit was brought in a representative capacity. Indeed under paragraph 5 of the plaint the plaintiff pleads that the suit properties had been registered in her name the same having been devolved to her following the demise of her husband.

9. The plaintiff's claim against the defendants as per the plaint is in her personal name and there is nothing to suggest the claim is being made on behalf of the deceased estate. Indeed under prayer (c) in the plaint the plaintiff's pray for the cancellation of the titles issued in favour of the 2<sup>nd</sup> defendant and for them to be reverted to the plaintiff's name. It is apparent the actions that resulted in the transfer of the suit properties in the plaintiff's name and subsequently in the 1<sup>st</sup> and 2<sup>nd</sup> defendants name took place before the applicant's beneficiary interested in the suit properties had been acknowledged in the succession case. Indeed the certificate of confirmation of Grant that acknowledged the applicant as a beneficiary on behalf of the 1<sup>st</sup> House was issued on 22<sup>nd</sup> January 2019. The Grant specifically identified the suit properties as part of the assets of the estate of the deceased. The records relating to the suit properties point to the suit properties as having been transferred to the plaintiff in 2010, to the 1<sup>st</sup> defendant in 2013 and to the 2<sup>nd</sup> defendant in 2014. Thus even though the applicant has been declared as a beneficiary of the suit properties, the properties are not in the hands of the deceased estate.

10. Given the peculiar circumstances of the matter the applicant has an interest over the suit property which the plaintiff as administrator of the estate of deceased estate may not necessarily protect. The plaintiff, it is clear, is entangled with the claims being made by the defendants at her personal level and not as administrator of the deceased estate. The 1<sup>st</sup> defendant for instance claims to have purchased the suit property from the plaintiff after the latter obtained title to the properties following transmission after the conclusion of the succession case.

11. The Applicant successfully objected to the Grant issued to the plaintiff and her Co-administrator on 6<sup>th</sup> July 2009 resulting in the annulment of the same and a re-issue of a fresh certificate of confirmation of Grant with a revised distribution schedule. This suit was commenced before the revised certificate of confirmation of Grant was issued. While I agree that it is the legal administrator of a deceased estate who has the power or capacity to represent the estate of a deceased person in terms of section 82(a) of the Law of Succession Act, Laws of Kenya, I observe that in strict sense this is not a suit involving the estate of the deceased. The plaintiff sued in her name and on her own behalf and the remedies sought were not for the benefit of the beneficiaries of the estate. Since obtaining the re-issued confirmation of Grant with the revised distribution schedule of the deceased assets, the administrators of the estate have not moved to amend the plaint to reflect the new reality. It cannot be assumed that if the present suit continues in its present form the interest of the applicant would be well taken care of.

12. I am in the premises satisfied that the applicant has a valid and legal interest in the suit properties having been declared a beneficiary by the succession Court. I am however not persuaded that the applicant would be entitled to be enjoined as a plaintiff in the circumstances of the case. I nonetheless allow the Applicant to be enjoined in the suit as an interested party to ventilate her interest as a beneficiary of the suit properties. I grant the applicant 21 days leave from the date of this ruling to file and serve her pleadings on the other parties. I direct that the matter be mentioned on 7<sup>th</sup> July 2020 for pretrial directions. The costs of the application shall be in the cause.

13. Orders accordingly.

**Ruling dated signed and delivered electronically at Nakuru this 30th day of April 2020.**

**J M MUTUNGI**

**JUDGE**