

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO. 9 OF 2018

**IN THE MATTER OF THE ESTATE OF NJOROGE GITAKA-
DECEASED**

**JAMES GACHUGU NJOROGE.....1ST
APPLICANT**

**IRENE WANGECHI NJOROGE.....2ND
APPLICANT**

-VERSUS

GEORGE STEPHENSON GITAKA

**NJOROGE.....
ADMINISTRATOR**

-AND-

CECILIA NJOKI KIHARA (*Suing as the Legal Representative of
the Estate of PHARIS KIHARA KARURI*).....

INTENDED INTERESTED PARTY

RULING

1. Through a Notice of Motion Application dated 24th March 2022, the Applicant/Intended Interested Party approached this Court seeking the following Orders:

- i. Spent.***
- ii. THAT this Honourable Court be pleased to enjoin CECILIA NJOKI KIHARA as an Interested Party in this suit.***
- iii. THAT this Honourable Court do find that land parcel number MJINI 25(NEW NO. BL 1/157) MURANG'A MUNICIPALITY is not free property available for distribution of the estate of the deceased herein NJOROGE GITAKA.***

- iv. THAT the caution lodged on the land parcel number MJINI 25(NEW NO. BL 1/157) MURANG'A MUNICIPALITY by the Applicants herein JAMES GACHUGU NJOROGE and IRENE WANGECHI NJOROGE be removed.**
- v. THAT the Orders issued herein be served upon the Murang'a County Government for compliance.**
- vi. Costs of the application be provided for."**

2. The subject Application is supported on the grounds set out at the foot thereof and in the Affidavit of *Cecilia Njoki Kihara* (the Applicant herein) sworn on 24th March 2022, her Further Affidavit dated 4th May 2023 and Further Supplementary Affidavit sworn on 25th February 2025.
3. The Applicant/Intended Interested Party averred that she is the widow of *Pharis Kihara Karuri* (deceased), the registered proprietor of land parcel number MJINI 25(NEW NO.BL 1/157) MURANG'A MUNICIPALITY (the subject property). She deposed that the suit property is listed among the assets for distribution in the deceased's Estate as contained in the Certificate of Confirmation of Grant dated 10th February 2022 issued by the Chief Magistrate's Court at Murang'a and signed by the Hon. E.M NYAGAH (Snr. Principal Magistrate). In the premises, the Applicant averred that the subject property is not available for distribution in the Estate of *Njoroge Githaka*.
4. The Applicant/Intended Interested Party further stated that her husband purchased the suit property sometimes in 2012 from *Lydia Muthoni George* who was the widow and administrator of the Estate of *George Stephenson Githaka Njoroge*, the original registered owner of the same. Thereafter, on 31st January 2013, the Intended Interested Party's husband applied for change of

ownership of the subject land, which application was approved by the County Government of Murang'a and her husband was registered as the proprietor of the subject property. Furthermore, on 9th June 2017, the Intended Interested Party's husband procured a Lease for a term of 99 years (effective from 1st June 2017) in respect of the suit land issued by the National Land Commission as attested to by a Letter of Allotment issued in her husband's name.

5. She further deposed that on or about 13th May 2019, she discovered that the 1st and 2nd Applicants herein caused a Caution to be registered over the suit land without any colour of right and urged the Court to remove the same.
6. The 1st Applicant herein resisted the instant Applicant through his Replying Affidavit sworn on 31st January 2023. He averred that he resides on the suit land and has known no other home for the last 43 years. He subscribed to the position that the subject property belongs to the Estate of his father (deceased). He asserted that the 2nd Applicant is his biological sister and is now deceased. Furthermore, that *George Stephenson Githaka Njoroge* who died in year 1999 was his brother and the Administrator of the Estate of their late father.
7. The 1st Applicant further deposed that following the demise of his brother *George Stephenson Githaka Njoroge*, his brother's widow namely *Lydia Muthoni Njoroge* fraudulently caused the suit land to be transferred to *Pharis Kihara Kariuki*, husband to the Intended Interested Party. That the aforesaid *Pharis Kihara Kariuki* proceeded to demolish the 1st Applicant's house situated on the suit property, leading the 1st Applicant to depart therefrom fearing for his life.
8. The 1st Applicant urged the Court not to enjoin the Intended Interested Party as sought as she is a stranger to the subject cause. Further, he urged the Court to maintain

the Caution placed over the suit property to ensure that his interests are taken care of. He accused his brother *George Stephenson Githaka Njoroge* of disinheriting the 1st and 2nd Applicants and their entire family by conveying the subject land.

