



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC CASE NO. 921 OF 2017

(Formerly Machakos ELC No. 346 of 2012)

KAPUPA ENE NKIRIMPAI.....1ST PLAINTIFF

SINKIRA ENE NKIRIMPAI KORUTA.....2ND PLAINTIFF

VERSUS

NTOOKI PAPU.....DEFENDANT

RULING

What is before Court for determination is the Plaintiff's Chamber Summons dated the 22nd March, 2018 brought pursuant to Order 1 rules 10(2) and 22 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act and any other enabling provisions of the law. The applicant seeks the following orders:

1. THAT the names of ALEX SILEID NKIRIMPAI and JOSEPH OLEKU NKIRIMPAI to be added to this suit.
2. That the cost of this application be in the cause.

The application is supported by the affidavit of ALEX SILEID NKIRIMPAI where he deposes that he is the lawful attorney of the Administrators of the estate of SINKIRA NKIRIMPAI (deceased) and is duly authorized by JOSEPH OLEKU NKIRIMPAI to swear the affidavit. He confirms he was granted authority vide a Court Order in the High Court Succession Cause No. 3 of 2018 issued on 16th March, 2018. He states that the 2nd Plaintiff died intestate on 19th February, 1998 and that the 1st Plaintiff was her co- wife. He claims the 1st Plaintiff is ailing that led to her memory loss, hence she might not be able to prosecute this matter. He states that the subject matter of this suit forms part of the deceased estate and that his stepbrother JOSEPH OLEKU NKIRIMPAI also wishes to substitute his ailing mother the 1st Plaintiff herein.

The application is opposed by the Defendant who filed grounds of opposition where he states as follows:.

1. That the provisions of the law relied upon by the 1st Plaintiff do not avail.
2. The subject matter of this suit is not part of the estate of the late SINKIRA ENE NKIRIMPAI KORUTA.
3. That the 1st Plaintiff's intention is to circumvent a legal process.
4. That there is no legal basis for JOSEPH OLEKU NKIRIMPAI to be added to the suit.
5. That the application dated the 22nd March, 2018 is bad in law, fatally defective and incurable by amendment.

Both parties submitted on the application, which submissions I have considered.

Analysis and Determination

Upon perusal of the Chamber Summons dated the 22nd March, 2018 including the supporting affidavit as well as the Grounds of Opposition

dated the 10th July, 2018, and upon hearing submissions from the parties herein, the following are the issues for determination:

- Whether ALEX SILEID NKIRIMPAI and JOSEPH OLEKU NKIRIMPAI should be substituted in this suit.

It is not in dispute that the 1st Plaintiff is deceased. I note vide the Chief Magistrates' Court Succession Cause No. 3 of 2018, ALEX SILEID NKIRIMPAI was appointed as the Administrator of the deceased estate. I note in the Medical Report dated the 15th April, 2015 from PLAZA MRI, it indicates the 2nd Plaintiff has a history of memory loss. The Defendant opposed the application and contends that the two parties should not be added to the suit. The Defendant has indicated that the application has been brought under wrong provisions of the law but not stated what prejudice he stands to suffer if the two parties were substituted in the suit in place of the original Plaintiffs'. The Defendant's only contention is that the subject matter in the suit does not form part of the estate of SINKIRA ENE NKIRIMPAI KORUTA. I find that this is an issue that can only be determined if the matter was set down for hearing on its merits. In relying on the facts as presented, I find that no prejudice will be suffered by the defendant if the two parties were substituted in place of the plaintiffs. I further find that the issue raised on the application being brought under the wrong provisions of the law is an issue of technicality which can be cured by an amendment and should not be used to defect the ends of justice.

It is against the foregoing that I allow the Chamber Summons dated the 22nd March, 2018 and direct that ALEX SILEID NKIRIMPAI and JOSEPH OLEKU NKIRIMPAI be substituted in place of the Plaintiffs herein. Costs will be in the cause.

Dated signed and delivered in open court at Kajiado this 8th day of October, 2018.

CHRISTINE OCHIENG

JUDGE