



Kiruhi (Sued as an administrator of the Estate of Hannah Mukami Kiruhi v Ngatho & another; Moki Savings Co-Operative Society Ltd & 20 others (Interested Parties) (Civil Appeal (Application) E847 of 2022) [2023] KECA 182 (KLR) (17 February 2023) (Ruling)

Neutral citation: [2023] KECA 182 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E847 OF 2022
KI LAIBUTA, JA
FEBRUARY 17, 2023**

BETWEEN

LUCY WANJIRU KIRUHI (SUED AS AN ADMINISTRATOR OF THE ESTATE OF HANNAH MUKAMI KIRUHI) APPLICANT

AND

LILIAN WAIRIMU NGATHO 1ST RESPONDENT

ELIZABETH MURUNGARI NJOROGE 2ND RESPONDENT

AND

MOKI SAVINGS CO-OPERATIVE SOCIETY LTD INTERESTED PARTY

BEATRICE NJERI GACHUKIA INTERESTED PARTY

JOYCE WARINGA NJUGUNA INTERESTED PARTY

SUSAN MUGURA NJUGUNA INTERESTED PARTY

JAMES NJOROGE MWANGI INTERESTED PARTY

SAMUEL KARIMI KARIGI INTERESTED PARTY

VENENSIO MBATARU KARIUKI INTERESTED PARTY

MICHAEL MBIRA NGINGI INTERESTED PARTY

FRANCIS KARIUKI MACHARIA INTERESTED PARTY

GEORGE MURIGU GITHUKU INTERESTED PARTY

SAMMY THUMBI NYAMBARE INTERESTED PARTY

SIMON GATHII MACHARIA INTERESTED PARTY

JAMES NDUATI KURIA INTERESTED PARTY



JAMES MARAGWA WERU INTERESTED PARTY
 JUSTINE WILLY KARIUKI INTERESTED PARTY
 JAMES MATHU WAKABA INTERESTED PARTY
 DAVID MWANGI G GUCECA INTERESTED PARTY
 JAMES NJOROGE NJAU INTERESTED PARTY
 CECILIA NDURUKA INTERESTED PARTY
 RICHARD GICHINI NJOROGE INTERESTED PARTY
 BETH WAIRIMI KAHIU INTERESTED PARTY

(Being an application under Rule 49(5) of the Court of Appeal Rules, 2022)

RULING

1. The applicant, Lucy Wanjiru Kiruhi, is the administratrix of the estate of Hannah Mukami Kiruhi (Deceased). She moved this Court vide her Notice of Motion dated January 13, 2023 supported by her annexed affidavit sworn on even date, and anchored on 10 grounds set out on the face of the Motion in which she sought orders, *inter alia*, that her application be certified urgent pursuant to rule 49 of the *Court of Appeal Rules*.
2. The applicant’s Motion came for hearing before me on January 16, 2023. Upon reading the certificate of urgency dated January 13, 2023, the applicant’s notice of motion and the affidavit of learned counsel for the applicant, Boniface Njiru, sworn on January 13, 2023 in support thereof, as well as the ruling of Oguttu Mboya, J dated October 13, 2022, I certified the application not urgent.
3. By a letter dated January 19, 2023, the applicant requested that her Motion be placed before me to hear and determine the question of urgency inter partes. To this end, the applicant’s Motion was set for hearing inter partes on February 2, 2023 at 2 pm on the GoTo Meeting virtual platform.
4. When called out, learned counsel Mr Boniface Njiru appeared for the applicant and for the 13th to 21st Interested Parties. The 1st and 2nd respondents were represented by learned counsel Mr Kuria, while learned counsel Mr Masore Nyang’au appeared for the 2nd to 6th Interested Parties. On their part, the 7th to 12th Interested Parties were represented by learned counsel Mr Karuga Maina. The 1st Interested Party, Moki Savings Co-Operative Society Ltd (“the Society”), was unrepresented.
5. The applicant’s appeal herein and the Motion sought to be certified urgent were prompted by the ruling of Ogutu Mboya, J dated October 13, 2022 by which the learned Judge dismissed the applicant’s Notice of Motion dated July 7, 2022 in which she sought to have the Society (the 1st interested party) struck out from the proceedings in the Environment and Land Court at Nairobi ELC Suit No 745 of 2001 (OS). In addition, the learned Judge directed that the substantive suit proceeds to hearing and determination on its merits on 7th and February 8, 2023.
6. Dissatisfied by the ruling of the learned Judge, the applicant has moved to this Court on appeal and, in addition, applied for stay of proceedings in the ELC pending appeal, and for certification of her Motion as urgent.
7. In his written submissions dated February 1, 2023, and in his oral highlights, counsel for the applicant stated that the applicant was neither a shareholder nor a director of the Society; that she comes on



appeal as the administratrix of the estate of her deceased mother, who had no dealings in the Society; that the Society was incorporated by her deceased father, who was not party to the proceedings in the ELC; that the Society has been inactive for the last 30 years; that, according to her, she only sought to have the Society excluded from all proceedings in the ELC on account of the fact that the 1st Interested Party was connected with her deceased father; and that the Society had never been served with summons to enter an appearance, and that it had never filed a defence in the proceedings.

8. Learned counsel for the 2nd to 6th Interested Parties, Mr Masore Nyang'au, filed written submissions dated February 1, 2023 opposing the applicant's Motion. In his oral highlights of his submissions, counsel contended that the applicant had no locus standi to file the instant application, and that the same was by no means urgent.
9. Learned counsel for the 7th to 12th Interested Parties took sides with counsel for the 2nd to 6th Interested Parties. They urged me to certify the applicant's Motion as not urgent. On their part, learned counsel for the 1st and 2nd respondents took no position in the matter and left it to my discretion.
10. I have carefully considered the applicant's motion, the grounds on which it is anchored, the affidavits in support thereof, the written and oral submissions of learned counsel for the applicant, counsel for the respondents, and for the Interested Parties. From the record as put to me, it is clear that the impugned ruling was made in a case filed way back in 2001, giving the Society or counsel on its behalf more than 21 years to take such steps as may be desired for its benefit; and that I find nothing in her application to suggest that her motion for orders to stay proceedings in the ELC is by any means urgent. Accordingly, I stand by my earlier decision to certify the applicant's motion not urgent.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF FEBRUARY, 2023.

DR. K. I. LAIBUTA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

