



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 159 OF 2012**

**ISIAYA KIPKEMEI SURTAN.....1<sup>ST</sup> PLAINTIFF**

**STEPHEN K. SANG.....2<sup>ND</sup> PLAINTIFF**

**EMMANUEL SITIENEL.....3<sup>RD</sup> PLAINTIFF**

**JULIUS K. BUSIENEL.....4<sup>TH</sup> PLAINTIFF**

**VERSUS**

**ERICK KOTUT.....1<sup>ST</sup> DEFENDANT**

**GREENVILLE PLANTATION LIMITED.....2<sup>ND</sup> DEFENDANT**

**RULING**

Rosebella Jeptoo Murei and Amos Kipkoech, the proposed interested parties pray that they be enjoined as interested parties to the suit. The applicants claim to be lawful administrators of the Estate of the late Kibitok Arap Murei who was one of the tenants in common alongside the plaintiffs and their predecessors owning equal shares in that parcel of land known as land reference No. 6482. It has emerged that the portion wherein the estate of the late Kibitok Arap Murei occupies overlaps with the defendants' property known as land reference No. 23201/22.

That this case relates to the said portion on which the estate actually resides hence any orders that will be issued herein will have a direct impact on their occupation and use thereof.

That it is thus just and expedient that the applicants be enjoined in these proceedings to take care of the interests of the deceased person's estate especially considering that Land Reference No. 6482 is yet to be sub-divided but is being sold out by the deceased person's former partners to the exclusion of his estate.

That the applicants' presence in the suit will assist the court to effectually and completely adjudicate upon and settle all questions involved in the suit.

That it is in the interest of justice and fairness that the application be allowed as drawn.

That this application has been brought in good faith.

That no prejudice will be occasioned on any party if the orders sought herein are granted.

In the supporting affidavit, the applicants have annexed a grant of letters of administration intestate issued to them. Kibitok Arap Murei was one of the six tenants in common who are grantors in respect of that parcel of land known as Land Reference No. 6482. Before the late Kibitok Arap Murei passed on, it emerged that the land the parties to application are occupying, overlaps with the defendants' property known as L. R. No. 23201/22. There were negotiations but the deceased died before it would be agreed. This case relates to the said parties.

The defendants filed grounds of opposition stating that the application has been brought after close of pleadings and has been brought with inordinate delay and is an abuse of court process.

In the replying affidavit, the plaintiffs state the proposed interested parties have no interest in this matter and have brought a separate suit against the plaintiff.

Mr. Magut, learned counsel for the applicant argues that Order 1, Rule 10 of the Civil Procedure Rules, 2010, empowers this court to add a party. He submits that the plaintiff and the proposed interested parties were tenants in common in respect of the suit property L. R. No. 6482 known as Kibirgen Farm. When suing was done, there was an overlap of the property.

Mr. Mbugua does not oppose the application.

Mr. Oribo opposes the application as it is an abuse of the process of the court as the applicants cannot produce any evidence that they are occupying the land. There is no evidence of overlap.

I have considered the application and do find that the subject matter in this suit is L. R. No. 6482 purchased in 1965 and situate in Kiplombe area that borders Growel Farm that borders the land owned by the defendants. The late Samuel K. Mureu has one of the 7 partners who jointly and severally owned the land. The issues raised by the applicants touching on the suit land include an overlap during survey. It is admitted that the late Kibitok Arap Murei was a partner and tenant in common of L. R. No. 6482. The applicants are the administrators of the Estate of the deceased.

A proper party is one who is impleaded in the suit and qualifies the thresholds of a plaintiff or defendant under Order 1 rule 1 and 2 respectively, or as a third party or as an interested party and whose presence is necessary or relevant for the determination of the real matter in dispute or to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. And the court has a wide discretion to even order suo moto for a party to be impleaded whose presence may be necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. According to Order 1 rule 10(2) of the Civil Procedure Rules: -

***“(2). 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..... whose presence before the court may be necessary in order to enable the court to effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”***

I do find that the applicants have established sufficient interest in the matter and are hereby enjoined as the interested parties. The interested parties to file interested party defence within 14 days.

**Dated and delivered at Eldoret this 19<sup>th</sup> day of June, 2018.**

**A. OMBWAYO**

**JUDGE**