



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 55 OF 2012

FATUMA MAITHA RIARA.....PLAINTIFF

VERSUS

SELU SULEIMAN KIRUNYA.....DEFENDANT

RULING

1. This ruling is in respect of the application dated 28.2.2017 and filed on 11.5.2017. Applicant is one KHALID FATEHDIN. He desires to be enjoined as a party to this suit.
2. In support of this application, applicant avers that plaintiff is his aunt as her husband, the late Gulam Alayar was a step brother to his (applicant's) father Fatehdin Alayar while, 1st defendant's husband, the late Suleiman Alayar was a brother of applicant's father.
3. Applicant has availed an order of a Kadhis court (in Nakuru Succession Cause No. 7 of 2012) whereby he was declared as the sole heir of his father, Fatehdin Alayar Khan.
4. Applicant is therefore staking a claim to the suit land parcel No. 3838 situated at Mikinduri Trading Centre.
5. Applicant avers that the suit land was transferred to his relatives fraudulently.
6. It is against this background that he desires to be enjoined as a party to this suit.
7. Plaintiff has admitted the relationship between the parties but she avers that applicant has no right whatsoever to inherit the suit land as the same was bought by her husband.
8. It is further averred that by the plaintiffs that this is not a succession cause and hence the issues being raised by applicant cannot be canvassed here.
9. 1st defendant avers that the application is belatedly done and is done in bad faith because applicant is seeking to bring in aspects of inheritance yet this is not a succession case.
10. 1st defendant also states that the application was filed six years after the suit was filed and hence there is inordinate delay.
11. 1st defendant states that applicant has no cause of action and that he is on a fishing expedition.
12. I find that the relationship between the applicant, plaintiff and 1st defendant is not disputed. Applicant has also availed the order from the Kadhis court which so far has not been challenged by the parties herein.
13. Order 1 rule 10 (2) of the civil procedure rules provides that:

“The court may at any stage of the proceedings either upon or without application of either party and on such terms as may appear to the court to be just, order that the name of any party 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”.

14. The applicant is staking a claim to the suit property. At this stage, the court is not in a position to determine the actual nature and extent of applicant's claim. However, having in mind that plaintiff, 1st defendant and applicant are relatives, then it is only fair and just that

applicant be given a platform to vindicate his interests.

15. I note that applicant has claimed that he was not aware of the existence of this suit.

16. Further, I note that although the case is quite old, (the plaint having been filed on 29.3.2012) this matter has never taken off.

17. I therefore allow the application in the following terms:

(i) Applicant Khalid Fatehdin is hereby enjoined in this suit as the 4th defendant.

(ii) The applicant is to file and serve the statement of defence and counterclaim (if any), as well as all documents he intends to rely on during the trial and statements of his witnesses within 14 days from date of delivery of this ruling.

(iii) In the event of noncompliance with order 2, the application of 28.2.2017 will stand as dismissed.

(iv) Matter to be listed down for pre-trial directions forthwith.

(v) Each party is to bear their own costs of the application of 28.2.2017.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 7th MARCH, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Gikunda A. Holding brief for Kaimenyi for plaintiff present

Mwirigi holding brief for P.R Morigori for applicant

Ken Muriuki for 1st defendant

Attorney General for 2nd and 3rd defendants absent

HON. LUCY. N. MBUGUA

ELC JUDGE