



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**CIVIL SUIT NO 9 OF 2005 (O.S.)**

**IN THE MATTER OF DIVISION OF MATRIMONIAL PROPERTIES**

**GKM 1.....APPLICANT/PLAINTIFF**

**VERSUS**

**GKM 2.....DEFENDANT/RESPONDENT**

**RULING**

1. There are two applications for determination. Both are by parties who seek to be enjoined into these proceedings as interested parties. The applications are dated 2<sup>nd</sup> March 2015 and 12<sup>th</sup> January 2016.
2. The application dated 2<sup>nd</sup> March 2015 is brought at the instance of SMK, hereinafter referred to as the first proposed third party. The first proposed third party is a daughter of defendant. She deposes that there is consent order in the cause recorded on 12<sup>th</sup> July 2012, wherein LR 1/44//[particulars withheld] Jabavu Road Kilimani and LR 36/VII//[particulars withheld] 1<sup>st</sup> Avenue Eastleigh were to be transferred and registered in the names of a family company where the two parties to the suit and their children were to be the shareholders in stated proportions. The first proposed interested party, being a child of the defendant, was one of the shareholders as per that consent. .
3. Her concern is that the parties to this cause are bent on frustrating that arrangement. The plaintiff is said to have declined to sign the relevant papers that would have facilitated formation of the company envisaged by the consent order. More crucially, the parties have caused the consent orders to be varied so as to allow sale of one of the assets the subject of the consent order without involving the children who were persons interested in the property by virtue of the consent orders.
4. In reply to the application, the plaintiff, by her affidavit sworn on 21<sup>st</sup> April 2015, denies the allegations made against her by the first proposed third party, and blames the defendant for the delays that led to the non-compliance with the consent order. She accuses the first proposed third party of being in cahoots with the defendant. She dismisses her as a person who has no *locus standi* in a property dispute between her parents.
5. On his part, the defendant swore an affidavit on 31<sup>st</sup> March 2015 in reply to the application. He concedes that he indeed did enter into a sale agreement over the subject property, but pleads that the sale was frustrated by several factors that he has sought to explain in the affidavit.
6. The first interested party swore a further affidavit on 19<sup>th</sup> May 2016 to address the issues raised in the replies. She points out that her mother was deceased and the proposed distribution of the property in question ought to take into account the interest of her children, noting that the assets were acquired before the plaintiff married the defendant.

7. Regarding the first application, I have perused through all the papers filed by all the parties affected. I have noted that the parties had proposed to give the first proposed interested party a share in the assets through a company that was to be formed. She appears to have been aware of these arrangements. It also emerges that her mother had preceded the plaintiff as spouse of the defendant and it would appear that some of the assets could have been acquired during her mother's lifetime.
8. I am persuaded that first proposed interested party has sufficient interest in the assets the subject of these proceedings to warrant her being enjoined.
9. Regarding the second application, I have noted that the asset that was the subject of the sale in respect of which the parties recorded consent on 9<sup>th</sup> October 2014, which was being sold to Max Gas and Logistics Limited, is the same property allegedly sold to the second proposed interested party. Both sales were allegedly entered into on divers in September 2014. In any event the application is not even opposed.
10. In the end I do hereby allow the applications for the joinder of the first and second proposed interested parties as parties to the suit herein. Costs shall be in the cause. It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI this 3<sup>RD</sup> DAY OF JUNE, 2016.**

**W MUSYOKA**

**JUDGE**