



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Ali & another v Ndirangu (Succession Cause 385 of 2013)  
[2022] KEHC 13136 (KLR) (29 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13136 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 385 OF 2013  
TW CHERERE, J  
SEPTEMBER 29, 2022  
IN THE MATTER OF THE ESTATE OF CECILIA KIUNGA  
MUGUNA (DECEASED)**

**BETWEEN**

**SULEIMAN MUTEGI ALI ..... 1<sup>ST</sup> RESPONDENT**

**JERIKA NTHIORIM'IKIUGU ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**DANIEL GACHIGI NDIRANGU ..... PROTESTOR**

**RULING**

**Background**

1. Cecilia Kiunga Muguna (deceased) died sometimes on December 19, 2012. Her estate comprised of 1/3 share of LR No Ntima/Ntakira/4742 whose title deed was issued on April 19, 2013.
2. By an order dated June 8, 2017, the court directed that Letters of administration be issued to petitioners jointly with the protestor and the same were issued on June 8, 2017.
3. By summons dated May 24, 2018, Suleiman Mutegi Ali (the 1<sup>st</sup> administrator) applied for confirmation of the grant solely to him. Subsequently by an affidavit filed on August 8, 2018, Daniel Gachigi Ndirangu protested the confirmation on the ground that he and one Telegina Muiti Nkonge had purchased a plot measuring 25 by 75 of the deceased's estate from the deceased during her lifetime.

**Protestor's case**

4. The protestor and Telegina Muiti Nkonge testified that on April 12, 2012, they jointly purchased a plot measuring 25 by 75 of the 1/3 share of LR No Ntima/Ntakira/2778 which was registered in the name of deceased and 2 others for KES 600,000/- for which they paid deceased KES 350,000/-



as shown on a sale agreement of same date. It was a term of the agreement that the balance of KES 250,000/- was payable upon the partitioning and transfer of the portion to the vendors. It was further their evidence that deceased on November 28, 2012 received a further sum of KES 129,000/- for which she signed an acknowledgement note. They additionally testified that protestor paid KES 45,405/- and KES 32,755/- to cater for deceased's hospital bills and funeral expenses respectively as shown on receipts for the said sums tendered in evidence. It is the protestor's case that they are innocent purchasers for value entitled to a share of deceased's estate which they had taken possession of and constructed a permanent house.

5. Consolata Kanana Muguna, deceased's sister confirmed and Moses Marete who said he was deceased's husband stated that they were present when deceased sold a share of her portion of land to the protestor and Telegina Muiti Nkonge. Consolata confirmed that she signed the sale agreement and stated that Protestor took possession of the land after the death of deceased. Although his name does not appear on the sale agreement, Gilbert Kinyua stated that he witnessed deceased receive KES 350,000/- from the protestor. Naftali Kathurima, deceased's nephew stated that he was aware that deceased had sold a portion of her land to protestor and Telegina Muiti Nkonge and later received money from with which he paid deceased's hospital bills and funeral expenses.

### **Respondents' Case**

6. Suleiman Mutegi Ali stated that he was working in Saudi Arabia in 2012 and was not aware that his mother had sold part of his land to the protestor and another. He stated he came back home in December, 2012 after his mother died to find it fence off. That he buried his mother and upon returning to Saudi Arabia received information that protestor was putting up houses on deceased's land and that he continued constructing even after the court issued an order of injunction. He proposed that deceased's estate be distributed equally between him and the children of his two deceased siblings. Jerika Nthiori M'Ikiugu deceased's sister denied signing any sale agreement between deceased and protestor for sale of deceased's land. She however acknowledged receiving KES 30,000/- from protestor for deceased's burial expenses.

### **Analysis and determination**

7. I have considered the protest in the light of the affidavits, oral evidence and on the submissions filed and the question then arises as to whether the construct of the *Law of Succession Act* (LSA) gives this court the jurisdiction declared the protestor a bona fide purchaser with a right over deceased's estate.
8. It is then important to look into the provision of section 2 of LSA which deals with its application. It provides as follows: 2. Application of Act (1) Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after, the commencement of this Act and to the administration of estates of those persons.
9. From the foregoing, it is my conviction that the applicability of the LSA is limited to cases concerning the intestate or testamentary succession of the estate of a deceased, in other words, inheritance issues. It therefore goes without say that anything outside of this does not fall within the purview of the LSA.
10. The Court of Appeal had a chance to address this issue and Kiage JA in the case of *Mose v Kirwa* (Civil Appeal 125 of 2018) [2022] KECA 730 (KLR) stated as follows:

I am persuaded by the *dicta* of W Musyoka in In *re Estate of Alice Mumbua Mutua (deceased)* [2017] eKLR where he articulated the jurisdiction of the LSA, as follows; It may be argued that the subject



land is estate property and by dint of that fact the probate court would have jurisdiction thereon. The position is not as simple. The Law of Succession Act, and the rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.

Disputes of course do arise in the process. The provisions of the Law of Succession Act and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the Law of Succession Act and the Probate and Administration Rules. Such have to be resolved through the structures created by the Civil Procedure Act and rules, which have elaborate rules on suits by and against executors and administrators.” (Emphasis added)

From the foregoing decisions, it is clear to me that for a matter to fall within the purview of the LSA it must; concern itself with the determination of the assets of a deceased, the survivors of the deceased and persons with beneficial interest; involve itself with the distribution of the assets of a deceased among the survivors and any persons with beneficial interest. Those people do not include creditors, purchasers, or such other third parties.

11. From the foregoing, I have come to the conclusion that this court lacks the requisite jurisdiction to determine the protestor’s purchaser’s right. I echo Nyarangi JA in the case of The Owners of the Motor Vessel Lilian 'S' v Caltex Kenya Limited (1989) KLR 1 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 a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”.

12. In view of the foregoing, I find that the protest has no merit. The same is thus dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> administrators/respondents.

**DELIVERED AT MERU THIS 29<sup>TH</sup> DAY OF SEPTEMBER, 2022.**

**WAMAE. T. W. CHERERE**

**JUDGE**

**Appearances**

Court Assistant - Kinoti

For 1<sup>st</sup> and 2<sup>nd</sup> Administrators/Respondents - Ms. Gikundi for Charles Kariuki & Kiome Associate Advocates

For 3<sup>rd</sup> Administrator/Protestor - Mr. Mutuma for G.M.Wanjohi & Mutuma & Co. Advocates

