



**Sekento v Waweru (Environment & Land Case E106 of 2022)  
[2023] KEELC 19215 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19215 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE E106 OF 2022  
LC KOMINGOI, J  
JULY 27, 2023**

**BETWEEN**

**RAHAB MUMBI SEKENTO ..... PLAINTIFF**

**AND**

**CAROLINE WANJIRA WAWERU ..... DEFENDANT**

**RULING**

1. This is the notice of preliminary objection dated February 14, 2023. The grounds are;
  1. That this court lacks jurisdiction to hear and determine this matter as the said property forms part of the estate of the late Edward Barnoti Ole Sekento (deceased) – Succession Cause No 1203 of 2012.
  2. That the judgement in Succession Cause E068 of 2021 at Kajiado High Court did not extinguish the right of the defendant and her children to inherit the share of her late husband Edgar Kasaine Sekento (See attached the judgement)
  3. That the said parcel Ngong/Ngong /33113 forms part of the estate of Edward Barnoti Ole Sekento (deceased) and thus the suit land was registered in the name of the plaintiff in trust for all the beneficiaries.
  4. That the defendant’s husband Edgar Kasaine Sekento was one of the plaintiff’s sons (Succession Cause No 91 of 2003 Estate of William Saitoti Sekento).
  5. That the plaintiff has distributed property to all the children and left out the children and spouse of the late Edgar Kasaine Sekento.
  6. That the defendant has filed suit in Succession Cause No/E006/2023 Edgar Kasaine Sekento at Ngong Law Court to enable her defend this suit.



7. That the defendant has been in actual occupation of Ngong/ngong/33113 for almost 25 years even after her husband's death.
  8. That the plaintiff has concealed from this court material facts.
  9. That the suit is actuated by malice, bad faith and *mala fide*.
  10. The application and suit should thus be dismissed with costs to the defendant/ applicant.
2. In response to the preliminary objection the plaintiff filed a replying affidavit, sworn on the March 22, 2023.
  3. On the February 16, 2023, the court with the consent of parties directed that the preliminary objection be canvassed by way of written submissions.
  4. Counsel for the defendant submitted that the subject property relates to the Estate of Edward Barnoti Sekento (deceased) who was the original registered owner before transmission of his estate in Succession Cause No 1203 of 2012 at the High Court in Nairobi.  
She has put forward the cases of "*Owners of Motr Vessel "Lilian S" v Caltex Oil (Kenya) Ltd* (1989) 1 KLR.  
*Jeremiah Mwangi Kihara & 3 others v Joshua Kihara & another* (2021) eKLR .
  5. Counsel further submitted that the plaintiff has concealed material facts. That she has not demonstrated how she acquired the subject property. Ngong/Ngong/33113. She has put forward the cases of;  
*Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* 1969 EA 696;  
*Nitin Properties Ltd v Singh Kalsi & another* (1995)eKLR. She prays that the preliminary objection be upheld.
  6. Counsel for the plaintiff on the other hand, submitted that the defendant's claim that the subject property belongs to the Estate of Edgar Kasaine Sekento is a matter of fact which can be proved or disproved at the hearing.  
He has put forward the cases of *Jemutai Tanui v Juliana Jebtepeny v 5 others* Eldoret ELC 44 of 2013.  
*Eunice Gathoni Wang'ombe v Hellen Wacera* (2016) eKLR. He prays that the preliminary objection be dismissed.
  7. In *Mukisa Biscuits Manufacturing Co Ltd v West End Distributors Limited* (1969) EA 696; the Court stated thus As per Sir Charles Newbold;P  
".....A preliminary is in the nature of what used to be a demurrer.  
It raises a point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if that is sought is the excise of Judicial discretion".
  8. In the case of *Equity Bank Ltd v Bryan Yongo & another* (2014) eKLR the court held that; "any true preliminary objection should not be entangled with factual issues".
  9. In the instant suit, both the plaintiff and the defendant admit that the subject property in dispute; Ngong/Ngong/33113 forms part of the Estate of Edward Barnoti Ole Sekento (Deceased).



10. I agree with counsel for the defendants submissions that the judgement in Succession Cause No E068 of 2021 in Kajiado High Court did not extinguish the right of the defendant and her children from inheriting the share of her late husband Edgar Kasaine Sekento.

11. For the foregoing reasons, I find that this court lacks jurisdiction to deal with this matter. This is a dispute which can only be resolved in Succession proceedings.

I am guided by the case of *Owners of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd* (1989) 1KLR where Nyarangi JA, stated thus;

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".

I find merit in this preliminary objection and it is upheld. The suit herein is hereby struck out. I make no orders as to costs.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 27<sup>TH</sup> DAY OF JULY 2023.**

**L. KOMINGOI**

**JUDGE.**

**IN THE PRESENCE OF:**

**MR. ITAYA FOR THE PLAINTIFF.**

**N/A FOR THE DEFENDANT.**

**MUTISYA – COURT ASSISTANT.**

