



**In re Estate of Jaswant Singh Boor Singh Dhanjal (Deceased) (Probate & Administration 20 of 2006) [2024] KEHC 3480 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3480 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
PROBATE & ADMINISTRATION 20 OF 2006**

**JN ONYIEGO, J**

**MARCH 20, 2024**

**IN THE MATTER OF THE ESTATE OF JASWANT  
SINGH BOOR SINGH DHANJAL (DECEASED)**

**BETWEEN**

**JOGINDER SINGH DHANJAL. ....1ST ADMNISTRATOR**

**SUKHWANT KAUR DHANJAL KUNDI.....2ND ADMNISTRATOR**

**BETWEEN**

**DALNJIT SINGH DHANJAL..... RESPONDENT**

**NIRMMAL SINGH DHANJAL.....1ST INTERESTED PARTY**

**SUKHWANT KAUR DHANJAL KUNDI.....2ND INTERESTED PARTY**

**DANJAL BROTHERS LTD.....3RD INTERESTED PARTY**

**ESTATE OF NARINDER SINGH DHANJAL.....APPLICANT**

**AND**

**MASS TRUST REGISTERED TRUSTEES.....INTENDED 4TH INTERESTED PARTY**

**MOHAMMED SHEIKH BIN SHEIKH.....INTENDED 5TH INTERESTED PARTY**

**FATMA ABUBAKAR SHARI.....INTENDED 6TH INTERESTED PARTY**

**GURE MOHAMED MUSA.....INTENDED 7TH INTERESTED PARTY**

**AHMADUNA HOUSINGS PROPERTIES.....INTENDED 8TH INTERESTED PARTY**



ABUDULHAKIMU FARAJ.....INTENDED 9TH INTERESTED PARTY  
HARON RASHID HAMISI..... INTENDED 10TH INTERESTED PARTY  
SUNAINA ABDULLA BREK..... INTENDED 11TH INTERESTED PARTY  
SAID ABDALLA SAID..... INTENDED 12TH INTERESTED PARTY  
FAIZA SWALLEH..... .. INTENDED 13TH INTERESTED PARTY  
ABDULHAKIM JAFFER ALI..... INTENDED 14TH INTERESTED PARTY  
ASHA BAKARI..... INTENDED 15TH INTERESTED PARTY

**BETWEEN**

JOGINDER SINGH DHANJAL ..... 1<sup>ST</sup> ADMINISTRATOR  
SUKHWANT KAUR DHANJAL KUNDI ..... 2<sup>ND</sup> ADMINISTRATOR

**AND**

DALNJIT SINGH DHANJAL ..... RESPONDENT

**AND**

NIRMMAL SINGH DHANJAL ..... INTERESTED PARTY  
SUKHWANT KAUR DHANJAL KUNDI ..... INTERESTED PARTY  
DANJAL BROTHERS LTD ..... INTERESTED PARTY

**AND**

ESTATE OF NARINDER SINGH DHANJAL ..... APPLICANT

**AND**

MASS TRUST REGISTERED TRUSTEES .... INTENDED INTERESTED PARTY  
MOHAMMED SHEIKH BIN SHEIKH ..... INTENDED INTERESTED PARTY  
FATMA ABUBAKAR SHARI ..... INTENDED INTERESTED PARTY  
GURE MOHAMED MUSA ..... INTENDED INTERESTED PARTY  
AHMADUNA HOUSINGS PROPERTIES .... INTENDED INTERESTED PARTY  
ABUDULHAKIMU FARAJ ..... INTENDED INTERESTED PARTY  
HARON RASHID HAMISI ..... INTENDED INTERESTED PARTY  
SUNAINA ABDULLA BREK ..... INTENDED INTERESTED PARTY  
SAID ABDALLA SAID ..... INTENDED INTERESTED PARTY  
FAIZA SWALLEH ..... INTENDED INTERESTED PARTY  
ABDULHAKIM JAFFER ALI ..... INTENDED INTERESTED PARTY  
ASHA BAKARI ..... INTENDED INTERESTED PARTY



