



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 68 OF 2018

KALONDU KYAMBO (*Suing in her capacity as the legal representative*

of the Estate of KYAMBO NGATA (deceased).....**PLAINTIFF**

VERSUS

PETER WANJOHI KAMAU (*Sued as the Liquidator of*

DRUMVILE FARMERS CO-OPERATIVE SOCIETY LTD).....**1ST DEFENDANT**

TIMOTHY MATHEKA KIVOLA *alias* .

TIMOTHY MATHEKA KIVUVA.....**2ND DEFENDANT**

AND

ALBERT ATHANAS MAKAU

KYAMBO.....**PROPOSED INTERESTED PARTY**

RULING

1. In the Chamber Summons dated 14th August, 2018, the Proposed Interested Party has sought for the following orders:

a. That upon hearing of this Application the Honourable Court be pleased to join the Applicant, Albert Athanas Makau Kyambo, as an Interested Party in these proceedings.

b. That costs of the Application be provided for.

2. The Application is premised on the grounds that the suit relates to ownership of the land known as Athi River/Athi River Block 5/112 (*the suit property*). The Proposed Interested Party deponed that he is the son of Kyambo Ngata (*deceased*); that the Estate of the deceased has already been administered and that his deceased father was a member of Drumvile Farmers Co-operative Society Limited. The Proposed Interested Party deponed that the Plaint contains factual misrepresentations regarding the shareholding of the deceased at Drumvile Farmers Co-operative Society which calls for rebuttal.

3. The Proposed Interested Party deponed that he had a share with the Society; that in 1978, the Society amalgamated his share with the deceased's share without his knowledge and that his deceased father was allocated the suit property and parcel of land known as Mavoko Town Block 12/849 under the erroneous impression that he had "two sets of shares" which entitled him to two parcels of land.

4. The Proposed Interested Party argued that parcel of land known as Mavoko Town Block 12/849 was included in the Certificate of Confirmation of Grant of the Estate of his late father; that parcel of land known as Athi River/Athi River Block 5/112 (*the suit property*) was not included in the Schedule of the properties of the deceased because it belonged to him (*the Proposed Interested Party*) and that he will be affected by the orders of this court in respect to the suit property.

5. The Plaintiff filed Grounds of Opposition in which he averred that there can only be two sets of parties in a civil suit, the Plaintiff and the Defendants; that the Applicant cannot join in the suit as an Interested Party and that the Applicant has not told the court what interest he has in the suit property.

6. In his Replying Affidavit, the Plaintiff deponed that the Proposed Interested Party (*the Applicant*) is his step-brother; that the Applicant secretly petitioned for Letters of Administration in respect of the deceased's Estate and that the Proposed Interested Party omitted in the said proceedings to include the suit property which is one of the property belonging to the Estate of the deceased.
7. According to the Plaintiff, the deceased was a member of the Society where he held two shares which entitled him to the suit property and another parcel of land known as Mavoko Town Block 12/849; that the suit land was allocated to the deceased and that the Application is an abuse of the court process and should be dismissed with costs. The Defendants did not file a response.
8. The Plaintiff and the Proposed Interested Party's advocates filed submissions which I have considered.
9. This suit was commenced by way of a Complaint dated 24th March, 2018. In the Complaint, the Plaintiff averred that he is the legal representative of the late Kyambo Ngata (*the deceased*); that the deceased was a member of Drumville Farmers Co-operative Society Limited (*the Society*) and that the deceased was the lawful allottee of land known as Mavoko Town Block 5/112 and Mavoko Town Block 12/849.
10. It is the Plaintiff's case that until 22nd March, 2000, the Defendants fraudulently caused the deceased's land being Athi River/Athi River Block 5/112 (*the suit property*) to be registered in the name of the 2nd Defendant and that the title in respect of the suit property in favour of the 2nd Defendant should be revoked by this court.
11. The 1st and 2nd Defendants (*the Defendants*) filed a Defence in which they averred that the deceased was never the lawful allottee and owner of the suit property; that it is the 2nd Defendant who was allocated the suit property by the Society and that the suit should be dismissed.
12. The evidence before this court shows that the Proposed Interested Party was appointed the Legal Administrator of the Estate of the deceased in Nairobi High Court Succession Cause No. 568 of 2010 on 13th August, 2010. On 6th June, 2011, the Succession Court distributed the Estate of the deceased vide a Certificate of Confirmation. The suit property was not amongst the properties that were included in the Certificate of Confirmation for distribution.
13. In the current Application, it is the Applicant's case that he should be enjoined in this suit because he is the one who should have been allocated the suit property by the Society, and not his late father.
14. It is the Applicant's case that his late father was only entitled to one share in the Society, which entitled him to one parcel of land known as Mavoko Town Block 12/849 and that the other share (*the suit property*) was his. According to the Applicant, he paid for his share through his father because he was out of the country.
15. Order 1 Rule 10(2) of the Civil Procedure Rules empowers the court, at any stage of the proceedings, upon an application by either party or *suo moto*, to order the name of a person who ought to have been joined or whose presence before the court is necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit, to be added as a party.
16. In *Sarkar's Code of Civil Procedure (11th Edition Reprint, 2011. Vol. 1, page 887)*, the authors stated as follows:

