



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELC CASE NO. 126 OF 2013

ISAAC KIRUBI KINYUA alias

KIRUBI S/O KINYUA.....PLAINTIFF/RESPONDENT

-VERSUS-

GITHAKA KINYUA.....DEFENDANT

JAMLECK MAINA KINYUA.....APPLICANT

RULING

1. This is an application by the proposed Interested Party, brought by way of Notice of Motion dated **27th September, 2016** in which he seeks to be enjoined in the suit.
2. His application is premised on the grounds on its face and is supported by his affidavit sworn on **27th September, 2016**. In that affidavit, he depones that the parties in this suit are his brother and half brother; that the suit property, **Kirimukuyu/Mutathini/40**, is family land that was registered in the names of the plaintiff and defendant in 1959 during land demarcation. It is his contention that because of his relation to the parties and this being family land, he has an equal interest in the suit property and should be joined as a party in the suit. He further states that his presence in the suit will enable the court adjudicate upon and settle all issues relating to the suit property.
3. The application is opposed. In his replying affidavit sworn on **3rd November, 2016** the respondent depones that the applicant is not a necessary party in these proceedings as he has no interest in the suit property because firstly, he is not a son of the late Kinyua Kirubi as he was born sometime in the 60's while their father died in 1943 and secondly, he hadnot been born by the time the applicant was registered as owner of the suit property. It is his contention that the application is hopelessly time barred and unsustainable in law.
4. The application was heard on **7th December, 2016** with **Mr Okeke** appearing for the proposed interested party/applicant and **Mr. Waweru Macharia** for the respondent.
5. Mr. Okeke relied on the applicant's supporting affidavit and reiterated its contents. In addition he submitted that the issues raised in the replying affidavit should be raised in the defence to the claim but not in the instant motion.
6. Mr. Macharia solelyrelied on the replying affidavit sworn by the respondent on 3rd November, 2016.

7. **Order 1 Rules 1, 3 and 8** of the Civil Procedure Rules (CPR) provides for Joinder of parties. The factors which the court considers in an application for joinder are those set out in **Order 1 Rule 1**. These are;

“existence of any right to relief in respect or arising out of the same act or series of acts or transactions alleged to exist whether jointly, severally or in alternative where, if such persons brought separate suits any common question of law or fact would arise.”

8. The issue for the court to determine is whether the applicant has demonstrated that he has an interest that warrants him to be enjoined to these proceedings. In his supporting affidavit, the applicant has deponed that the parties in this suit are his brothers and that the suit property is family land therefore any determination made in this suit will affect his interest as he is entitled to a share of the suit property. The respondent has not denied that the suit property is family land or that the applicant is a family member. The issues raised by him on whether he is a child of his father or not and whether he is entitled to a share of the suit property should be raised in defence and addressed during the hearing of the suit.

9. Being a brother and step brother to the parties in this suit, I am of the view that the applicant has demonstrated sufficient interest to warrant his joinder as a necessary party in these proceedings. Any orders made in this suit will definitely affect his interests in the suit property. Further, I do not see what prejudice the respondent stands to suffer if the applicant is allowed to join these proceedings. For the above reasons, the application is found to have merit and is allowed as prayed.

Orders accordingly.

Dated, signed and delivered in open court at Nyeri this 9th day of December, 2016.

L N WAITHAKA

JUDGE.

In the presence of:

Mr. Nderi h/b for Mr. Okeke for the defendant and Interested applicant

Mr. Ombongi h/b for Waweru Macharia for the plaintiff/responded

Court assistant - Esther