



**In re Estate of David Muuru Kamau (Deceased) (Succession Cause
1011 of 2013) [2023] KEHC 20225 (KLR) (Family) (30 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 20225 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1011 OF 2013
PM NYAUNDI, J
JUNE 30, 2023
IN THE MATTER OF THE ESTATE OF DAVID MUURU KAMAU (DECEASED)**

BETWEEN

CHEGE RUBIA APPLICANT

AND

KENNETH MBUGUA MUURU 1ST RESPONDENT

JANE WARUGURU KAMAU 2ND RESPONDENT

MARTIN NGETHE MUURU 3RD RESPONDENT

RULING

1. By Summons dated December 20, 2016, presented under Section 76 of the [Law of Succession Act](#) and rules 49 and 73 of the [Probate and Administration Rules](#) the Applicant seeks the following orders-
 - 1) Spent
 - 2) That an order be made that the grant of letters of Administration issued to Kenneth Mbugua Muuru, Jane Waruguru Kamau and Martin Ngethe Muuru made on the 24th November 2014 and confirmation of grant be revoked as they were obtained fraudulently.
 - 3) Costs of the Suit
2. The Application is supported by the Affidavit of the Applicant sworn on even date and further affidavit dubbed 'supporting affidavit' sworn on July 3, 2017. The Application is opposed and the 2nd Respondent has sworn an affidavit on May 8, 2017.



3. Parties agreed to canvass the Application by way of written submissions and the Applicant filed submissions dated January 11, 2018, whilst the Respondent's submissions are dated March 10, 2021.

Summary

4. The Respondents are the Children of the deceased David Muuru Kamau who died on July 30, 2010. Subsequent to his death they applied for and were granted letters of administration on November 24, 2014 and grant was confirmed on July 6, 2015
5. The Applicant seeks the revocation of the grant that he had entered into a sale agreement with the deceased and that the Respondents have proceeded to administer the estate without acknowledging his interest. The Applicant relies on the Court of Appeal decision in *Musa Nyaribari Gekone & 2 Others v Peter Miyianda & anor* [2015] eKLR to bolster his claim.
6. The Respondents oppose the Application on the following grounds-
 - i. The Court lacks jurisdiction this being a dispute over land
 - ii. The claim is barred by the statute of limitation
 - iii. Fraud has not been established
 - iv. The claim has not crystallised

Analysis And Determination

7. Having considered the rival pleadings and submissions of the parties I take note that the issue of jurisdiction has been raised. Prior to framing the issues for determination, I must first determine whether or not this court is clothed with the requisite jurisdiction to hear this matter.

I am guided by the locus classicus decision in the in the case of *Owners Of Motor Vessels (lilian (S) v Caltex Oil (kenya Ltd)* [1989] 1KLR where the court pronounced inter alia that:

“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 continuation of proceedings pending other evidence.”

8. In the instant case jurisdiction of this Court is challenged by the respondent on account of the fact that the dispute is over the ownership of land, and that it relates to a claim that has not crystallised. The Applicant does not respond to this contention directly but instead argues that the claim by the Applicant is equivalent to that of a creditor and therefore he is properly before the court and entitled to the orders he seeks.
9. It is evident from the rival affidavits that the Respondents do not admit the claim of the Applicant. The issue of ownership the land is therefore in question.
10. In *Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Limited & 2 Others* [2012] eKLR the Supreme Court held as follows:

“A Court's jurisdiction flows from either the *Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the *Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before



it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

11. Article 162(2) of the Constitution of Kenya provides for the establishment of specialised courts to hear and determine disputes relating to environment and land. Parliament has since enacted the Environment and Land Act, No 19 of 2011 which operationalises the Environment and Land Court.
12. In Republic v Karisa Chengo & 2 others [2017] eKLR, the supreme Court stated as follows-

“We therefore entirely concur with the Court of Appeal’s decision that such parity of hierarchical stature does not imply that either ELC or ELRC is the High Court or vice versa. As Article 165(5) precludes the High Court from entertaining matters reserved to the ELC and ELRC, it should by the same token be inferred that the ELC and ELRC too cannot hear matters reserved to the jurisdiction of the High Court.”
13. It is now well settled that the probate court’s jurisdiction does not extend to determining disputes over ownership of land. This was reiterated in the case of re Estate of Julius Ndubi Javan (Deceased) [2018] eKLR, where the Court held:-

“(14) The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity, the estate property must be identified. Thus, where issues of ownership of the property of the estate are raised in a succession cause, they must be resolved before such property is distributed. And that is the very reason why rule 41(3) of the Probate and Administration Rules was enacted so that claims which are prima facie valid should be determined before confirmation.”
14. Applying the above principles to the instant case, where the issue is whether the Applicant have a valid sale agreement with the Deceased with regard to the subject parcel, it is evident that on account of Article 165(5) of the Constitution, this dispute can only be determined before the Environment and Land Court this court lacks jurisdiction.
15. As was stated by Nyarangi J in the Owner of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd case (*supra*), Jurisdiction is everything and without it a court must lay down its tools. Having found that the Court has no jurisdiction I am obligated to lay my pen down as I cannot delve any further into this matter.
16. For these reasons the Applicant’s summons for revocation of grant dated December 20, 2016 is dismissed in its entirety with costs to the respondents.

It is so ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 30th DAY OF JUNE, 2023.

P M NYAUNDI



HIGH COURT JUDGE

In the presence of:

Court Assistant Karani

