



REPUBLIC OF KENYA
IN THE E.L.C. COURT OF KENYA AT EMBU
E.L.C NO 30 OF 2014
FORMERLY ELC 674 OF 2013

NGARI NGURU.....APPLICANT

VERSUS

JOSPHAT MACHARIA KARACHI.....1ND RESPONDENT

STEPHEN MUYA CHEGE.....2ND RESPONDENT

SUSAN NYAMBURA MACHARIA.....3ND RESPONDENT

ESTHER MUTHONI MACHARIA.....4ND RESPONDENT

CYRUS KARACHI MACHARIA.....5TH RESPONDENT/APPLICANT

HENRY MWANGI NDUNGU.....6TH RESPONDENT

JOSEPH MUIRURI KAMUNDU.....7TH RESPONDENT

AND

IGOKI NGURU.....1ST INTERESTED PARTY/RESPONDENT

CECILY MWENDIA.....2ND INTERESTED PARTY/RESPONDENT

RULING

1. On or about 22nd April 2016, the firm of R.W. Chege and Associates Advocates filed a Notice of Motion dated 22nd April 2016 on behalf of the Applicant Cyrus Karachi Macharia, who intended to be joined in these proceedings as the 5th Respondent.

2. The said application was supported by the affidavit of Cyrus Karachi Macharia sworn on the date of filing. It is sworn in the said affidavit that he is the son of the 1st Respondent who is now deceased and that he is the administrator of the estate of his late father. A copy of the grant of letters of administration intestate was attached as exhibit CKM 1.

3. It is also stated by the Applicant that the original Applicant in this suit died sometime in 2015 and the

concerned family members have been reluctant to take out letters of administration despite a citation being served upon some of them in a succession cause under the Law of Succession Act (Cap 160).

4. The court was also informed by counsel for the Applicant that the limited grant *ad litem* was issued to the mother of the deceased on 22nd April 2016 for purposes of the pending suits including the instant one.

5. The said application was served upon the firm of Macharia Muraguri & Co Advocates for the original Applicant by registered post and personally upon the firm of Muriuki Njagagua & Co Advocates for the 2nd Respondent. The served firms did not turn up for hearing of the said application on 7th March 2017 when it was scheduled for hearing. I was also informed that the other Respondents have never entered appearance in these proceedings.

6. The advocate for the intended 5th Respondent prosecuted her said application before me and urged the court to allow the same since it was not opposed.

7. I have considered the said application and I am inclined to grant prayers 2 and 3, that is, the prayer for enlargement of time and the substitution of the 1st Respondent with Cyrus Karachi Macharia as the 5th Respondent in the proceedings.

8. I have also considered prayer 4 seeking to join the mother and wife of the original Applicant in the Originating Summons (who is deceased) as interested parties. I am hesitant to join them as such in view of the fact that they appear to be reluctant to act on the citation served upon them under the Law of Succession Act. These two individuals appear to be persons who have legal capacity to seek to join the proceedings and to determine the capacity in which they may want to participate. It would not be appropriate for the 5th Respondent or the court to join them against their will or to choose for them the capacity in which to participate in the proceedings.

9. It is, therefore, my view that the proposed interested parties ought not to be joined as such at this stage. They are, however, at liberty to make their own application to be joined, in whatever capacity, in the pending proceedings given that the mother of the deceased Applicant, Igoki Nguru, has been granted a limited grant *ad litem*, she may also apply for substitution to join the proceedings in place of her deceased son.

10. The upshot of the foregoing is that the Notice of Motion dated 22nd April 2016 partially succeeds in the following terms:

- a) Prayer Nos. 2 and 3 are hereby allowed.
- b) Prayer No. 4 is hereby disallowed.
- c) The costs of the application shall be in the cause.
- d) A date for directions shall be fixed after delivery of the ruling.

Orders accordingly.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **15th** day of **MARCH 2017**

In the presence of R.W Chege for the 5th Respondent and in the absence of all the other parties.

Court clerk Njue

Y.M. ANGIMA

JUDGE

15.03.17