



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT MURANG'A**

**E.L.C NO. 486 OF 2017**

**BWK** (of unsound mind suing through the next friend

**CMK)**.....**PLAINTIFF/RESPONDENT**

**VS**

**SMK)**..... **1<sup>ST</sup> DEFENDANT /RESPONDENT**

**JMK)**.....**2<sup>ND</sup> DEFENDANT/RESPONDENT**

**FKG)**.....**3<sup>RD</sup> DEFENDANT /RESPONDENT**

**JWK )**.....**4<sup>TH</sup> DEFENDANT/RESPONDENT**

**AND**

**PNK**

**ANK**

**ENK**

**DW - (as proposed interested parties)**

**RULING**

1. This is a ruling in respect to the Notice of Motion application under certificate by the intended interested parties' Applicants dated 30/1/2020 for the following orders;

- a. *That the Applicants be enjoined into the suit as interested parties being the beneficiaries of the estate and subject matter herein*
- b. *That an interim injunction restraining the Respondents from disposing of charging selling, transferring, subdividing or dealing in any way with the suit property land parcel number LOC.4/NGUTHURU/xxx (suit land) and all other property belonging to the late GKG (deceased) pending the hearing and determination of this application.*
- c. *That the estate be ordered to revert back to the estate of the late GKG any property that had been transferred to themselves or to third parties.*
- d. *That the Respondents be ordered to account for and deposit rent and ownership documents for the houses collected from the properties belonging to their father being 10 houses and a shop in Thika, 20 rooms and two in Gatitu and 6 houses and a shop in Kiranga.*
- e. *That costs be in the cause.*

2. The application is premised on the grounds that the interested parties are the beneficiaries of the then deceased registered owner of the suit land by virtue of being his biological children. They claim to have been unaware of these proceedings and seek to be enjoined in order to provide the necessary evidence in this matter that would aid the Court in reaching an informed verdict. They contend that the Respondents herein are their blood siblings who are yet to obtain letters of administration to their father's estate thus are bereft of any authority to make

decisions concerning the estate of their father in the manner they have done without the knowledge and consent of all other beneficiaries. That none of the beneficiaries have yet been appointed by the family as their representative and no succession proceedings have been collectively done by the family. They suspect fraud and misrepresentation of facts against the Respondents. They are aware that their father's estate constitutes several properties in Thika, Gatitu and Kiranga. That no shares of the estate have been agreed upon and allocated to the Respondents in the manner the Respondents have stated. They accuse the Respondents of intermeddling on the estate, as they have commenced subdivisions of the properties with intentions of disposing portions of it to third parties which if allowed to continue shall occasion irreparable loss to the interested parties.

3. The application was supported by the affidavit of PNK' the 1<sup>st</sup> intended interested party herein with authority from the other interested parties in which she largely reiterates the grounds on the face of the application and avers that their advocates on record are unable to ascertain the extent of the proceeding in this matter as they were barred from perusing the file, obtaining copies of documents or filing notice of appointment. That the proceedings herein affect their right of inheritance to the estate and have a right to be enjoined at any stage of the proceedings.

4. Parties elected to canvass the application through written submissions.

5. The Applicants submit that their stake in the suit land in this matter can only be protected if they are enjoined in the suit claiming that their siblings the Respondents herein have demonstrated their intention of sidelining them by concealing the fact of these proceedings against them and by allocating properties of the estate to themselves without their knowledge and consent. They rely on the case of **Trusted Society of Human Rights Alliance vs. Mumo Matemo and 5 others (Supreme Court petition no. 12 of 2013)** thus

*“Consequently, an interested party is one who has a stake in the proceedings, though he or she was not a party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings and champions his or her cause....”*

6. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants submit that that the prayers sought by the Applicants are not tenable as they cannot be granted before they are enjoined in the suit hence the application as framed is incompetent. That the suit has been in Court for over six (6) years with knowledge of the Applicants hence no sudden urgency of being enjoined. They contend that the deceased's estate had already been distributed during his lifetime which was later executed by the elders and the suit property was not to be inherited by the Applicants. That the Respondents have been in occupation of the suit properties for over ten years holding titles to the same and nothing would have stopped them from disposing off or charging them as suggested and deny any such intentions. They are of the view that injunctive orders would hence be unnecessary.

7. The 2<sup>nd</sup> Respondent swore a Replying Affidavit asserting that he and other Respondents are in occupation of the suit property rightfully having been allocated the same by their father and later adopted by the elders with subdivisions being done way back in 2011 with no objection from any of the Applicants. That the Applicant has their rightful shares of the estate where they reside with their families and have never been in occupation of the suit property. He suspects collusion between the Applicants, the Plaintiff and the 4<sup>th</sup> Defendant to scuttle the proceedings herein. He urges for the application to be declined as they are not deserving to be enjoined herein.

