



Jiwa (Suing as Executor of the Estate of Shamshudin Hasham Jiwa (Deceased)) v City Park Properties Investments Limited; Parpia (Suing as Administrator of the Estate of Roshan Hasham Jiwa (Deceased) (Interested Party) (Suing as Administrator of the Estate of the Roshan Hasham Jiwa (Deceased)) (Environmental and Land Originating Summons E026 of 2024) [2024] KEELC 7242 (KLR) (30 October 2024) (Ruling)

Neutral citation: [2024] KEELC 7242 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E026 OF 2024
LN MBUGUA, J
OCTOBER 30, 2024**

BETWEEN

**AMIN SHAMSHUDIN HASHAM JIWA PLAINTIFF
SUING AS EXECUTOR OF THE ESTATE OF SHAMSHUDIN HASHAM JIWA
(DECEASED)**

AND

CITY PARK PROPERTIES INVESTMENTS LIMITED DEFENDANT

AND

**MOEZ ABDULALI EBRAHIM PARPIA (SUING AS ADMINISTRATOR
OF THE ESTATE OF ROSHAN MOEZ ABDULALI HASHAM JIWA
(DECEASED) INTERESTED PARTY
SUING AS ADMINISTRATOR OF THE ESTATE OF THE ROSHAN HASHAM
JIWA (DECEASED)**

RULING

1. Before me is the Intended Interested Party's Notice of motion dated 21.5.2024 seeking orders to be enjoined as an Interested Party in this matter to safeguard the interests of the Estate of Roshan Hasham Jiwa. The application is founded on grounds on its face and on the Intended Interested Party's supporting affidavit sworn on 21.5.2024. He avers that he is the duly appointed administrator of the estate of Roshan Hasham Jiwa (deceased) who owns Maisonette No. 41 in Hirani Estate erected on LR 209/7573 and who passed away on 8.12.1991.



2. That the mode of ownership of title in the suit property is in the form of ownership of shares in the Defendant, of which title to the suit property and the share certificate of shares in the Defendant are both registered under Rosham Hasham Jiwa (deceased) which is evidenced by annual returns filed by the company in 2005, showing that she owned 62 shares.
3. He avers that his responsibilities as the administrator and dependant of the estate are directly impacted by the ongoing suit and his absence in the suit would impede his duties to safeguard the deceased's estate.
4. The Defendant supports the intended interested party's application vide the replying affidavit sworn on 23.7.2024 by its director, Naseem Sadrudin Ali Jina. He avers that the Plaintiff and the Intended Interested parties are cousins and that as things stand, there's a dispute as to the ownership of the suit property between the two parties and the same can only be solved after a full hearing.
5. In opposition to the application, the Plaintiff filed the replying affidavit sworn on 17.7.2024. He avers that the suit property belongs to the estate of the late Hasham Jiwa (deceased) vide a purchase from the Defendant. That the Defendant's CR12 shows that the said Hasham Jiwa (deceased) owns 62 shares in the Defendant and no suit has been instituted by the Intended Interested Party challenging the ownership and neither did he produce documents to evidence ownership.
6. He avers that this court has no jurisdiction to determine issues relating to the estate of the late Hasham Jiwa which are before the succession court in Nyeri HCP & A No. 45 of 1984, which court has jurisdiction to confer property to the beneficiaries of the said estate and not this court.
7. I have considered all the issues raised herein. The Plaintiff commenced this suit vide Originating Summons seeking to compel the Defendant to execute transfer documents over maisonette No. 41 in Hirani Estate in the plaintiffs favour. The Intended Interested Party seeks to be enjoined on the basis that Roshan Hasham Jiwa (deceased) owns the suit property.
8. Under Order 1 Rule 10 of the Civil Procedure Rules, this court has discretion to enjoin a party. The court has considered the threshold for joinder as stated by the Supreme Court in the case of *Communications Commission of Kenya & 3 Others v Royal Media Services Limited & 7 Others* [2014] eKLR.
9. I find that the Intended Interested Party has a stake in the matter, after all, the returns filed by the Defendant in 2005 indicate that Roshan Hasham Jiwa (deceased) owned 62 shares in the 2nd Defendant. Her estate may be deprived of her interest in the suit property without being heard. On the other hand, the Plaintiff has not demonstrated that he will suffer any prejudice on account of the joinder of the interested party. In the circumstances, the Intended Interested Party's application is found to be merited and is allowed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30th DAY OF OCTOBER, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Tama holding brief for Ochieng for Plaintiff

Otieno for Defendant

Kingori for the Intended Interested Party



Court assistant: Vena

