



**REPUBLIC OF KENYA**  
**IN THE HIGH OF KENYA AT MOMBASA**

**Civil Case 138 of 2005**

**1. HASSAN MOHAMED HUSSEIN**

**2. SAID MOHAMED ABDI .....PLAINTIFFS**

**VERSUS**

**MOHAMED RAMADHANI .....DEFENDANT**

**RULING**

(1) The application before court is the Notice of Motion dated 1st October, 2007 in which one ALI KIBWANA SHALLY (the Intended Interested party) seeks to be joined to these proceedings as an interested party. It is expressed to be brought under the provisions of order 1 Rule 3 and order L Rule 1 of the previous edition of the Civil Procedure Rules and section 3A of the Civil Procedure Act.

(2) At the heart of the dispute between the plaintiffs and the Defendant is the possession and ownership of land known and described as Mombasa/BlockXIII/322 (the suit property). The Plaintiffs have presented their claim in the Amended plaint dated 7<sup>th</sup> March, 2008 in which they claim to be registered owners of the suit property. It is their averment that the Defendant is in illegal occupation and they seek vacant possession thereof and mense profits.

(3) It is the Defence of the Defendant that he is lawfully in occupation of the suit property. That any registration thereover obtained by the Plaintiffs would only have been obtained by fraud. The Defendant has then counter claimed on the basis of adverse possession.

(4) The Intended Interested Party says that he is a member of the Defendants family, being a cousin to him. The suit property, he says, is family property in which he has beneficial interest under Islamic law and the plaintiffs claim is a threat to that interest.

(5) As is evident the Intended Interested Party seeks to join the fray on the side of the Defendant who has not filed any grounds opposing that joinder. On the part of the plaintiffs, it was argued that the application is an abuse of the court process and that no good reasons have been given as to why the intended interested party seeks to be joined. It is also argued that the suit is the property of the plaintiff and there is no provision in the Civil Procedure Rules for adding an interested party.

(6) The provisions of order 1 Rule 10(2) of the previous edition of the Civil procedure Rules provide:

**“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any**

**person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.” (my emphasis)**

(7) Under this rule the court has unfettered discretion to order the joinder of any person whose presence may be necessary in order to effectively and completely deal with all issues in controversy in a suit. This discretion can even be exercised on the courts own motion. But a person wanting to join must demonstrate a real and legitimate interest.

(8) The Intended Interested Party has argued that the property is family land and that he is a direct beneficiary. He claims a direct interest in the suit property. The Intended Interested Party’s affidavit in support of the application does not explain the manner in which Islamic law vests that interest in him. There is, however, an affidavit sworn by the Defendant on 15<sup>th</sup> August, 2005 in opposition to the plaintiff’s application dated 29<sup>th</sup> July, 2005 which is pending for hearing and determination. That affidavit is part of the court record. In it, the Defendant says that the suit property was purchased by Bai Binti Mohamed (deceased) from Awadh and Said Saleh Sherman. In paragraph 6 of that affidavit the Defendant gives the family tree of the deceased as follows:-

**“THAT, according to our family tree, the deceased BHAAI BINTI MOHAMED gave birth to three daughters namely; NANA (deceased) who gave birth to ALI KIBWANA SHALLY, KHADIJA (deceased) who gave birth to MOHAMED RAMADHANI (Defendant herein) and MWANAMKUU who gave birth to FARID SALIM, JAMAL ALI, MARYAM ALI AND FATUMA ALI. (Annexed herewith is a copy of the family tree and marked as “MR 3”)**”.

This confirms the Intended Interested Party’s assertion that he is a cousin of the Defendant.

(9) In addition, attached to that affidavit is a letter of 25<sup>th</sup> June, 2004 written by the District Land Registrar Mombasa to Mwanamkuu Lali Shee, the Defendant and the Intended Interested Party, summoning the three to a meeting over the land parcel. I reproduce that letter in full;

**Department of Lands**

**P O BOX 80053**

**MOMBASA.**

**25<sup>th</sup> June, 2004**

**Mwanamkuu Lali Shee**

**Mtopanga – Mombasa**

**Mohamed A. Ramadhani**

**Ali Kibwana Shali**

**P O Box 90140**

**MOMBASA.**

**MOMBASA/BLOCK XIII/322**

**By virtue of powers vested to me under Section 8 (b0 of the Registered Land Act (Cap. 380) I hereby summon all of you to appear before me on 27<sup>th</sup> July, 2004 at 10/30 a.m. without fail.**

**Please bring all relevant documents pertaining to the above plot.**

**Treat this as urgent please.**

**Yours faithfully**

**MARY N. KAKAI**

**DISTRICT LAND REGISTRAR**

**MOMBASA.**

This would seem to suggest that the Intended Interested Party's involvement in the dispute is not new.

(10) Without pretending to assess the prospects of the Intended Interested Party's claim in the suit property, it does not seem to me that his interest in the controversy herein is frivolous or a trifle. For that reason this court accepts his plea to participate in the proceedings and allows his application of 1<sup>st</sup> October, 2007.

Dated and delivered at Mombasa this 5<sup>th</sup> day of September, 2012.

**F. TUIYOTT**

**JUDGE**

Dated and delivered in open court in the presence of:-

Wafula for Plaintiff

No appearance for Defendant

No appearance for Applicant

Moriasi - Court clerk

**F. TUIYOTT**

**JUDGE**