



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 521 OF 2013

JOSEPH NJIRAINI MURIITHI.....PLAINTIFF

VERSUS

BETH WANJIRA MURIITHI.....1ST DEFENDANT

AGNES WAKUTHII WACHIRA.....2ND DEFENDANT

ANTHONY MBITHI WACHIRA.....3RD DEFENDANT

SUSAN NJERI MUNENE.....4TH DEFENDANT

MARGARET WAKIURU MURATHI.....INTERESTED PARTY

JANE KIRUNDA NJIRAINI.....1ST INTENDED INTERESTED PARTY

B M N (Minor) Sued on behalf of the mother as next friend).....2ND INTENDED
INTERESTED PARTY

S W N (Minor) Sued on behalf of the mother as next friend).....3RD INTENDED
INTERESTED PARTY

RULING

This is in respect to the intended interested parties application dated 29th May 2015 and filed herein on 3rd June 2015 brought under the provisions of **Order 1 Rule 10 and 15 of the Civil Procedure Rules** seeking the following orders:-

1. *That this Court enjoins the intended interested parties in these proceedings.*
2. *That costs of this application be provided for.*

The said application is based on the grounds set out therein and supported by the affidavit of **MARGARET WAKIURU MURATHI** in which she has deponed, inter alia, that she is the elder sister of the plaintiff while the 1st and 2nd defendants are sister-in-law and aunt to the 1st, 2nd and 3rd intended interested parties and that prior to his death, their late father had sub-divided his land parcel No. **MUTIRA/KIRUNDA/85** into various portions with the purpose of sharing it out among his children but the plaintiff took advantage of his illness and transferred the resultant sub-divisions to himself and to the intended interested parties in total disregard of their late father's wish.

The defendants did not oppose the application but the plaintiff filed a replying affidavit in which he deponed that the application offends the provisions of **Order 10 and 15 of the Civil Procedure Rules** as it does not indicate which Sub-rule it is brought under and secondly the 1st interested party has no capacity to file such an application on behalf of the 2nd and 3rd interested parties.

Submissions have been filed both by Mr. Murigu advocate for the intended interested parties and Mr. Gacheru advocate for the plaintiff/respondent.

I have considered the application, the rival affidavits and submissions by counsels.

It is true that **Order 1 Rule 10 of the Civil Procedure Rules** has four (4) Sub-rules but the intended interested parties have not indicated which Sub-rule this application has been brought under. However, I do not think that the want of form has caused any prejudice to the plaintiff/respondent in this case as he knows what case he has to meet and has responded to it. Besides, that defect is a mere technicality that **Article 159 2 (d) of the Constitution** was meant to address. Similarly, **Order 2 Rule 14 of the Civil Procedure Rules** provides as follows:-

“No technical objection may be raised to any pleading on the ground of any want of form”

It is clear from the body of the application that the intended interested parties want to be enjoined in that capacity. **Order 1 Rule 10 (2) of the Civil Procedure Rules** grants the Court powers at any stage of the proceedings either upon or without application to enjoin a party either a plaintiff or defendant or any party ***“whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit be added”***. An interested party is defined in **BLACK’S LAW DICTIONARY 9th Edition** as one who has a recognizable stake (and therefore standing) in a matter. Clearly therefore, if any party can demonstrate at that early stage where proceedings have not even commenced (as in this case) that he has a claim or other interest over the subject matter in dispute, a joinder should be allowed so that all matters can be conveniently tried in one suit rather than having multiple suits. That is also in keeping with the overriding objectives of the **Civil Procedure Rules** which are to facilitate the efficient, just, expeditious proportionate and affordable resolution of disputes. It is also important to note that under **Order 51 Rule 10 of the Civil Procedure Rules**, while it is provided that an application must indicate under which rule it is brought, no application shall be defeated merely for want of form that does not affect the substance of the application. It is clear to me that the substance of this application is not in doubt.

What is the interest of the intended interested parties in this case? According to the supporting affidavit of the 1st interested party, she is the sister to the plaintiff and the land subject matter of this case belonged to their late father who intended to share it out among his children but during his illness, the plaintiff took advantage to transfer portions thereof to himself. It is clear from that supporting affidavit that the 2nd and 3rd interested parties are part of one and the same family. Given that relationship, it is in the interest of justice that the said intended interested parties are allowed to be enjoined in these proceedings to enable the Court adjudicate and settle all the questions involved in this dispute.

In the circumstances, I find that the Notice of Motion dated 29th May 2015 and filed herein on 3rd June 2015 is well merited. It is allowed. Costs in the cause.

B.N. OLAO

JUDGE

26TH FEBRUARY, 2016

Ruling delivered this 26th day of February, 2016 in open Court

Mr. Macharia for Mr. Kagio for 3rd Defendant present

Mr. Mwai for Mr.Gacheru for Applicant present.

B.N. OLAO

JUDGE

26TH FEBRURY, 2016