



Hefti & another (Suing as administrators of the Estate of the Late Daniel Bernhard (Deceased) v Reinhard & 3 others; Ngombo (As Attorney & Agent of Dr Jur Stefan Muller, Executor of the Estate of Daniel Hefti) (Intended Plaintiff) (Environment & Land Case 75 of 2019) [2024] KEELC 4543 (KLR) (6 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4543 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 75 OF 2019**

**EK MAKORI, J
JUNE 6, 2024**

BETWEEN

ELSBETH REINHARD HEFTI, DANIEL BERNHARD REINHARD (SUING AS ADMINISTRATORS OF THE ESTATE OF THE LATE DANIEL BERNHARD (DECEASED) PLAINTIFF

AND

**JOYCE JEPLETING REINHARD 1ST DEFENDANT
THE CABINET SECRETARY IN CHARGE OF LANDS 2ND DEFENDANT
REGISTRAR OF TITLES, MOMBASA 3RD DEFENDANT
THE ATTORNEY GENERAL 4TH DEFENDANT**

AND

STEPHEN KITHI NGOMBO (AS ATTORNEY & AGENT OF DR JUR STEFAN MULLER, EXECUTOR OF THE ESTATE OF DANIEL HEFTI) INTENDED PLAINTIFF

RULING

1. The first and second plaintiffs' applications, dated 14th June 2023, by the 1st and 2nd plaintiffs, seek to have Mr. Stephen Kithi M Ngombo represent them as an authorized agent by virtue of a Power of Attorney donated to him.
2. In the second application dated 10th July 2023, Mr. Stephen Kithi Ngombo is joined in this suit as a third plaintiff representing Dr. Jur. Stefan Muller, the will executor. The applications are opposed. Parties canvassed the same by way of written submissions.



3. Mr. Ngombo argues that the 1st and 2nd plaintiffs filed the suit herein in their dual capacity as heir of the Estate of the deceased Daniel Bernard Hefti on the one hand and the other hand as Administrators intestate of the estate, appointed pursuant to the grant of confirmation of grant probate issued in Malindi Succession Cause No. 47 of 2008.
4. The Succession Cause Intestate was filed and prosecuted by the 1st defendant as an Attorney and Agent of the 1st and 2nd plaintiffs applicants. The 1st defendant swore averments and produced in evidence all annexures in that cause. She was also appointed as a holder of Power of Attorney, which was donated to her by the executor of the written will of Dr. Jur Stefan Muller, who was only appointed by the written will. That the executor has now donated a Power of Attorney directly to him - Mr. Stephen Kithi Ngombo running in parri passu with the one initially donated to the 1st plaintiff and by necessary application, superior to any other power(s) of Attorney earlier donated by the plaintiff to the 1st defendant all of which have been revoked.
5. Since she is now a defendant, Mr. Stephen Kithi Ngombo will want to assume the role of the 1st defendant/respondent in the earlier suits.
6. He argues that she also appointed Moses Kipkurgat Rop to represent her while abroad and that leave was granted to her in these proceedings.
7. Mr. Ngombo argues that the Law on Power of Attorney had not changed when he wanted to appear; the parties opposed it because he had no Powers of Attorney. Now that he has acquired one, they cannot be heard to oppose it.
8. He argues that Article 48 of the [Constitution](#) grants the Executor of the written will, Dr. Jur Stefan Muller, the right to access justice in person or through his appointed Attorney/recognized Agent. Equality of the law under Article 27 of the [Constitution](#) demands that both parties be treated equally. Since the 1st defendant had been granted leave to be represented by a duly recognized Agent, the same should be accorded to Dr. Jur Stefan Muller.
9. If the Court seeks to limit those rights under Article 24 of the [Constitution](#), the same must be established by law or statute, and the limitation must be reasonable and justifiable in a democratic, open society.
10. No prejudice will be occasioned against the respondents if this is allowed.
11. The 1st Respondent, in a rejoinder, opposes the applications and the documents filed and dated 14th June 2023, together with the authority to appear.
12. That the affidavit in support is not commissioned and that the application is incompetent. It contradicts Section 5 of the [Oaths and Statutory Declarations Act](#) Cap 15 Laws of Kenya. (see [Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 others](#) [2018] eKLR.
13. 1st respondent states that the application is also brought under the provisions of Sections 45, 47, and 79 of the [Law of Succession Act](#) Cap 160 laws of Kenya. By dint of Section 47, the applicant invokes the High Court's powers in probate matters. (See [Josephine Wambui v Margaret Wanjiru Kamau & another](#) (2013) eKLR.
14. The 1st respondents aver that the applicant seeks to be added as a third plaintiff. This offends Order 1 Rule 10 of the Civil Procedure Rules. None of the parties consented to his joinder in the matter. The applicant has yet to be appointed an administrator in the Mombasa Succession Cause. An attempt to file a parallel Cause in the Malindi was thwarted. He has not obtained a letter of administration probate as required by law (see [Virginia Edith Wamboi Otieno v Joash Ochieng Ougo](#) [1987] eKLR.



