



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

IN MERU

ORIGINATING SUMMONS NO. 101 OF 2016

AND

IN THE MATTER OF THE LAND REGISTRATION ACT

AND

IN THE MATTER OF THE REGISTRATION OF ACTIONS ACT

PAUL MWENDA M'INOTI (suing in his capacity as administrator

ad litem of the estate of HELLEN KARAMBU M' INOTI- deceased).....PLAINTIFF

VERSUS

PETER KIRIMA IMATHIU.....DEFENDANT

CATHERINE MWENDWA.....INTERESTED PARTY/APPLICANT

RULING

1. The application for the court's consideration is the Chamber Summons dated 2nd October 2018 brought under **Section 1A, 1B and 3A of the Civil Procedure Act, Order 1 Rules 10 and 25 of the Civil Procedure Rules** seeking orders that Catherine Mwendwa be made party in this suit.

2. The application is premised on the grounds stated on the face of it together with the supporting affidavit of Catherine Mwendwa who averred that the plaintiff is her uncle, the administrator of her mother's (Hellen Karambu) estate. Together with her mother they were in occupation of LR. No. NYAKI/MUNITHU/1480 and 1481 since the year 1993 and nobody protested. Her mother died in 2010 and they buried her on the said property and before her death they enjoyed peaceful possession. That she has made the said property her home, took over all her mother's developments making a livelihood out of it and therefore, if deprived of this land, she will be rendered homeless. She further stated that she is a beneficiary of her mother's estate and has entitlement to the land through adverse possession.

3. The application was set to be heard inter-parties on 6th November 2018 but despite service the defendant was absent. Advocate Mr. Muchiri for the plaintiff asked for the court to allow the application because it was not opposed.

4. The issue for determination is whether to enjoin the said Catherine Mwendwa as an interested party to this suit. Order 1 rule 10 (1) provides that:

“Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.”

5. I find that the applicant has demonstrated that she is indeed an interested party. As such, the application is allowed in terms of Prayer 1, but costs shall be in the cause.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 17TH DECEMBER, 2018 IN THE PRESENCE OF:-

C/A: Kinoti

Muchiri for applicant

HON. LUCY. N. MBUGUA

ELC JUDGE