



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 3142 OF 2003

(CONSOLIDATED WITH 776 OF 1985, 614 OF 2006(OS)AND E.L.C 121 OF 2009)

JAMES MASILA MUTUA APPLICANT

V E R S U S

JOHN MUTIO MUTUA 1ST RESPONDENT

FLORENCE NDINDA MUTUA 2ND RESPONDENT

AND

SIMON KANGETHE KIMANI INTERESTED PARTY/APPLICANT

RULING

1. The Motion for determination is dated 8th September 2014. It seeks two principal orders – that the time for filing the Interested Party’s Notice of Appeal against the order of Aluoch J. of 1st November 2006 be enlarged and that the applicant’s Notice of Appeal attached to the application be deemed to have been filed within time upon payment of the requisite filing fees.
2. The application is brought at the instance of the Interested Party, Simon Kang’ethe Kimani. The grounds upon which it is premised are set out on the face of the application, as well as in the affidavit of the applicant sworn on 8th September 2014.
3. The applicant’s case is that he only got to know of the order of 14th November 2006 sometime in December 2005. The said order restrained the respondents from dealing with LR No. 12251/6 Langata, declared certain subdivisions of the property null and void, and directed rectification of the subject register. The applicant then moved the court by an application dated 23rd December 2011, seeking to be joined as an Interested Party and to have the orders of 16th November 2006 vacated. The court allowed the joinder but declined to vacate the order on the grounds that an appeal ought to have been filed instead against the same. The applicant now seeks to proffer an appeal against the order of 16th November 2006 on the grounds that it affected him yet he was not served with the suit papers leading up to the making of the order. He pleads that he was improperly excluded from the proceedings, his appeal would have good chances of success and that he is not guilty of laches.
4. I have carefully combed through the consolidated matter and the only response to the application dated 8th September 2014 is the Notice of Preliminary Objection by James Masila Mutua dated

12th September 2014 and filed herein on 12th September 2014. He argues that **HCCC No. 614 of 2006(OS)** no longer exists for it was consolidated with **HCP & A No. 776 of 1985, HCELC No. 121 of 2009** and **HCP & A No. 3142 of 2003**. He also states that the interested party had been enjoined to the suit in 2009.

5. The parties agreed by consent to have the said application disposed of by way of written submissions. The applicant, Simon Kangethe Kimani, and the respondent, James Masila Mutua, filed their respective submissions complete with lists and copies of the authorities they proposed to rely on. I have read through both sets of submissions and noted the legal arguments they put forward. I have also perused through the authorities that they placed before.
6. I have perused the record in **HCCC No. 614 of 2006(OS)**. I have noted that the applicant interested party was not party to the proceedings in 2006. The decision of the court of 16th November 2006 concerned the parties who were then before the court, and who were named in the summons before court as parties.
7. As the applicant interested party was not a party to the proceedings in 2006, he would have no *locus standi* to appeal an order that was made when he was not party to the suit. In any event the application to enlarge time is being sought eight (8) years after the event.
8. There is in my view no merit in the application dated 8th September 2014. I hereby disallow the same. The same is dismissed with costs to James Masila Mutua.

DATED, SIGNED and DELIVERED at NAIROBI this 3RD DAY OF JULY, 2015.

W. MUSYOKA

JUDGE

In the presence of Mr. Mabua advocate for the applicant.

In the presence of Mr. Githaan advocate for the respondents.

In the presence of Mr. Manyasi advocate for the Interested Party.