



In the matter of the Estate of Mathayo Ratemo Mayaka - Deceased (Succession Cause 5 of 2019) [2024] KEHC 12126 (KLR) (30 September 2024) (Ruling)

Neutral citation: [2024] KEHC 12126 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
SUCCESSION CAUSE 5 OF 2019
TA ODERA, J
SEPTEMBER 30, 2024**

IN THE MATTER OF THE ESTATE OF MATHAYO RATEMO MAYAKA - DECEASED

BETWEEN

BENSON MAKORI OBJECTOR

AND

DANIEL RATEMO OYUNGE 1ST ADMINISTRATOR

BARNABAS RATEMO 2ND ADMINISTRATOR

KENNEDY MBAKA RATEMO 3RD ADMINISTRATOR

MALACH RATEMO MATHAYO 4TH ADMINISTRATOR

RULING

1. The objector filed the application dated 6.9.23 seeking revocation, the letters of administration and the confirmed grant herein on the grounds that the applicant Benson Makori Purchased 2¾ acres out of the lease certificate Nyansiongo /Scheme land parcel no.9346/2 (IR 20914) as per the agreement “BM1” dated 15.11.97 between Noah Nyaega Ratemo and himself. Further that his portion is included in 20 acres given to Daniel Ratemo to hold in trust for his siblings and the children of Perpetua Onchere. Also that the respondents have threatened to evict him from the land. He said that the respondents did not disclose to the court that there are also other purchasers in the suit land.
2. Daniel Ratemo the 1st respondent swore the replying affidavit dated 20.12.23 on his own and that of his co-administrators. He termed the application misconceived and an abuse of the court process. He clarified that this is Succession Cause No 5 of 2019 and not 35 of 2016 and that they have never given instructions to the firm of Ochoki and Co. Advocate in the later file. Also that the deceased passed on in 1980 and as at 1998 when applicant bought the land the estate was still un-administered. He told the court that his counsel on record advised him that the alleged agreement is null and void as the alleged seller had no capacity to sell the land before appointment of administrators.



3. I have carefully considered the application dated 6.9.23 and the response. The applicant admits that he purchased part of the estate. “BM 1”. The respondents have vehemently opposed the application saying that the “seller” had no capacity to sell the land before the grant was issued and thus the agreement was null and void. Section 82(b)(ii) of the Law of Succession Act restricts the sale or disposition of immovable property of the deceased before the grant of letters of administration. The personal representatives have the authority to deal with the estate only after a grant has been issued.
4. Section 45 of the Law of Succession Act prohibits intermeddling with the estate of a deceased a person.
5. Section 93 of the Law of the same Succession Act protects purchasers who have acquired an interest in good faith from a personal representative who has been properly issued with a grant. It ensures that purchases made after the issuance of the grant are protected, even if the grant is subsequently revoked.
6. The applicant’s interest is not protected within the meaning of section 93 as he did not purchase the parcel from a legal representative but a survivor who had no capacity to sell the estate of the deceased before administrators were appointed by the court. The alleged land sale agreement dated 15.11.97 between the applicant and one Noah Nyaega Ratemo is thus null and void in relation to the estate herein and thus unenforceable against the estate of the deceased herein as it offends the provisions of Section 82 (b) (ii) and Section 45 of the Succession Act.
7. The applicant herein is seeking to enforce his right to title, use and occupation of the parcel of land he allegedly purchased from a survivor of the deceased before the grant was issued. Article 165(3) and (6) of the Constitution of Kenya sets out the jurisdiction of the High Court as follows:
 - (3) Subject to clause (5), the High Court shall have —
 - (a) unlimited original jurisdiction in criminal and civil matters;
 - (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
 - (c) jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
 - (d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—
 - (i) the question whether any law is inconsistent with or in contravention of this Constitution;
 - (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
 - (iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
 - (iv) a question relating to conflict of laws under Article 191; and
 - (e) any other jurisdiction, original or appellate, conferred on it by legislation.
 - (6) The High Court has supervisory jurisdiction over the subordinate Courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior Court.



Article 162(2) and (3) provides as follows: -

- (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
 - (a) employment and labour relations; and
 - (b) the environment and the use and occupation of, and title to, land.
 - (3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).
23. The legislation contemplated under Article 162(3) is the *Environment and Land Court Act*.
24. Section 13 of the said *Act* provides for the Environment and Land Court’s jurisdiction as follows: -
- (1) The Court shall have original and appellate jurisdiction to hear and determine all dispute in accordance with Article 162(2) (b) of the *Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
 - (2) In exercise of its jurisdiction under Article 162(2) (b) of the *Constitution*, the Court shall have power to hear and determine disputes—
 - (a) relating to environmental planning and protection, climate issues, land use, planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) relating to compulsory acquisition of land;
 - (c) relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) any other dispute relating to environment and land.
25. It thus follows that rights the applicant is seeking to enforce can only be litigated upon in the Environment and Land court against the seller in his personal capacity for specific performance or refund of his funds but not this family court.
26. It is trite law that jurisdiction is everything and without it the court must pen down as was held in the celebrated case of *Owners of the Motor Vessel “Lillian S” v. Caltex Oil (Kenya) Ltd* [1989] KLR 1. Nyarangi, JA. relying, *inter alia*, on the above cited treatise by John Beecroft Saunders held as follows:
- “...Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.
27. This court thus therefore lacks jurisdiction to deal with the claim of the applicant herein and must pen down.
- I proceed to strike out the application dated 6.9.23.
- I am not inclined to make any orders as to costs due to the circumstances of this case.
- It is so ordered.



T.A ODERA

JUDGE

30.9.24

Delivered Virtually in Via Teams Platform in the presence of: -

Mr. Ochoki for Petitioner

Mr. Momanyi for the 1st, 2nd and 3rd respondents.

T.A ODERA

JUDGE

30.9.24

Ochoki: We kindly request for a mention date as there has been very little progress in the matter since the letters of administration were issued. The administrators are not working together.

Momanyi: The file was closed. This is a leasehold all processes must be done in Nairobi. It is being worked on. There was a proposal to convert the leases to free hold. This is still in abeyance. The grant was confirmed on 24.5.21.

Order: Mention on 20.1.25 for a progress report on administration.

T.A ODERA

JUDGE

30.9.24

