



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ENVIRONMENT AND LAND DIVISION**

**E.L.C NO 712 OF 2014**

**ERIC PETER WANJAU.....PLAINTIFF**

**VERSUS**

**MARGARET KASERA.....1<sup>ST</sup> DEFENDANT**

**TERESIA NASIEKU KINELA.....2<sup>ND</sup> DEFENDANT**

**SAMUEL KINELA.....3<sup>RD</sup> DEFENDANT**

**SAMUEL MUTUNKEI.....4<sup>TH</sup> DEFENDANT**

**JOHN M. KINYUA.....5<sup>TH</sup> DEFENDANT**

**RICHARD M. KINYUA.....6<sup>TH</sup> DEFENDANT**

**AND**

**BETTY BATULI MONTET (Suing in her capacity as *Administratrix Ad-Litem* of the**

**Estate of GEORGE MONTET A.K.A ASMAN OLE MONTET.....INTERESTED PARTY**

**RULING**

The application for the court’s consideration is the *Notice of Motion* dated **23<sup>rd</sup> June 2014**, brought under **Sections 1A, 1B and 3A of the Civil Procedure Act, Order 1 Rule 10 (2) of the Civil Procedure Rules** seeking for orders that the Estate of **George Montet a.k.a Asman Ole Montet** be allowed to join these proceedings as an interested party.

This application is premised on the grounds stated on the face of the application and the supporting affidavit of **Betty Batuli Montet** one of the daughters of the late **George Montet**. She avers that her late father had sued the plaintiff in Civil Suit No. **3257 of 1978** in respect to **LR No Ngong/Ngong/15933** wherein the judge referred the case for arbitration to be chaired by the then District Officer Ngong Kajjado District which passed an award in favour of the of the plaintiff on **6<sup>th</sup> July 1982**. The deceased was not notified of the award until **23<sup>rd</sup> August 1994** when the plaintiff attempted to evict him from the suit land. The deceased sought review which was granted by the Court of Appeal .She averred that the plaintiff is seeking to rely upon a judgment that was set aside on **22<sup>nd</sup> August 2000**, and has not been a

subject of any appeal or review by the plaintiff. That the allegations by the plaintiff that he only learnt of the defendants occupation of the land in the year 2014 was farfetched as he has built a permanent house next to the suit land and the plaintiff's parents in law are in occupation of the land adjacent to the suit property. Therefore it is in the interest of justice that this court do allow the applicant be enjoined as an interested party in this suit.

This application is opposed. The plaintiff in his Replying Affidavit and Grounds of opposition both filed in court on **25<sup>th</sup> July 2014**, stated that the proposed interested party has no interest in this matter and whichever way this matter concludes, no prejudice whatsoever will be visited upon the proposed interested party. That the interested party wants to have a platform within which to support the defendants defence and having failed to demonstrate her interest in this matter she can only do that by being a witness in their defence and not as an interested party. Therefore the application should be dismissed with costs.

Parties canvassed this application by way of written submissions. I have now carefully considered the affidavits, the written submissions and the authorities cited by the parties herein. The issue for this courts determination is whether the proposed interested party has made out a case to deserve the reliefs sought in her application. . **It is a fundamental consideration that before a person can be joined as party, it must be established that the party has high interest in the case. In addition, it must be clearly demonstrated that the orders sought in the main suit would directly legally affect the party seeking to be added. These considerations have been amplified by the Supreme Court of Uganda in the case of the Departed Asians Property Custodian Board v. Jaffer Brothers Ltd [1999] I.E.A 55, where the court held that,**

***“...for a party to be joined on ground that his presence is necessary for the effective and complete settlement of all questions involved in the suit, it is necessary to show either that the orders sought would legally affect the interest of that person and that it is desirable to have that person joined to avoid multiplicity of suit, or that the defendant could not effectually set up a desired defence unless that person was joined or an order made that would bind that other person.”***

*In the instant case, the applicant has alleged that the plaintiff herein had sued her late father in Civil Suit No 3257 of 1978, in respect of the suit property that the plaintiff is laying claim. She stated that the court referred the matter to a tribunal that was to be conducted by a District officer but the proceedings of the tribunal were conducted by a chief which was contrary to the orders of the court and subsequently the court set aside the award in the years 2000 and the plaintiff did not appeal or apply to set side or vary the orders of the court when it set aside the award on the tribunal The plaintiffs contention is that the plaintiff now wants to rely of the judgment that was set side. The defendants purchased the suit property from the late **George Montet** .Since the suit property in contention was initially owned by the late Montet and since he sold the suit property to the defendant before his demise, it is only proper to enjoin the **Estate of George Montet** so that the issues arising in this suit may be determined once and for all and this will also save the court unnecessary filling of another suit by the interested party as regards the suit property.*

*The court finds that it is only fair and just that it grants leave to the interested party to be enjoined in the proceedings and to participate in the hearing of the plaintiffs Claim, and the Court proceeds to do so. In that regard the now enjoined interested party has leave of 14 days from the date of this ruling to file any response, to the Plaint dated 6<sup>th</sup> June 2014 and any other pleadings that may need a response from the interested party. *Costs of this application shall in the cause.**

It is so ordered.

**Dated, Signed and Delivered this 11<sup>th</sup> day of June, 2015**

**L.GACHERU**

**JUDGE**

In the Presence of:-

.....For the Plaintiff/Respondent

.....For the Defendant/Respondent

.....for the intended interest party/applicant

Hilda: Court Clerk

**L.GACHERU**

**JUDGE**