



REPUBLIC OF KENYA

IN THE HIGH COURT AT EMBU

MISC SUCCESSION CAUSE NO. 156 OF 2014

IN THE MATTER OF THE ESTATE OF TIMOTHEO KARIGI LAZARUS NYAGA (DECEASED)

RAHAB WAMWITHA KARIGI.....APPLICANT

VERSUS

FREDRICK MUNYI TIMOTHY.....ADMINISTRATOR/RESPONDENT

AND

STELLA WANYAGA MUNYI.....1ST INTERESTED PARTY

JULIETTE NJURA MUNYI.....2ND INTERESTED PARTY

JOSEPHINE WAWIRA MUNYI.....3RD INTERESTED PARTY

MARTIN MUTURA MUNYI.....4TH INTERESTED PARTY

FAITH IRENE WANJIRU MUNYI.....5TH INTERESTED PARTY

CHRISTINE WEGANDU MUNYI.....6TH INTERESTED PARTY

ALEXANDER NJERU MUNYI.....7TH INTERESTED PARTY

ROSALYN WANJIRU MUNYI.....8TH INTERESTED PARTY

SUSAN WAMITI MUNYI.....9TH INTERESTED PARTY

REGINA MUTHONI KARIGI...PROPOSED 10TH INTERESTED PARTY

R U L I N G

A. Introduction

1. This ruling pertains to the application dated 13th June 2019 in which the applicant seeks orders that one Regina Muthoni Karigi be enjoined in the instant suit on the grounds that she was adopted by the deceased and the applicant since 1965 and has since lived on the estate of the deceased.
2. It is the applicant's case that the deceased and herself adopted the proposed interested party in 1965 and that she and the deceased took her through her education and she was their daughter for all intents and purposes.
3. In support of the application, the proposed interested party corroborated the applicant's case and further attached a baptism certificate given in the year 1984 that identified the deceased and the applicant herein as her parents. She further stated that sometime in 1984, the deceased allocate her 400 coffee stems and caused her to become a member of Kihumbu Coffee Factory.
4. In rejoinder, the 2nd interested party, who is also the legal representative of the now deceased administrator, testified that the proposed interested party was a niece to the applicant and as such not a beneficiary to the deceased's estate. It is further deposed that neither the eulogy

of the deceased or the now deceased administrator identify the proposed interested party as either the daughter of the deceased or niece of the now deceased administrator. It is the respondent's case that the applicant has not demonstrated the procedure used when the proposed interested party was adopted.

5. The parties disposed of the application by way of written submissions.

B. Applicant's Submissions

6. It is submitted that the deceased and the applicant brought up the proposed interested party and catered for her education and further that the proposed interested party still lives in the deceased's estate. As such the applicant submits that the proposed interested party became a child of the deceased.

7. The applicant further submits that the deceased administrator had recognised the proposed interested party as the deceased's child and proceeded to allocate her some land during the distribution of the estate, as such the applicant submits that it is only prudent that the said Regina Muthoni be enjoined in the proceedings so that she can articulate her entitlement to the estate.

8. The applicant further submits that the 2nd interested party does not dispute the averments she has made but merely questions the adoption procedure.

C. Analysis & Determination

9. I have considered the application, the submission and the affidavits. The issue which arises for determination is whether the proposed interested party should be joined as an interested party in this case.

10. An interested party is one who has a stake in the proceedings, though she was not party to the cause *ab initio*. She 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. The Courts have had instances to deal with the issue.

11. In a persuasive decision in the case of **Skov Estate Limited & 5 Others v Agricultural Development Corporation & another [2015] eKLR** Justice Munayo Sila stated the following in dismissing an application for the applicants to be enjoined to the suit because they purchased the suit property from the plaintiffs' person;

“In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party. In other words, there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.”

12. I need not say more. The applicant is seeking to enjoin Regina Muthoni Karigi as an interested party since she was adopted by the deceased and the applicant since 1965 and has since lived on the estate of the deceased. From the record it is also clear that the proposed interested party was one of the beneficiaries of the deceased inheriting 1 acre out of Gaturi/Weru/3638.

13. I have perused the record and noted that the letter of the chief Mbeti North Location dated 26/07/2012 filed with the initial documents in this case named three beneficiaries of the deceased among them Regina Muthoni the proposed interested party herein. Her relationship with the deceased is indicated as an “adopted daughter”. She was one of the two beneficiaries who signed the consent for Fredrick Munyi Timothy to be appointed the administrator.

14. It is my considered view that the enjoinder will assist the court in settling all questions involved regarding the deceased's estate. In any case the decision of this court is likely to affect her. She should therefore be joined as an Interested Party. Her name also appears on Form P&A.5 as a beneficiary.

15. The grant confirmed on 23/01/2013 that distributed the estate of the deceased to four (4) beneficiaries gave the proposed interested party two shares of 1.30 ha. And 0.40 ha. respectively out of Gaturi/Weru/3638.

16. Considering the foregoing hard facts in this cause, the proposed interested party is a beneficiary in the said grant and was considered as such from the stage of filing this case. It is therefore in the interests of justice that she is enjoined as a party in this case so that she can defend her interest.

17. I therefore find this application merited and allow it as prayed.

18. The upshot is that the proposed interested party Regina Muthoni is hereby joined as an interested party.

19. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 5TH DAY OF DECEMBER, 2019.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Muriuki for ithiga for Petitioner

Ms. Muthama for Mugendi for 11th Proposed Interested Party