



REPUBLIC OF KENYA
IN THE E.L.C. COURT OF KENYA AT EMBU

E.L.C. NO. 15 OF 2016

EVANSON MWANGI KIHUMBA.....PLAINTIFF

VERSUS

EVELYN WAMUYU NGUMO.....1ST DEFENDANT

THE LAND REGISTRAR.....2ND DEFENDANT

THE ATTORNEY GENERAL.....3RD DEFENDANT

DAISY NJERI NDWIGA.....4TH DEFENDANT

CHARLES N. MUSAU.....5TH DEFENDANT

AND

SILAS MURIITHI MBUI.....INTERESTED PARTY

RULING

1. By a Notice of Motion dated and filed on 11th April 2017, the Applicant, Silas Muriithi Mbui, sought to be joined in this suit as an Interested Party. The main reason for seeking such an order was that he is the son of one Mbui Kobuthi (deceased) who was the original owner of the suit property which was fraudulently transferred to third parties. He further stated by way of a further affidavit that he was the holder of letters of administration *ad litem* for the purpose of filing a succession cause or civil case for the benefit of the deceased's estate.

2. The Plaintiff's counsel opposed the said application and he relied upon his own replying affidavit sworn on 20th April, 2017 and filed in court on 21st April, 2017. Mr Joe Kathungu for the 4th Defendant did not oppose the application whereas the 1st, 2nd and 3rd Defendants did not turn up either to oppose or support the application.

3. Mr Andande for the applicant prosecuted his application and he relied entirely upon the grounds shown on the face of the application and the supporting affidavit sworn by the intended interested party on 11th April, 2017. He also relied upon the provisions of Article 50 of the Constitution of Kenya on fair trial and urged the court to allow the application.

4. Mr Guantai for the Plaintiff opposed the said application and submitted that there was no evidence that the applicant is the son of the late Mbui Kobuthi since he did not exhibit any evidence to that effect such

as a birth certificate, chief's letter, death certificate, etc. He further submitted that the applicant had not established any specific claim over the suit property since no succession proceedings had been filed or concluded in respect of the estate of the deceased Mbui Kobuthi.

5. Mr Guantai for the Plaintiff also submitted that his client was the 3rd registered owner of the property having bought it from a Mr Paul Njeru Kamara who was the 2nd registered owner after purchasing it from Mbui Kobuthi. It was his submission that if there was any fraud in the acquisition or transfer of the suit property from Mbui Kobuthi then such claim could only lie against Paul Njeru Kamara and not the Plaintiff since there was no privity of contract between the Plaintiff and the late Mbui Kobuthi.

6. In further opposition to the said application, Mr Guantai submitted that Article 50 of the Constitution of Kenya did not apply to this case as the Article applies to the rights of accused persons only. He also submitted that if the applicant had a cause of action he was at liberty to file his own suit.

7. I have considered the rival submissions by counsel for the Plaintiff and the applicant. The main issue for determination is whether or not the applicant has made out a case for joinder in the proceedings as an interested party.

8. The applicant claims to be the son of the late Mbui Kobuthi who was the first registered proprietor of Title No. Gaturi/Weru/377 which is the subject matter of the main suit herein although it has since been sub-divided into 10 portions. The applicant is also the holder of a limited grant in respect of the estate of one Mbui Kobuthi (deceased) for the purpose of filing succession or civil proceedings for the benefit of the estate. The applicant claims that his late father was the first registered owner of the suit property which was allegedly fraudulently transferred to third parties including the Plaintiff herein. He therefore sought to be joined in the suit in order to protect the interest of the estate of his late father.

9. Blacks Law Dictionary, 9th Edition, defines an interested party as;

“A party who has a recognizable stake (and therefore standing) in a matter.”

10. In my opinion, although a filial relationship of its own may not necessarily give a party a recognizable interest in legal proceedings, the appointment as a legal representative would certainly be sufficient. The further affidavit filed by the applicant exhibited a limited grant issued for the purpose of filing succession or civil proceedings for the benefit of the estate of the late Mbui Kobuthi. At this stage therefore, the applicant is not seeking to be joined in the proceedings solely as a son of the deceased but also as a legal representative of the deceased.

11. The one thing which is not clear at this stage is whether the Mbui Kobuthi who was the first registered owner of parcel 377 is the same Mbui Kobuthi in respect of whose estate the applicant is holding a limited grant. That is an issue best resolved at the trial of the action.

12. I have considered the provisions of Article 50 of the Constitution of Kenya. It is not true that the Article applies to accused persons only. It is true that most of the sub-articles deal with the rights of accused persons but the article is headed “*fair hearing*” and sub-article 1 provides that:

“Every person has the right to have a dispute that can be resolved by the application of the law decided in a fair and public hearing before a court or, if appropriate, another independent or impartial tribunal or body.”

The court is not persuaded that the said provisions are restricted to accused persons in criminal proceedings only.

13. The question of whether or not the applicant has a cause of action against the Plaintiff or any other parties does not, in my view require consideration or determination at this stage. All that the applicant needs to do is to satisfy the court that he has some recognizable stake in the subject matter of the suit.

14. The upshot of the foregoing is that the applicant's Notice of Motion dated 11th April, 2017 has merit and the same is hereby allowed. Costs of the application shall be in the cause.

15. I have deliberately avoided delving into or commenting upon the pending criminal cases in the magistrate's court because I do not wish to prejudice the trial of those cases. It was also not necessary to consider them for the purpose of the instant application.

Orders accordingly

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

In the presence of Mr Makori holding brief for Mr Guantai for the Plaintiff, Mr Ireri holding brief for Mr Andande for the interested party and in the absence of the Defendants.

Court clerk Mr Njue.

Y.M. ANGIMA

JUDGE

15.06.17