9. The Application was dispensed by way of written submissions. The Intended Interested Party filed written submissions dated 27th October 2025 through her counsel and List of Authorities in support of the instant motion 5th March 2025. She submitted that being the beneficiary of the Estate of her husband who is the registered proprietor of the subject land, she has a stake in the subject proceedings although not a party to the original cause. It was further submitted that her presence in the suit will enable the Court to effectually and completely adjudicate all questions arising in the suit as contemplated under **Order 1 Rule 10(2)** of the **Civil Procedure Rules 2020**.
10. Guidance was sought in the reasoning of the Court in **Mangi v Wanjiru & 9 others; Bedford (Intended Interested Party) (Environment & Land Court Case 86 Of 20220 [2023] KEELC 21999 (KLR); Marigat Group Ranch & 3 Others -Versus Wesley Chepkoimet & 19 Others [2014] eKLR; Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others [2014] eKLR; Francis Karioko Muruatetu & another V Republic & 5 others [2016] eKLR, and, Judicial Service Commission v Speaker of the National Assembly & 8 Others [2014] eKLR.**
11. The 1st Applicant's written submissions are not on file. Accordingly, the Court will rely on his Replying Affidavit dated on record dated 31st January 2023.
12. Having carefully perused the pleadings, the entirety of the evidence supplied in support and against the subject application and submissions tendered before the Court, one issue for determination was identified, namely,

whether the Intended Interested Party has established a case for joinder as sought.

13. In the case of **Meme v. Republic, 2004 1 EA 124**, the Court observed that a party could be enjoined in a matter for the following reasons:

“(i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;

(ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;

(iii) Joinder to prevent a likely course of proliferated litigation.”

14. The Supreme Court of Kenya in the case of **Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others [2014] eKLR**, declared as hereunder:

“An interested party is one who has a stake in the proceedings, though he or she was not 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...”

15. When considering an application seeking joinder as an Interested Party, a Court is required to ask itself the following two questions, as held by the Court in the case of **Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others [2014] eKLR**:

**“We ask ourselves the following questions:
(a) what is the intended interested party’s stake and relevance in the proceedings? and**

(b) will the intended interested party suffer any prejudice if denied joinder?”

16. In the proceedings before the Court, the Intended Interested Party annexed a copy of a Certificate of Confirmation of Grant dated 10th February 2022, wherein the suit land is listed among the properties to be distributed in the Estate of her late husband *Pharis Kihara Karuri*. Furthermore, the 1st Applicant testified that his late brother's wife namely, *Lydia Muthoni Njoroge* through fraud, caused the transfer of the subject parcel to the aforementioned *pharis kihara karuri*. It also cannot escape the attention of this Court that the Intended Interested Party claim that she resides on the suit land was corroborated by the 1st Applicant who testified that the Intended Interested Party is currently residing on the suit property as a tenant.

17. In the instant cause, the Court is satisfied that the Intended Interested Party has demonstrated that she holds a demonstrable stake or interest in the subject-matter of the suit. Having established that she holds a stake with regard to the subject property, the Court holds and finds that the Intended Interested Party stands to suffer prejudice in the event the instant application for joinder is disallowed.

18. The following, then, are the Final Orders of the Court:

(i) Prayer number 2 as appears in the Notice of Motion Application dated 24th March 2022 is hereby allowed.

(ii) The Caution registered over the subject land to remain in place awaiting the Court's decision on the main suit.

(iii) The Intended Interested Party to file their documents within 30 days from the date of this Ruling.

(iv) Costs to abide the outcome of the main suit.

It is so Ordered.

DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS
13TH DAY OF **NOVEMBER, 2025.**

HON. T. W. Ouya
JUDGE

ORIGINAL