



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**  
**ELC CASE NO.71 OF 2014**

**PETER MWENDA MBUI .....PLAINTIFF**

**VERSUS**

**ESTHER NDULU MUTUKU .....1<sup>ST</sup> DEFENDANT**

**TOTAL KENYA CO. LTD .....2<sup>ND</sup> DEFENDANT**

**AND**

**MUTUKU NGEI ..... INTERESTED PARTY**

**R U L I N G**

1. The Applicant/Interested party filed motion on 8.10.2014 applying to be joined in the instant suit in what purely appears in his grounds in Support of the application to be handling the sale transaction of the suit property in his professional capacity. On behalf of Mutuku Ngei Interested Party in the matter. The application is supported by affidavit of John Ndungwa Kimeu sworn on 8.10.2014.

2. The application is based on the provision of order 1A, 1B order 51 Civil Procedure Rules 2010. The application is opposed by the Plaintiff/Respondent vide his affidavit sworn on 14.10.2014 and filed on the same date. The Defendants and interested party are not opposed to the grant of orders joining the intended interested party. The Applicant filed submissions on 21.10.2014 dated 21.10.2014.

3. The applicant's case is that he wishes to be joined to enable him ventilate his interest in the suit. He argues that his interest goes beyond advocates client relationship with Mutuku Ngei. He avers he made various payments on instruction of Mutuku Ngei including advancing him monies which are recoverable from him after successful completion of the transaction and that he will suffer loss unless he is enjoined in the instant suit as interested party.

4. The Plaintiff reply is that the application is frivolous and lacks merit. The Plaintiff argue that since the Applicant acted in his professional capacity over the suit property transaction, then can only be a witness. The Plaintiff argues that the applicant has no cause of action. He argues that none of the parties claims against him in the transaction over suit land and his expenses in the transaction can only

be recovered elsewhere not in this case. He prays for the application to be dismissed with costs.

5. Order 20 Rule 3 empowers the court at any stage of the proceedings upon or without application of either party to enjoin any person whose presence before court be necessary in order to enable court effectively and completely to adjudicate upon and settle all questions involved in the suit.

6. The subject of the suit is the sale transactions between Plaintiff and 3<sup>rd</sup> party and the second Defendant. The 1<sup>st</sup> Defendant, the interested party is in the suit due to her interest in suit land on what she alleges to be a forgery of spousal consent in transaction between interested party and the Plaintiff. The Applicant has no claim over the suit land nor is he a party to any of the sale agreement transactions. He only acted professionally in the matter.

7. In the suit the Applicant will neither be claiming any of the suit land or the proceeds thereof from any of the parties. His claim will purely be outside suit which can be addressed via advocate client bill of costs; or on contract between him and his client. The issues over the processes of the sale transactions in dispute herein will only require the Applicant input as a party. The court thus finds no merit in the application and dismisses the same with costs to the Plaintiff.

**Signed and delivered this Machakos this 19<sup>th</sup> day of December, 2014.**

**CHARLES KARIUKI**

**JUDGE**



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