## RULING

1. Before the Court for determination are Summons dated 5th December 2023 brought by the intended interested parties (hereafter the applicants) pursuant to Rule 59 of the Probate and Administration Rules, Section 47 of the Law of Succession Act, Section 1A,1B,3A and 63(e) of the Civil Procedure Act Cap 21 Laws of Kenya, Article 159 of the Constitution of Kenya and all other enabling provisions of the Laws of Kenya seeking orders as hereunder:
  1. That this matter be certified as urgent, service be dispensed and be heard ex-parte in the first instance.
  2. That this Honourable Court be pleased to arrest the judgement scheduled for delivery on 8<sup>th</sup> December,2023.
  3. That this Honourable court be pleased to grant leave to Mass Trust Registered Trustees And 11 Others to be enjoined in this suit as Interested Parties.
  4. That the cost of this application be provided.
2. The application is based on the particulars set out on the face of it and further amplified by averments contained in the affidavit sworn by Fahad Haji Mansur on 4<sup>th</sup> December 2023 on his own behalf and that of the rest of the applicants: It was deposed that at all material times relevant to this suit, the applicants are bonafide purchasers for value, occupiers and owners of Land Parcel Mombasa block-numbers; XVI/413,411,415,471,421,416,412,424,422,423,414,406,417,420 and 470 and 470.
3. That the said parcels of Land are products arising from subdivision of Mombasa/Block /XVI 292, 293, 294, 295, 296, 297, 298 and 299. He further averred that the said properties were acquired for value from Jaypee and sons limited who owned the same. That they are aware that the deceased person herein owned shares in Jaypee and sons Limited and distribution of the said shares is a matter in issue in this succession proceedings. According to the applicants, they were made aware of this suit after some of them were served with conservatory orders in the Mombasa ELC case No. E037 of 2023 consequences whereof Construction on their parcels of land was halted.
4. That upon further enquiry, it came to the Applicants' attention that the above listed properties were created as a result of sub-division of the now defunct parcels of land. That any orders and/or directions issued in this matter with regard to distribution of shares in Jaypee and Sons company Limited will directly affect the applicants' ownership and potentially the occupation of Mombasa/Block XVI/415. In the applicants' view, it is in the interest of justice and fairness that the judgement scheduled for 8<sup>th</sup> December,2023 is arrested pending the hearing and determination of this application.
5. Consequently, the applicants sought to be enjoined in this matter in order to give information over their ownership and occupation of the subject properties so that when the court retires to write its decision on distribution of assets of the deceased, it is well informed and appreciates the true position on the ground with regard to the assets of the deceased.
6. Upon service of the application, Joginder sikh Dhanjal Co-administrator opposed the application by filing grounds of opposition dated 13<sup>th</sup> February 2024 together with a replying affidavit sworn on the 1<sup>st</sup> February 2024 thus stating that; the proceedings herein have been pending since 2006 and any transaction executed after the year 2020 cannot affect its outcome; the purported sale of any of the deceased's estate in the year 2020 would amount to nothing less than intermeddling with the estate



by Nirmal Singh Dhanjal who is appearing as the plaintiff in ELC case number E037 of 2023; the aforesaid proceedings before the magistrate's ELC court have the County Government of Mombasa as the defendant hence no connection with these proceedings to necessitate arresting an eagerly awaited and long overdue Judgment; the application is fatally defective and incompetent, vexatious, baseless and dead on arrival; the applicants are not claiming beneficial interest on the estate and any sale of the deceased's estate after his death would amount to intermeddling with the estate. The court was thus urged to dismiss the application herein.

7. On the other hand, Daljit Singh Dhanjal also filed grounds of opposition dated 12<sup>th</sup> February 2024 thus stating that; the application is incompetent; the intended interested parties are not necessary parties as they do not seek to assist the court to reach a judicious determination of the matter and that their intention is to divert the course of the proceedings; the application is bad in law as it is not filed by people with demonstrable interest in the estate in the context expressed by the supreme court in the case of *Francis Muruatetu and another v Republic and 5 others* (2016) eKLR; the court herein lacks jurisdiction under Article 162(1) of the *Constitution* to hear and determine land ownership disputes under succession proceedings and; the claim is that of parties who bought land from unknown persons other than the deceased
8. When the matter came up for hearing, counsel for the applicants basically reiterated the particulars of the application and the content of the affidavit in support. The respondents equally adopted their respective responses.
9. I have considered the application herein and the responses thereof. There is no doubt that these proceedings have been pending since 2006 due to protracted litigation extending up to the court of appeal. There is no dispute either that after extensive hearing proceedings by way of viva voce evidence, this matter was fixed for judgment on 19<sup>th</sup> October 2023 but due to my personal medical constraints, it could not be delivered in time hence caught up with the instant application seeking to arrest its delivery.
10. The only issue for determination therefore is whether the applicants have met the threshold for joinder as interested parties. Order 7 Rule 9 of the *Civil Procedure Rule* states that;

