



REPUBLIC OF KENYA



KENYA LAW
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Shah & 6 others v Iragu & 4 others (Environment & Land Case 115 of 2019 & 519 of 2013 & Civil Case 317 of 2011 (Consolidated)) [2023] KEELC 17761 (KLR) (31 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17761 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 115 OF 2019 &
519 OF 2013 & CIVIL CASE 317 OF 2011 (CONSOLIDATED)
FM NJOROGE, J
MAY 31, 2023
(FORMERLY HCC. NO: 122 OF 2002)

BETWEEN

GIRISH VAGHJI SHAH 1ST PLAINTIFF

VIPUL PATEL 2ND PLAINTIFF

AND

BEN NGUNYANGI IRAGU 1ST DEFENDANT

CHIEF LAND REGISTRAR 2ND DEFENDANT

AS CONSOLIDATED WITH

CIVIL CASE 317 OF 2011

BETWEEN

LUCY NJERI NGUNYANGI 1ST PLAINTIFF

MAXWELL MUNENE 2ND PLAINTIFF

ESTHER WANGUI 3RD PLAINTIFF

JENIPHER WANGARI 4TH PLAINTIFF

AND

CHIEF LAND REGISTRAR DEFENDANT

AS CONSOLIDATED WITH

ENVIRONMENT & LAND CASE 519 OF 2013



BETWEEN

FRANCIS GACHIRI NDUA PLAINTIFF

AND

LUCY NJERI NGUNYANGI 1ST DEFENDANT

MAXWELL MUNENE 2ND DEFENDANT

RULING

1. PW1 started giving evidence today in this old case and stated that the 2nd plaintiff had granted him a power of Attorney in the matter. He also stated that his friend one Albert Gatimu had been granted a power of Attorney by the 1st plaintiff. His attempt to produce the said powers of Attorney elicited objections from Mr. Mindo and Mr. Maanzo for the defendants.
2. Mr. Mindo's line of objection principally being that the powers of attorney do not grant the donees power to prosecute the suit and secondly and most importantly that no approval of court has ever been sought by the holders of the powers of attorney to proceed with any action or step in the suit; Mr. Maanzo's objection lay mainly in the proposition that first the court must establish if the persons names in the powers of attorney do exist and secondly, that the documents ought to be produced by the persons named therein. As PW1 is named in his power of Attorney, the second limb of Mr. Maanzo's objection is relegated to deal with the power of Attorney granted to Albert.
3. I have considered the objection and the response. Order 9 rule 2 which Mr. Mindo relies on provided for the taking of steps by appointed agents of parties only after they have sought the court's approval. The power of attorney in the name of PW1 was registered in 2013; so was Albert's. The suit herein ELC 115 of 2019 used to be HCCC 122 of 2002. Mr. Konosi in response did not indicate that any application has ever been made for approval of the prosecution of this suit by the donees of the two powers of attorney, but alluded to mention of the issue in some ruling by the Hon. Justice Omondi while she was handling the case.
4. Regarding the objections generally Mr. Konosi stated that the powers of attorney were registered and were therefore public documents which PW1 could produce.
5. I have referred to the ruling of the Hon. Omondi J. dated 22/11/2013 in which the plaintiff/donors were applying to be joined as interested parties in HCCC 317 of 2011. That ruling clears the air about around the question whether approval of court was sought or not. It appears that the court by then was of the view that it was not sought, but nevertheless stated that "although the appointment of [the holders of the power of Attorney] requires approval of the court, I find nothing in the law requiring that the approval be sought before lodging of a suit or an application."
6. It is noteworthy that at the time the plaintiffs were on the threshold of being joined to the suit in their own names hence the court's holding as above. The current scenario is where the hearing has already commenced without approval being sought. Mr. Mindo is mindful of the possibility of parties proceeding to the end only for the proceedings taken without approval to be impugned for that very default.



7. I find that the stage that the matter has attained requires prior approval before the hearing proceeds further and I therefore uphold Mr. Mindo's objection.
8. I am of the view that Mr. Mindo's second limb of objection was adequately addressed by Mr. Konosi in that the documents are registered and are public in nature and can be produced in evidence by PW1.
9. This also answers Mr. Maanzo's objection that the documents must be produced by the makers in order that the court may know that the makers exist. Mr. Maanzo seems principally vexed by the question of whether the donors of the powers of attorney are real persons who exist. I would not address the issue substantively in this ruling but I would leave Mr. Maanzo to manoeuvre through the provisions relied on by Mr. Mindo for succour.
10. That said, it is this court's holding that the objection raised by Mr. Mindo has partial merit and is thus upheld to the extent that it is hereby declared that PW1 and Albert Gatimu Nderitu have never sought the approval of this court to act as agents of their principals, the plaintiffs in ELC 115 of 2019.
11. The consequential imperative arising from that state of affairs, and regrettably so, is that this hearing must be halted to pave the way for seeking of approval by way of a formal application to this court. PW1 is hereby stood down. This hearing is adjourned. There shall be liberty to apply.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT ON THIS 31ST DAY OF MAY, 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

