



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. APPEAL NO. 10 OF 2017

(Formerly ELC Appeal No. 61 of 2016 - Nairobi)

JOYCE MUTETHYA KIMANZI.....APPELLANT

VERSUS

TIMOTHY KIMANZI KIIVA.....1ST RESPONDENT

JOSIAH MALOMBE KIMANZI.....2ND RESPONDENT

JOYCE KAVISI MALOMBE.....3RD RESPONDENT

AND

IRENE KATUMBU KIMANTHI.....INTERESTED PARTY/APPLICANT

RULING

1. In the Application dated 14th February, 2017, the Interested Party is seeking for leave to be enjoined in the Appeal as an “Interested Party.” The Application is premised on the grounds that she is the daughter of the Appellant and the 1st Respondent; that the subject matter in this Appeal is in respect of parcels of land known as Matinyani/Kalimani/231, 224, 899 and 1153 (*the suit land*) and that she should be enjoined in the suit.
2. In response, the Appellant admitted that the Applicant is her daughter. However, she opposed the Applicant’s Application for joinder in the Appeal because the Applicant’s interests in the suit are unknown to her.
3. The 2nd Respondent deponed that the Interested Party has not demonstrated an identifiable interest in the matter; that the Applicant was not a party in the proceedings in the lower court and that since the lower court suit was filed in the year 2005, it is too late in join the Applicant in this Appeal.
4. In his submissions, the Applicant’s advocate submitted that this matter pertains to the issue of matrimonial property, customary law and ancestral land; that there can be no limitation of time where a party is seeking to be enjoined in a suit and that the court has unfettered jurisdiction to allow a party to be enjoined in a suit.
5. The 2nd Respondent’s counsel submitted that the fact that the Applicant is the Appellant’s daughter cannot be a ground to allow her in the suit and that the Applicant has not shown the identifiable stake that she has to be allowed in the suit.
6. In the Memorandum of Appeal filed in this court, the Appellant is seeking for the setting aside of the Judgment and Decree of the lower court in Kitui CMCC No. 298 of 2005. According to the Plea that was filed in the lower court, the Appellant alleged that she was the legal wife of the 1st Respondent; that in the course of their marriage, she acquired the suit properties with the 1st Respondent and that the 1st Respondent fraudulently transferred the suit land to the 2nd and 3rd Respondents.
7. The Appellant sought for a declaration that the 1st Respondent was holding the suit land on her behalf as a trustee and for a mandatory injunction to have the suit land transferred to her.
8. Although I have not seen a copy of the Judgment of the lower court in the Record of Appeal, it would appear that the Appellant’s suit was dismissed, thus the filing of this Appeal.

9. The Applicant was not a party in the lower court. Indeed, the Applicant has never been registered as the proprietor of the suit land. Considering that the only issue that this court will determine at the hearing of the Appeal is if indeed the 1st Respondent held the suit properties in trust for the Appellant, the Applicant does not have any identifiable interest in the outcome of the Appeal.

10. Having not shown an identifiable legal interest in the Appeal, I find the Application dated 14th February, 2017 not only frivolous but also incompetent. I therefore dismiss the Application with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 12TH DAY OF OCTOBER, 2018.

O.A. ANGOTE

JUDGE