15. The 1st respondent argues that the applicant will be conflicted if the applications are allowed. He will instruct himself and act on behalf of the plaintiffs. A clear demonstration is where he draws documents, signs them, files them, and proceeds to prosecute. He wants to subvert justice. He has been forum shopping. There were directions that the plaintiffs were to appear in Court physically. The documents he has filed already purport to infer that the Court granted him leave to appear for the parties as their Recognized Attorney or Agent, yet leave has never been granted to him by this Court
16. On the abuse of the Court process, the decisions in *Arthur Wamiti Njoroge v the Disciplinary Tribunal & another* [2017] and *Stephen Somek Takwenyi & another v David Mbutia Githare & 2 Others Nairobi* (Milimani) HC No. 363, the 1st respondent is of the view that this is one of those instances of abuse of the Court process where several matters are commenced in various forums touching on the same issue.
17. On authority to appear for the 1st and 2nd plaintiffs, the 1st respondent argues that the applicant has not been joined in the matter to act; for the 1st and 2nd plaintiffs, this is contrary to Order 1 Rule 2, 12, and 13 of the *Civil Procedure Rules*.
18. The bundle of documents by the 1st plaintiff is signed ‘for,’ contrary to Order 9 Rule (1) of the *Civil Procedure Rules*. The same should be expunged.
19. I frame the issues for this Court’s determination as to whether the applicant should be granted leave to appear for the parties in the manner proposed by the Powers of Attorney granted to him and whether he should be allowed to be joined as a third plaintiff.
20. The Powers of Attorney held by the applicant are said not to be registered. This has not been disputed, meaning they have no force of law.
21. On joinder as a 3rd plaintiff, in *Zepbir Holdings Ltd v Mimosa Plantations Ltd, Jeremiah Maztagaro and Ezekiel Misango Mutisya* [2014] eKLR, the Court held as follows on joinder:

“A proper party is one who is impleaded in the suit and qualifies the thresholds of a plaintiff or defendant under Order 1 rule 1 and 2 respectively, or as a third party or as an interested party and whose presence is necessary or relevant for the determination of the real matter in dispute or to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. The court has a wide discretion to even order suo moto for a party to be impleaded whose presence may be necessary to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. Accordingly, a suit cannot be defeated for mis-joinder or non-joinder of parties.”
22. I have taken quite a while to understand what the application(s) seek. Mr. Stephen Kithi Ngombo, learned counsel and an advocate of the High Court of Kenya as of right, wants to appear as an agent for the 1st and the 2nd plaintiffs. He has already been counsel representing the parties and has all the rights to do so under the *Constitution* of Kenya and the *Advocates Act* as long as he is in good standing in law practice in this country. No allegations have been levelled that he cannot practice law in this Country. He wants to move from that hallowed position of an Advocate of the High Court of Kenya to a recognized Agent. At the same time, he also wishes to come on record as 3rd plaintiff to represent the interest of the Executor of the will. He also hopes to descend to the litigation arena as a party. So, he will be acting in the role of an advocate (as of right), the role of a Recognized Agent, and the role of a litigator. He will be drafting, signing, and filing documents, testifying in Court, cross-examining witnesses, being cross-examined as a witness, examining witnesses as a counsel, et al. I think it will pose a challenge. He will be conflicted and may not assist this Court as an officer of the Court. His addition



as a Recognized Agent and 3rd plaintiff will mean he has taken over the matter from the initial litigators to himself, which will assist in convoluting this matter rather than settling the real issues in controversy. I need not belabour to discuss the other objections raised.

23. It will be unnecessary for him to be joined as a party but instead continue to act for the parties as a lawyer. The procedure he seeks to adopt is unknown in law. The entire application(s) he brought dated 10th July 2023 and that of the 1st and 2nd plaintiffs dated 14th of June 2023 be and are hereby dismissed with costs. Still, without any avoidance of doubt, Mr. Stephen Kthi Ngombo will be allowed to proceed as an advocate for parties if need be in this matter.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 6TH DAY OF JUNE 2024.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Kiponda holding brief for Mr. Kithi for the Plaintiffs

Mr. Songok for the 1st Defendant

Court Clerk: Happy

