



**In re Estate of Cecilia Ngoiri Kinuthia (Deceased) (Succession Cause  
3118 of 2014) [2023] KEHC 21783 (KLR) (Family) (31 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21783 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 3118 OF 2014  
PM NYAUNDI, J  
JULY 31, 2023  
IN THE MATTER OF THE ESTATE OF CECILIA NGOIRI KINUTHIA(DECEASED)**

**BETWEEN**

**EPHRAIM GACHUI MACHARIA ..... OBJECTOR**

**AND**

**IRENE WANGARI KINUTHIA ..... 1<sup>ST</sup> ADMINISTRATOR**

**STEPHEN KARIMI KNUTHIA ..... 2<sup>ND</sup> ADMINISTRATOR**

**JUDGMENT**

1. By Summons dated 16<sup>th</sup> September 2021, presented under Section 76 of the *Law of Succession Act* and rule 44 of the Probate and Administration Rules the Applicant seeks the following orders -
  1. Spent
  2. Spent
  3. That the Grant of Letters of Administration intestate issued to Irene Wangari Kinuthia and Stephen Kinuthia on 28<sup>th</sup> July 2015 and a certificate of Confirmation issued on 30<sup>th</sup> May 2016 be revoked/ annulled.
  4. That the cost of this Application be in the cause.
2. The Application is supported by Affidavit of Applicant/ Objector the sworn on the 1<sup>st</sup> July 2021. The Respondents are opposed to the Application and the 1<sup>st</sup> Respondent has sworn an affidavit in opposition on 19<sup>th</sup> November 2021.



3. The record shows that after filing the Application the Objector did not attend Court notwithstanding that he was served with notice when the matter was to come up for hearing on 5<sup>th</sup> July 2023. The Respondents stated they would rely wholly on the replying affidavit.

### **Summary of Objector's Case**

4. The Objection is premised on 4 grounds-
  - a. That the grant was obtained fraudulently by concealment from the Court the facts that the entire parcel No. Dagoretti/ Thogoto/888 was the subject of another succession cause No. 405 of 2010 that was still pending before this honourable Court
  - b. That the grant was obtained fraudulently by concealment from the Court that the objector herein had applied for revocation of the grant obtained by the deceased herein.
  - c. That the grant was obtained fraudulently by concealment from the Court that the deceased in Succession Cause No. 405 of 2010 (Charles Kinuthia Gathirimu) had sold the entire parcel to the Objector and received full consideration and obtained the land control board consent to transfer in favour of the objector.
  - d. That the proceedings to obtain the grant herein were defective in substance as there was no consent obtained from the objector as creditor to the estate nor was the objector cited prior to filing this petition.
5. The Objector avers that he paid a sum of Kshs 280000 as consideration for the purchase of land but the proprietor died before the transfer of the property into his name had been effected.
6. It is deponed that the Objector initially sought a revocation of the grant that had been issued to the deceased person in this cause in Succession Cause No. 405 of 2010 as widow to Charles Kinuthia Gathimu.
7. That in its judgment of 18<sup>th</sup> July 2018 the court found that the objector's application for revocation in Succession cause No. 405 of 2010 was rendered redundant following the death of the Administrator (Cecilia Ngoiri Kinuthia) who is the deceased in the current cause.
8. It is contended that as Succession Cause No. 405 of 2010 was still pending before Court, the Applicants herein lodged this petition and obtained grant of letters of administration and subsequently a certificate of confirmation of grant.

### **Summary Of The Respondent's/administrator's Case**

9. The Administrators/ Respondents are the Children of the deceased who is the widow of Charles Kinuthia Gathirimu.
10. That grant in respect of their father's estate was issued to their mother on 26<sup>th</sup> July 2010 and subsequently confirmed on 15<sup>th</sup> March 2011. That subsequent to the Confirmation the parcel devolved to their mother.
11. That the current application is Res Judicata, the Objector having filed a similar Application in Succession cause no. 405 of 2010 seeking to revoke the grant on the same grounds.
12. It is further contended that this Court does not have jurisdiction to adjudicate over this matter as it falls within the purview of the Environment and Land Court. It is submitted that the Objector can only establish his interest in the Environment nad Land Court.



13. In conclusion it is contended that the application is an abuse of Court process and should therefore be dismissed.

### **Analysis and Determination**

14. Having carefully reviewed the Pleadings filed herein and Affidavits, I frame the following as the issues for determination
- a. Whether this court is clothed with requisite jurisdiction; (if this question is answered in the affirmative);
  - b. Whether the matter is res judicata? (if answered in the negative);
  - c. Whether the Application meets the threshold under Section 76 of the [Law of Succession Act](#).

15. Whether the Court is clothed with requisite jurisdiction

The locus classicus decision on jurisdiction is the case of *Owners of Motor Vessels (Lilian (s) v Caltex Oil (Kenya Ltd)* [1989] eKLR 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.”

16. 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 as the Objector claims that he is a purchaser. Indeed, the Objector contends that he should have been acknowledged as a creditor.
17. It is evident from the rival affidavits that the Respondents do not admit the claim of the Objector. The issue of ownership of the land is therefore in issue.
18. In [Samuel Kamau Macharia & Another v 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.”

19. 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.



20. 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.
21. 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.”
22. The facts of the instant case are on all fours with the facts in *Re Estate of Charles Mburu Shadrack (Deceased)* (Succession Cause 1 of 2018) [2022] KEHC 3374 (KLR) (28 April 2022) (Ruling), where at paragraph 49, G.W. Ngenye- Macharia LJ (as she then was) cited with approval the decision in *re Estate of Prisca Ong’ayo Nande (Deceased)* [2020] eKLR where the Court stated  
[27].... A determination of the question as to whether there was a valid sale of the registered land in accordance with the relevant land legislation, is an issue that is well outside the jurisdiction of the High Court. Both statutes carry provisions which state the jurisdiction of the court with regard to the application and interpretation of the two statutes. These provisions are to be found in sections 2 and 101 of the *Land Registration Act* and sections 2 and 150 of the *Land Act*.
23. Applying the above principles to the instant case, where the issue is whether the Applicant had a valid sale agreement with the Deceased with regard to the subject parcel, it is evident that on account of Article 165(2)(3) of *the Constitution*, this dispute can only be determined before the Environment and Land Court as this court lacks jurisdiction.
24. 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.
25. In the circumstances I dismiss the Summons dated 16<sup>th</sup> September 2021, with costs to the Respondent  
It is so ordered

**SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY OF JULY, 2023.**

**P M NYAUNDI**

**JUDGE**

**In the presence of:**

Mr. Mwaniki Advocate.....for the Administrators/ Respondents

Sylvia Court Assistant

