



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**MILIMIMANI LAW COURTS**

**ELC NUMBER 742 OF 2017**

**MATHINI GITHATU & 5 OTHERS.....PLAINTIFFS**

**VERSUS**

**WAWERU KIHARA & 8 OTHERS.....DEFENDANTS**

**RULING**

1. This is a ruling in respect of a Notice of Motion dated 9<sup>th</sup> October, 2018, brought by five applicants who seek to be enjoined as plaintiffs or interested parties in these proceedings. The dispute which the applicants seek to join relates to distribution of compensation monies paid in respect of acquisition of about 5 acres out of LR No. 1316 IR No 27109 (suit property). The suit property was about 100 acres before the compulsory acquisition of the 5 acres which was used for construction of the Northern by-pass.
2. The suit property was owned jointly by 21 persons as tenants in common in equal shares. The amount for the acquired portion which is said to be **Kshs.34,589,700/=** was paid to an account at Kenya Commercial Bank, Ruiru Branch. It is contended that part of that money has since been withdrawn and disbursed. The current plaintiffs filed a suit against the defendants and obtained interim orders restraining the 1<sup>st</sup> to 6<sup>th</sup> defendants from withdrawing any monies from accounts specified in prayer (2) and (3) of the notice of motion dated 5<sup>th</sup> December 2017.
3. The applicants contend that if they are not enjoined before the application by the plaintiffs is heard, they will lose out yet they are entitled to the compensation monies which was given out. The 1<sup>st</sup> applicant is one of the widows of the late Kinuthia Nunua who was one of the registered owners of the suit property. The 2<sup>nd</sup> applicant is one of the registered owners of the suit property. The 3<sup>rd</sup> applicant is the wife of Nderi Mbutiri who was one of the registered owners of the suit property. The 4<sup>th</sup> applicant is daughter to Njeri Kimani who was one of the registered owners of the suit property. The 5<sup>th</sup> applicant is son of the late Kamau Makimii who was one of the registered owners of the suit property.
4. The applicants' application is opposed by the 1<sup>st</sup> to 6<sup>th</sup> defendants/respondents based on a replying affidavit sworn on 11<sup>th</sup> December 2018. The respondents contend that the confirmed grant issued to the 1<sup>st</sup> applicant was revoked in a judgement delivered by Justice Kimaru on 26<sup>th</sup> November 2010 and a subsequent ruling delivered by Justice Ogo on 31.1.2018. As regards the 4<sup>th</sup> and 5<sup>th</sup> applicants, the respondents contend that though the two may be daughter and son of Njeri Kimani and Kamau Makimii respectively, there is no evidence that they are the legal representatives of the owners of the suit property who are now deceased. The respondents seem to have no problem with the 2<sup>nd</sup> and 3<sup>rd</sup> applicants being enjoined as nothing has been said against them.
5. I have considered the applicants' application as well as the opposition to the same by the respondents. The only issue for determination is whether the applicants should be enjoined in these proceedings as plaintiffs or interested parties. The principles upon which joinder of parties can be allowed are now relatively well settled. One of the principles is that an applicant has to demonstrate that he/she has a legally recognizable interest in the proceedings and that the court cannot pass an effective decree without the joinder of that applicant or that the presence of the applicant is necessary for complete and effectual determination of the dispute in question.
6. In the instant case, a look at the judgement of Justice Kimaru shows that the first applicant's confirmed certificate of grant is the one which was revoked. The grant was however not revoked. The 1<sup>st</sup> applicant and her co-administrator were allowed to continue administering the estate of the deceased pending filing of further affidavits to aid in distribution of the estate. This position obtained until the estate was distributed by Justice Ogo in a ruling delivered on 31.1.2018. The 1<sup>st</sup> applicant and the other house of the deceased were to share their portion of the suit property equally. I therefore find that the 1<sup>st</sup> applicant is a necessary party in these proceedings.
7. As I had already said herein above, there is no problem with the 2<sup>nd</sup> and 3<sup>rd</sup> applicants being enjoined in these proceedings. The 2<sup>nd</sup>

applicant is one of the surviving owners of the suit property. The 3<sup>rd</sup> applicant is wife of the Nderitu Mbutiri who was one of the owners of the suit property.

8. There is no evidence that the 4<sup>th</sup> applicant is a legal representative of the estate of her late mother Njeri Kimani. The 4<sup>th</sup> applicant cannot therefore be allowed in this suit without evidence of having obtained even limited letters of administration in respect of her estate. As for the 5<sup>th</sup> applicant, there is uncontroverted evidence in form of affidavits that his father had sold his share in **LR No.8442 IR 10420** which is the property which was exchanged with the suit property. The 5<sup>th</sup> applicant cannot therefore seek to be enjoined in a suit where he has no interest recognizable in law.

9. From the above analysis, I find that the only persons who can be enjoined in these proceedings are the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> applicants. I direct that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> applicants be enjoined in these proceedings as 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> plaintiffs respectively. The plaint shall be amended to include them within 14 days. The pleadings in this case shall be served upon them within 14 days and they shall be at liberty to file responses to the pending applications within 14 days after service of the pleadings. The costs of this application shall be costs in the cause.

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 11<sup>th</sup> day of March 2019.**

**E.O.OBAGA**

**JUDGE**

In the presence of:-

M/s Moturi for 1<sup>st</sup> to 5<sup>th</sup> Interested Parties and for Mr. Maina for Plaintiff

Mr. Waweru for 1<sup>st</sup> to 5<sup>th</sup> Defendants

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**