



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC NO.919 OF 2015**

**CATHERINE WANGARI MURAGURI & ANOTHER.....PLAINTIFF**

**=VERSUS=**

**MONICA KATUNGE KASINGA.....DEFENDANT**

**RULING**

1. This is a ruling in respect of a preliminary objection dated 1<sup>st</sup> March 2017 and filed in court on 2<sup>nd</sup> March 2017 and a notice of motion dated 21<sup>st</sup> March 2017. The preliminary objection is based on the ground that the plaintiffs lack locus standi to bring this suit and therefore calls for striking out of the notice of motion filed by the plaintiffs on 25<sup>th</sup> September 2015 as well as the entire suit. The notice of motion on the other hand seeks leave to amend the plaint to bring in a third plaintiff and to make other amendments.

2. The Plaintiffs in this suit are administratrix of the estate of the late Irene Wanjiru Muraguri (deceased). The estate of the deceased was subject of High Court Succession Cause No.2691 of 2009. The estate of the deceased was distributed and the suit property was earmarked for a beneficiary called Esther Njambi Muraguri who is now sought to be brought in as a third plaintiff.

3. Before the suit property could be transferred to the intended beneficiary, the plaintiff filed a suit in which they among other prayers sought removal of a caveat which had been registered against the suit property at the behest of the defendant. However as the proceedings in this case were pending, the plaintiffs in their capacity as administratrix of the estate of the deceased managed to remove the caution and had the suit property registered in the name of the intended beneficiary. These new developments are the ones which led the defendant to raise a preliminary objection that the plaintiffs no longer had locus standi to proceed with the case and that they cannot litigate on a property which is registered in a person who is capable of litigating by herself.

4. It is apparent that these are the developments which made the plaintiffs to bring up an application for amendment to plead the proper position. It is clear that the preliminary objection cannot be sustained in view of the proposed amendments. A court of law cannot engage in a business of allowing preliminary objection whose sole aim is to delay the conclusion of the real issues in controversy. The defendant concedes that the plaintiffs had locus standi when they filed the suit but that that locus has now gone with the new developments where the suit property is now registered in the name of the proposed third plaintiff. I disallow the preliminary objection in consideration of the overriding objective as set out in section 1A and 1B of the Civil Procedure Act.

5. As for the application for amendment, I find that the application is well founded. The person who is sought to be brought on board is now the registered owner of the suit property. Her presence in this suit is therefore necessary. The applicants as the administratrix of the estate of the deceased are important in this case. This is a matter which stems from a succession dispute and the input of the applicants will assist the court in arriving at a just decision of the dispute herein. The law regarding amendments is that they should be freely allowed unless where it is shown that the amendments will prejudice the other party. In this case, there is no such prejudice.

6. I therefore allow the application for amendment. The amended plaint shall be filed within 14 days from the date hereof. The other pleadings should be filed in accordance with the rules. As the preliminary objection has already been disallowed, the costs of both the disallowed preliminary objection and the application shall be costs in the cause.

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 19<sup>TH</sup> day of JULY 2018.**

**E.O.OBAGA**

**JUDGE**

In the presence of :-

Mr Adano for Mr Wachira for Plaintiff

Court Clerk: Hilda

**E.O.OBAGA**

JUDGE