

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ELC CASE NO. 326 OF 2017

DIVYANSHU RAVINSHANKAR PANCHAL.....PLAINTIFF

VERSUS

1. DOGO MOHAMED

2. DISTRICT LAND ADJUDICATOR AND SETTLEMENT OFFICER, KWALE

3. LAND REGISTRAR KWALE

4. THE HON. ATTORNEY GENERAL.....DEFENDANTS

RULING

1. The Application for consideration is the Notice of Motion dated 6th December, 2017 in which the Applicants Pwani Mohammed Juma, Maembe Mohamed Jumaa, Saumu Mohamed Jumaa and Riziki Mohamed Juma seek to be enjoined in the suit as defendants. The application is brought under Sections 1A, 1B and 3A of the Civil Procedure Act, Order 1, Rule 10 and Order 51 Rule 14 of the Civil Procedure Rules.

2. The Application is supported by the affidavit of Pwani Mohame Juma sworn on 6th December 2017 and a Supplementary Affidavit sworn on 23rd April 2018. The Applicants state that the suit property, to wit Title Number Kwale/Tsunza/1166 is their family land which was previously owned by the late Juma Ganadza but subsequently registered in the name of the 1st defendant Dogo Mohamed as a Trustee on behalf of all the beneficiaries of the estate of the Said Juma Ganadza. The 1st defendant is a daughter to the 2nd applicant and a sister to the other applicants. The applicants contend that they have proprietary interest in the suit property and thus any decision in the matter will affect them. They would therefore like to be enjoined as parties to the suit to protect their interests.

3. The plaintiff has filed a replying affidavit dated 7th February 2018 in which he depones that he is the proprietor of the suit land known as **Kwale/Tsuna/1166** having purchased it from the 1st defendant. The Plaintiff avers inter alia that this suit is filed against the 1st defendant in her personal capacity and also as the administrator of the estate of the late Juma Ganadza to which the four (4) proposed defendants/applicants are part of as beneficiaries. That the applicants have on various occasions received substantial amounts of money from the plaintiff being part of the purchase price of the suit property.

4. The 1st defendant has filed grounds of opposition dated 12th February 2018 stating inter alia, that the applicants have not challenged the succession cause at the Kadhis's court being **Succession Cause No.138 of 2013**-in the matter of the Estate of Juma Ganadza (deceased) and are therefore estopped from being enjoined as parties to this suit. That they should instead be called as witnesses.

5. I have considered the application, the affidavits on record, the grounds of opposition and the submissions made. There is no denial that the 1st defendant and the applicants are all beneficiaries of the estate of Juma Ganadza (deceased). They all have an interest in the property of the said estate. This being a land matter and the applicants having claimed and shown that they have an interest in the suit property, I feel their claim for whatever is worth ought to be heard on merits. Accordingly, I allow the applicants' application for them to be joined in the suit as defendants. The applicants will in accordance with Order 7 of the Civil Procedure Rules, file their defences and counter-claim, if any, within fourteen (14) days from the date of this ruling, and the plaintiff may file a reply to the defence and counter-claim, if any within fourteen (14) days of service of the defence and counter-claim after which the matter will proceed for pre-trial directions. The costs of the application will be in the cause.

Dated, signed and delivered at Mombasa this 20th day of December, 2018.

C. K. YANO

JUDGE