



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CIVIL CASE NO. 559 OF 2014**

**IN THE MATTER OF SIMON NGUGI & OTHERS**

**IN THE MATTER OF LAND REF LR NO. 28641 IR 152216**

**PREVIOUSLY REGISTERED AS LR 7340/59 MAVOKO MUNICIPALITY**

**IN THE MATTER OF DETERMINATION OF THE QUESTION ARISING DIRECTLY OUT OF THE ADMINISTRATION OF THE ESTATE OF NDIINGURI KARUGIA (DECEASED)**

**BETWEEN**

**SIMON NGUGI.....PLAINTIFF**

**VERSUS**

**HANNAH GATHONI GICHURI.....DEFENDANT/RESPONDENT**

**DAVID NGANGA.....INTENDED INTERESTED PARTY**

**RULING**

1. This is the notice of motion dated 22<sup>nd</sup> June 2016 brought under order 1 rule 10(2) order 51 rule 1 and 13, orders 22 rule 52 of the Civil Procedure Rules Section 1A, 1B 3 and 3A of the Civil Procedure Act and all enabling provisions of the law.

2. It seeks orders

**1. Spent.**

**2. That DAVID NGANGA being an Intended Interested Party be allowed to join these proceedings.**

**3. Spent.**

**4. That costs of this application be in the cause**

3. The grounds are on the face of the application and are set out in paragraphs (1) to (15).

4. The application is supported by the affidavit of David Ng'ang'a the intended interested party/applicant sworn on the 22<sup>nd</sup> June 2016.

5. The application is opposed. There are grounds of opposition filed by 2<sup>nd</sup> defendant/respondent dated 27<sup>th</sup> June 2016.

6. The court directed that the application be canvassed by way of written submissions.

**The Intended Interested Party Submissions**

7. He is the son of the late Ndinguri Karugia who was the previous owner of LR No. 7340/59 IR 7042/1 now registered as LR NO. 28641 IR

152216. The defendant is his sister in law as she was married to his step brother, the late Herman Gichuni. The defendant fraudulently applied for and obtained grant of letters of administration of the estate of Ndinguri Karugia (deceased) in succession Cause No. 224 of 2006 totally excluding other members of the family of the deceased. The consent adopted on 9<sup>th</sup> June 2016 as an order of the court was solely with the intention of defeating the intended interested party's application before court.

8. The inclusion of the name of the interested party was mischievous and directed at causing confusion and to mislead the Chief Land Registrar to believe that he was a party to the proceedings to facilitate removal of caution. He has put forward the cause of **Omunde Kokore vs The Town Clerk & Others Kisumu HCCC No. 834 of 2005**. Articles 10, 20, 25, 159 and 259 obligate the court to apply the law in a manner that ensures that justice is achieved and that the court is also obligated to ensure that justice is administered without undue regard to procedural technicalities. No prejudice will be suffered if the application is allowed as all issues regarding the suit property will be adjudicated before the court once and for all as such joinder would help determine the real issues in dispute. He prays that the application be allowed.

**The plaintiff's submissions**

9. This matter has been finalized between the parties involved, by way of a consent judgment. The consent field was adopted as the order of the court on the 9<sup>th</sup> June 2016. The applicant herein was not party to the suit hence had no role in the consent field in this matter.

10. The question before court is does this court have jurisdiction to determine issues the applicant intends to bring before this court? Matters of succession can only be handled by the family division. The issues raised herein are already before the high court family division in succession cause no. 224 of 2016. He has put forward the case of **Owners of Motor Vessel "Lilian S" –vs- Caltex Oil (Kenya) Ltd [1989] KLR1**.

11. The applicant is already an active participant in succession cause no 224 of 2006, the appropriate forum where the applicant should ventilate the issues he want to raise here. This court is *factus officio* hence the applicant's application cannot be allowed. He has put forward the case of **Raila Odinga & Others vs IEBC & Others [2013] eKLR**. Allowing the application will not serve any purpose at all because even if the suit is reopened the court has no powers to determine the applicant's grievances. He prays that the application be dismissed.

12. It appears the defendant did not put in any written submissions.

13. I have considered the notice of motion and the affidavit in support. I have considered the grounds of opposition, the written submissions of counsel and the authorities cited. The issue for determination is whether this application is merited.

14. **Oder 1 rule 10 (2)** of the Civil Procedure Rules provides that:-

**"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."**

15. In the instant suit the proceedings have been concluded.

16. I have gone through the court record. By a consent dated 17<sup>th</sup> March 2016 between M/S Mang'era & Co. Advocates for the plaintiffs, M/S Ogessa & Co. Advocates for the 1<sup>st</sup> defendant and M/S Njenga Muchai & Associates for the 2<sup>nd</sup> defendant (Stephen Njihia Mbugua) the parties agreed to resolve the dispute herein. The said consent was adopted by the court on 9<sup>th</sup> June 2016. At the time of the consent the applicant herein was not a party to the suit herein. The applicant has stated that he is participating in the high court succession cause no. 224 of 2006 in the matter of the estate of Ndinguri Karugia (deceased). He is at liberty to seek appropriate orders in that cause as the family court is the seized with jurisdiction to deal with matters to do with inheritance.

17. I agree with the plaintiff's counsel submissions that this court became *functus officio* upon adopting the consent on 9<sup>th</sup> June 2016. I rely on the case of **Raila Odinga & Others vs IEBC & Others [2013] eKLR**. I find that the applicant's application has been overtaken by events. He should ventilate the issues appropriately in high court succession cause no. 224 of 2006.

18. In conclusion I find merit in this application and the same is dismissed. I make no orders as to costs

It is so ordered.

**Dated, signed and delivered in Nairobi on this 18<sup>TH</sup> day of SEPTEMBER 2019.**

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**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

.....Advocate for the Plaintiff

.....Advocate for the Defendant

.....Advocate for the interested party

.....Court Assistant