The court may even on its own motion add a party to the suit if such party is necessary for the determination of the real matter in dispute or whose presence is necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit.
11. The above notwithstanding, joinder of parties is provided for in Order 1 Rule 10(2) of the *Civil Procedure Rules* which provides as follows: -
  - (2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.
12. The law and numerous judicial precedents have laid out clear guidelines regarding joinder of proceedings. The threshold for joinder of parties was set out clearly in the case of *Francis Kariuki Muruatetu & Another vs Republic & 5 others* in Petition 15 as consolidated with 16 of 2013 (*Supra*) where the court held that; for a party to succeed in a joinder application, the applicant must move the court by way of a formal application; enjoinder is not as of right, but is at the discretion of the court hence and sufficient grounds must be laid before the court on the basis of the following elements:



- i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
  - ii. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the court. It must also be clearly outlined and not something remote.
  - iii. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.
13. Therefore, joinder of parties is permitted by law and can be done at any stage of the proceedings. However, joinder of parties may be refused where such joinder will lead to practical problems of handling the existing cause of action together with the one of the parties being joined as necessary or will occasion unnecessary delay or costs on the parties in the suit.
  14. It is worth noting that Joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible to, or totally different from the existing cause of action or relief. The determining factor in joinder of parties is the existence of a common question of fact or law which would arise between the existing and the intended parties. This was the test that was applied by F. Gikonyo J. in the case of *Lucy Nungari Ngigi & 128 others v National Bank of Kenya Limited and another* (2015) eKLR.
  15. In my view, when deciding an application for joinder, the court must exercise a liberal approach so as not to shut out a genuine litigant who is effectively interested or is bound by the outcome of the suit. However, the court must guard against a frivolous or vexatious litigant whose sole motivation is to complicate and confuse issues that are before court for determination.
  16. In the case of *Judicial Service Commission v The Speaker of the National Assembly & Another* Petition No. 518 of 2013, the court had this to say regarding joinder of parties:
 

“the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, 2012, defines an interested party as “a person or entity that has an identifiable stake or legal interest in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation” ... He is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to urge the Court to make a determination favorable to his stake in the proceedings...”
  17. In the instant case, the applicants are claiming to be current owners of the property in question which forms part of the deceased’s estate. They allegedly bought the said property sometime 2020 from an entity which is not the administrator of the estate nor a beneficiary of the estate. From their pleadings, they did not buy the property from the estate hence the claim over ownership of land is a dispute that can best be handled before an ELC court pursuant to Article 162(2) of the *Constitution* and not a probate court. see *Mbula Muoki Ndolo & another v Kenya Power and Lighting Company Limited* (2017) eKLR.
  18. Guided by the above case law and the relevant provisions of the law, it is clear that the applicants’ claim can best be handled before the ELC court and not the probate court. Further, this matter has been pending since the year 2006 and pleadings closed long time ago with a number of witnesses testifying.



To reopen the proceedings and start the hearing a fresh would cause unnecessary delay of the matter, cause confusion and even make the proceedings messy and untidy.

19. Obviously, the applicants were aware of these proceedings and the pending dispute but chose to sit at the fence. This court can not afford to be part of the abuse of the court process. I do not find the applicants as necessary parties in these proceedings as their stake in these succession proceedings is not clearly identifiable taking into account that they are not beneficiaries of the estate nor did they acquire the purported properties in question from the deceased nor the appointed administrators. They should actually follow their claim against the entity that sold them the property for appropriate remedy including declaration of ownership or refund of their consideration.
20. For the above stated reasons, I do not find the application merited and the same is hereby dismissed. The court shall then proceed to deliver its judgement. I will however order that each party do bear own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT GARISSA THIS 20<sup>TH</sup> DAY OF MARCH 2024**

**J.N.ONYIEGO**

**JUDGE**

