



**Njuki (Suing on Behalf and as done Through General Power of Attorney
by Dickson Kabuga Njuki) v Kabuga & 2 others (Environment & Land
Case E025 of 2022) [2023] KEELC 18046 (KLR) (20 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18046 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE E025 OF 2022**

JM MUTUNGI, J

JUNE 20, 2023

BETWEEN

GEORGE KABUGI NJUKI PLAINTIFF

**SUING ON BEHALF AND AS DONE THROUGH GENERAL POWER OF
ATTORNEY BY DICKSON KABUGA NJUKI**

AND

SIMON NJERU KABUGA 1ST DEFENDANT

REBECCA WANJIRU KABUGA 2ND DEFENDANT

CHRISTINE MURINGO KABUGA 3RD DEFENDANT

RULING

1. The Plaintiff instituted the instant suit vide a Plaint dated 20th June, 2022 filed in Court on 29th June, 2022. The Plaintiff was suing on behalf of and through a General Power of Attorney given by Dickson Kabuga Njuki. According to the Plaint Dickson Njuki Kabuga and his siblings are registered as the joint owner of land parcel No. Ngariama/Merici/395 measuring 4.37 Ha. The Plaintiff seeks to have the suit land partitioned and subdivided amongst the family members as follows:-

Dickson Njuki Kabuga – 2 Acres

Simon Njeru Kabuga - 2 Acres

Rebecca Wanjiru Kabuga – 2 Acres

Christine Muringo Kabuga – 2 Acres.

The homestead measuring approximately 3 Acres to be registered jointly to all the siblings.



2. The Defendants are opposed to the proposed mode of partitioning the land and have contended that the matter is a family matter which this Court lacks the jurisdiction to handle. The Defendants have raised a Preliminary Objection on two grounds as follows:-
 1. The suit as it is offends the provisions of order 9 rule 1(a) and 2(a) of the [Civil Procedure Rules](#).
 2. The Honourable Court does not have jurisdiction to hear the matter since the parties are family members having a dispute over family property, as it offends the Law of Succession Act Cap 160 Laws of Kenya.
3. The Defendants on 20th March, 2023 filed a bundle of documents as per the list dated 27th February 2022. The Court on 20/4/2023 directed that the Preliminary Objection be heard orally on 7/6/2023. On the day, Mr. Andati Advocate appeared for the Defendants: Though the Plaintiff's Counsel had been served with a hearing Notice, he did not attend. The Court allowed Mr. Andati to urge the Preliminary Objection *ex parte* upon being satisfied that indeed the Firm of Igati Mwai & Company Advocates representing the Plaintiff had been served with the hearing Notice via email.
4. While urging the grounds set out in support of the Preliminary Objection Mr. Andati Advocate stated that there was no compliance with order 9 rule 1 and 2 of the [Civil Procedure Rules](#) respecting who a recognised agent of a party is. He argued the Plaintiff who purported to represent a party by virtue a General Power of Attorney ought to have obtained sanction of the Court. As the suit stood it was his position that the Plaintiff lacked the *locus standi* to institute the suit. Further he argued the instrument of the General Power of Attorney was not exhibited.
5. On the second ground in support of the Preliminary Objection Counsel argued that the matter before this Court was a family matter arising from Succession which this Court has no jurisdiction to handle. The Counsel stated the suit property was a subject matter in Kerugoya HC Succession Cause No. 21 of 2018 which had not been concluded. He urged the Court to strike out the suit in its entirety.

Order 9 of the [Civil Procedure Rules](#) makes provisions for Recognised Agents and Advocates who are authorised to represent and/or Act for parties. Order 9 Rule 1 provides as follows:-

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- (1) Any application to or appearance or act in any court required or authorized by the law to be made or done by a party in such court may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by an advocate duly appointed to act on his behalf:

Order 9 rule 2 provides for recognised Agents who may represent and appear for parties. Rule 2 (a) deals with situations where a recognised agent is pursuant to a Power of Attorney and provides as follows:-

- 2) The recognized agents of parties by whom such appearances, applications and acts may be made or done are—
 - (a) subject to approval by the court in any particular suit persons holding powers of attorney authorizing them to make such appearances and applications and do such acts on behalf of parties;

In the suit before the Court, George Kabugi Njuki states he holds a General Power of Attorney given by Dickson Kabuga Njuki vide which he has instituted the present suit. The copy of the supposed Power of Attorney was not exhibited as one of the Plaintiff's documents. No approval was sought from the Court under order 9(2)(a) of the [Civil Procedure Rules](#) to authorise the said George Kabugi Njuki to institute the suit as a recognised agent on behalf of Dickson Kabuga Njuki. The Power of Attorney



in my view was a primary document in the Institution of the suit as it was the document that the Court was required to scrutinise and give approval for the said George Kabugi Njuki to proceed with the suit as a recognised agent of the Plaintiff. There was no demonstration by George Kabugi Njuki that he had capacity to act as a recognised agent of the Plaintiff. There was no compliance with order 9 Rule 2(a) and the suit is therefore unsustainable. I therefore uphold the Preliminary Objection on the first ground.

6. As relates to the second ground, I have reviewed the bundle of documents filed by the Defendants and it is evident the parties before this Court were all parties in Kerugoya H.C Succession Cause No. 21 of 2018 (Re-Estate of Epaphras Kaara Kabuga Alias Epaphrus Kabuga Kaara(deceased)). The P & A Form 5 filed in that Succession Cause lists under Paragraph 6 among other assets land parcel Number Ngariama/Merichi/395 as an asset of the deceased estate. The Succession Court ordinarily would deal with the distribution of the assets of the estate of the deceased to the beneficiaries. It is not clear what the status of the Succession Cause before High Court is at the moment and there is potential for conflicting decisions if this Court was to proceed to deal with the matter. I, agree with the with the Defendant's Counsel that in so far as the suit property formed part of the assets of the deceased estate and the Succession Court was seized of the matter, this Court lacks the jurisdiction to entertain the present suit.
7. For the above reasons I find the Preliminary Objection merited and I uphold the same. I accordingly strike out the suit in its entirety. As regards costs, I take note that this is a matter involving close family members, indeed siblings, and I order that each party bears their own costs.
8. As I pen off, I feel constrained to implore the parties, to consider exploring having the dispute resolved through the Alternative Justice System (AJS) such as mediation as they are family and the dispute appears to be quite narrow. I hope the parties will see it fit to close ranks and do what eventually would be beneficial to each one of them.

RULING DATED, SIGNED AND DELIVERED AT KERUGOYA THIS 20TH DAY OF JUNE 2023.

J. M. MUTUNGI

E.L.C - JUDGE