8. The Plaintiff swore a Replying Affidavit in support of the Applicants' application recognizing them as her aunts and rightful beneficiaries' of her grandfather's estate hence is not opposed to them being enjoined in the suit.

9. I have carefully considered the application by the proposed interested parties, the opposition thereto and the rival submissions by Counsel for the Plaintiff. The issues for determination are; whether the Applicants are entitled to be enjoined to the suit; whether interim injunction restraining the Respondents from disposing the suit property is merited; whether the Defendants should revert back the properties to the name of the deceased father; whether the Defendants should be ordered to account for the rent and legal documents with respect to properties in Biafra, Gatitu and Kiranga; costs of the application.

10. Black's Law Dictionary 9th Edition at page 1232 defines an interested party as;

*“a party who has a recognizable stake (and therefore standing) in a matter”.*

11. The provisions of **Order I Rule 10(2)** of the Civil Procedure Rules, 2010 states as follows;

*“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”.*

12. Courts have taken a liberal application to joinder of parties to a suit. In the case of **Kingori vs. Chege (2002) 2 KLR 243**, Warsame J had this to say;

*“In my view in deciding an application for joinder, the Court must exercise a liberal approach so as not to shut out a genuine litigant who is effectively interested or is bound by the outcome of the suit, however the Court must guard against the frivolous or vexatious litigant whose sole motivation is to complicate and confuse issues that are before Court for determination”.*

13. The threshold of joinder was set out in the case of **Francis Kariuki Muruatetu & Anor. Vs Republic & 5 Others (2016) eKLR** where

the Court held that the Applicant must demonstrate the personal interest that it has in the matter by laying sufficient grounds before the Court; the prejudice it would suffer if it is not enjoined as interested party; set out the case that it intends to make before the Court and demonstrate the relevance of the evidence being proffered to the Court in determining the issue in controversy.

14. The Applicants have averred that they are the biological children of the late GKG and that they are entitled to the estate of their father through a beneficial interest. It is their case that the Defendants have shared the properties of the deceased illegally without taking out letters of grant of administration and are apprehensive that they stand to be disinherited of their beneficial shares. That as stakeholders of the estate they were not consulted when this case was filed. That there appears to be evident intent on the parts of the Respondents to sideline them in these proceedings. That the fact of the ongoing proceedings was deliberately concealed from them. The suit relates to the parent's estate to which they claim equal entitlement to as the Respondents who are their siblings herein.

15. The Plaintiff supported the application.

16. The 4<sup>th</sup> Defendant did not oppose the application.

17. The 1<sup>st</sup> -4<sup>th</sup> Defendants do not deny that the Applicants are their siblings save to say that they have been settled elsewhere and that the suit land was given to them by their father *inter vivos* and no provision was made for the Applicants and therefore their interest in the case is superfluous and should not be entertained.

18. The Defendants have not showed any prejudice that they are likely to suffer if the Applicants are enjoined to the suit. The Court is satisfied that the Applicants have demonstrated their stake in the suit and orders for joinder are hereby merited.

19. With respect to the prayers for injunctive reliefs, the Defendants have contended that they have held the titles to the suit lands for the past 10 years and none has disposed of them and that it is superfluous to seek interim injunctive orders in the absence of evidence to warrant such orders. The Applicants on the other hand pray for interim injunctive orders for the purposes of preservation of the suit properties pending the hearing and disposal of the suit.

20. Guided by the provisions of Order 40 Rule 1 Civil Procedure Rules and given the competing interests of the parties in the suit property, it is the view of the Court that this is a case that warrants status quo orders. That is to say that the Defendants are restrained by way interim injunction *from disposing, charging selling, transferring, subdividing or dealing in any way with the suit property land parcel number LOC.4/NGUTHURU/xxx (suit land) and its resultant subdivisions registered in their names pending the hearing and determination of this suit.*

21. *With respect with the prayers 3 and 4 the Court declines to entertain them at this stage for the reasons that they should be subjected to trial by the parties.*

22. *In the end the application partially succeeds.*

23. ***Final orders and disposal;***

*a) Prayers 1 and 2 of the application be and are hereby granted.*

*b) The interested parties are directed to file their response to the suit within the next 14 days from the date hereof.*

*c) The costs of the application shall abide the determination of the suit.*

24. ***It is so ordered.***

**DELIVERED, DATED AND SIGNED AT MURANG'A THIS 30<sup>TH</sup> DAY OF NOVEMBER 2020.**

**J. G. KEMEI**

**JUDGE**

**Delivered in open Court in the presence of;**

**Plaintiff: Absent**

**1<sup>st</sup> – 4<sup>th</sup> Defendants; Absent**

**Kinuthia HB for Mburu Macharia for the Interested Parties**

**Njeri & Kuyiki: Court Assistants**