“The Section (on joinder) should be interpreted liberally and widely and should not be restricted merely to the parties involved in the suit, but all persons necessary for a complete adjudication should be made parties.”
17. The Court of Appeal of Tanzania, in *Tanga Gas Distributors Ltd vs. Said & Others (2014) E.A 448*, while considering the equivalent of our Order 1 Rule 10(2) of the Civil Procedure Rules stated that the power of the court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before, or during the trial; that it can be done even after Judgment where damages are yet to be assessed; that it is only when a suit or proceedings has been fully disposed off and there is nothing more to be done that the rule becomes inapplicable and that a party can be added even at the appellate stage. This position was adopted by the Court of Appeal in *J M K vs. M W M (2015) eKLR*.
18. The Applicant has applied to be joined in this suit on the ground that he is the owner of the suit land. Indeed, the Plaintiff has admitted that the Applicant was the sole administrator of the Estate of the deceased and that the suit property was not amongst the Estate of the deceased.
19. That being so, and considering that the full Letters of Administration were granted to the Applicant, the Applicant is a necessary party in these proceedings. As was held in the case of *Meme vs. Republic (2004) 1 EA 124*, a party could be enjoined in a matter for the reasons that his presence will result in the complete settlement of all the questions involved in the proceedings, to provide protection of the rights of a party who would otherwise be adversely affected in law and to prevent a likely course of proliferated litigation.
20. As I have stated above, to the extent that the Applicant is claiming to be the owner of the suit property, and having been the Legal Administrator of the Estate of the deceased, who is being represented by the Plaintiff in this matter, the joinder of the Applicant in this suit, whether as an Interested Party or a Defendant, will not only settle all the questions of law and facts in respect to the suit property, but will also prevent a proliferation of litigation.
21. Indeed, the right of a party to be heard is a cherished principle in our laws. As was held by the Court of Appeal in *Mbaki & Others vs. Macharia & Another (2005) 2 EA*, the right to be heard is a valued right. It would offend all notions of justice if the rights of a party were to be prejudiced or affected without the party being afforded an opportunity to be heard.

22. For the reasons I have given above, I shall allow the Proposed Interested Party's Application dated 14th August, 2018 as follows:

a. The Applicant, Albert Athanas Makau Kyambo be and is hereby joined in these proceedings either as an Interested Party or a Defendant.

b. The Applicant to file and serve his pleadings within sixty (60) days of this Ruling.

c. Each party to bear his own costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 8TH DAY OF MAY, 2020.

O.A. ANGOTE

JUDGE