



ENVIRONMENT AND LAND COURT

AT MALINDI

LAND CASE NO. 43 OF 2012

SAID SALIM OMAR.....PLAINTIFF

=VERSUS=

JAPHET ENOCK MRABU.....DEFENDANT

GLADYS DAMA BILAHU.....INTERESTED PARTY

RULING

Introduction

1. What is before me is the Interested Party's Application dated 28th February, 2014 filed pursuant to Order 1 Rule 3 and 10 (2) of the Civil Procedure Rules. The Application is seeking for the following orders:

(a) THAT the Interested Party GLADYS DAMA BILAHU be enjoined as a Defendant in this case and she be granted leave to Defend the Plaintiff's claim.

(b) THAT the costs of this application be costs in the cause.

The Interested Party's/Applicant's case:

2. It is the Applicant's case that she is the sister of Enock Mrabu and a daughter of the late Japhet Bilahi who was the owner entitled to possession of the suit property which he had developed.
3. It is the Applicant's deposition that during the registration process, his brother, the late Enock Mrabu registered himself as the owner of the property; that the said Enock Mrabu held the suit property in trust for the family of Japhet Bilahi and that as a family they filed a case when he tried to sell the property to the Plaintiff.
4. The case in the lower court was compromised out of court on the understanding that the transactions over the properties are rescinded and any deposit paid be refunded. Consequently, it was depone, the Interested Party being a direct beneficiary to the Estate of Japhet Bilahi has a valid interest in the ownership of the suit premises.

Plaintiff's/Respondent's case:

5. The Plaintiff's advocate filed his Grounds of Opposition and averred that the Applicant has no *locus standi* to file the current Application.
6. The Interested Party's advocate filed his submissions on 18th March 2014 which I have considered. The Plaintiff's advocate did not file any submissions.

Analysis and findings:

7. It is on record that the Defendant's family had objected to the sale of the suit property to the Plaintiff. This fact was admitted in the Plaintiff's supporting affidavit sworn on 6th November, 2012 in which he stated as follows:

“That a meeting was held in which meeting the late Mrabu's family members asked that the sale of the two plots be nullified but I did not accept their request.”

8. It is therefore obvious that the Defendants family, whether rightfully or not, have an interest in the suit property and in the outcome of this suit. The Interested Party is therefore a necessary party for the effectual and complete determination of the real issues in dispute.
9. In the circumstances, I allow the Interested Party's Application dated 28th February, 2014 as prayed.

Dated and delivered in Malindi this **20th** Day of **June,** 2014

O. A. Angote

Judge