



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 5 OF 2014

KAPITI INVESTMENT COMPANY LIMITED.....PLAINTIFF

VERSUS

DISTRICT LAND REGISTRAR, MACHAKOS.....DEFENDANT

RUTH MBITHE NDUNDA.....1ST APPLICANT/INTENDED 1ST INTERESTED PARTY

MARY MUTHEU MUNYAU.....2ND APPLICANT/INTENDED 2ND INTERESTED PARTY

RULING

1. In the Application dated 7th February, 2018, the 1st and 2nd Intended Interested Parties/Applicants have sought for the following orders:

a. That this Honourable Court be pleased to grant an order for the Applicants herein Ruth Mbithe Ndunda and Mary Mutheu Munyau to be joined in this suit as the Interested Parties.

b. That costs of this Application be provided for.

2. The Application is premised on the grounds that the Applicants are the daughters of the late Job Ndunda Muthike; that the Applicants are Objectors in High Court Succession Cause No. 112 of 2014; that the subject matter herein is the main property for distribution in the Succession Cause and that no prejudice will be occasioned if the orders sought are granted.

3. The Interested Parties filed Grounds of Opposition in which they averred that the Applicants do not have the *locus standi* to warrant intrusion in this suit; that the Application is meant to delay the expeditious conclusion of the suit and that the Application is an abuse of the court process.

4. The Plaintiff also filed Grounds of Opposition in which it averred that it shall suffer prejudice if the Application is allowed; that the Applicants do not have the *locus standi* because the Estate of the deceased has appointed administrators and that this court does not have the jurisdiction to entertain the succession issues raised by the Applicants.

5. The parties filed their respective submissions and authorities which I have considered.

6. In the Plaint dated 23rd January, 2014, the Plaintiff alleged that it is the registered proprietor of land known as Mavoko Town Block 3/12873-12895 (*the suit and*); that it purchased the said land from Job Ndunda Muthike (*deceased*) and that although the suit land was transferred to the Plaintiff, the Defendants registered a restriction on the green card. It is that restriction that the Plaintiff is seeking to have removed by the court.

7. The purported Vendor's legal representative, Josiah Kioko Ndunda, was joined in the suit as an Interested Party. However, when he died on 15th July, 2016, he was substituted by one Elizabeth Joshua Kioko after being issued with a Limited Grant of Letters of administration on 16th February, 2017.

8. The Applicants have deponed that they are the daughters of the late Job Ndunda Muthike and that by virtue of being beneficiaries of the Estate of Job, they should be enjoined in the suit. It is the Applicants' case that they have since filed Objection proceedings in respect to the Estate of their late father in Succession Cause number 112 of 2014.

9. It is not clear to this court the nature of the Objection proceedings that have been filed by the Intended Interested Parties in the Succession Cause. However, what is clear is that the Estate of the late Job Ndunda is represented by the duly appointed legal representatives, who are not the Applicants. That being the case, the interests of all the beneficiaries of the Estate of Job Ndunda will be catered for by the said legal

representatives. Indeed, until the Applicants succeed in their Objection proceedings in Succession Cause No. 112 of 2014, they do not have the requisite *locus standi* to be joined in this suit.

10. It is for the reasons I have given above that I find the Application dated 7th February, 2018 to be unmeritorious. Consequently, the Application is dismissed with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 18TH DAY OF JANUARY, 2019.

O.A. ANGOTE

JUDGE