



Multhoff-Sama v Registrar of Lands Mombasa Registry (Environment & Land Miscellaneous Case E003 of 2023) [2023] KEELC 20121 (KLR) (26 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20121 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND MISCELLANEOUS CASE E003 OF 2023**

**NA MATHEKA, J
SEPTEMBER 26, 2023**

BETWEEN

ELIZABETH JORAM WILLIAM MULTHOFF-SAMA APPLICANT

AND

REGISTRAR OF LANDS MOMBASA REGISTRY RESPONDENT

RULING

1. The application is dated 24th February 2023 and brought under Sections 5 and 6 of the *Foreign Judgments (Reciprocal Enforcement) Act*, Section 77 of the Probate Act Cap (160)2 Section 3 and 3A of the *Civil Procedure Act* and Rule 42(1) of the Probate and Administration Rules seeking the following orders;
 1. That the decision by the Local Court of Kassel, in the Republic of Germany in Probate Court File No: 791 VI 2573/11 M, appointing Solicitor Holger Adolph, Friedrich-Ebert-Strasse 127, 34119 Kassel as the Administrator of the estate of Hardy Multhoff (Deceased) be received, accepted and recognized in the Republic of Kenya and be issued by this Court as an Order made by the Kenyan Court
 2. That the Purchase Agreement in respect of residential property on Portion No: 2549(original No: 1935/387), Malindi Central, Kilifi County within the Republic of Kenya registered with Lands Registry Mombasa in Vol. L. T 21, Folio 500/1, File 4767 be also received, accepted and recognized by the Kenyan Court as valid and proper agreement.
 3. That the Registrar of Lands, Mombasa Lands office do register transfer instruments in respect of property on Portion No: 2549(original No: 1935/387), Malindi Central, Kilifi County within the Republic of Kenya registered with Lands Registry Mombasa in vol. L.T 21, Folio 500/1, File 4767 unto MS. Elizabeth Joram William Multhoff-Sama



2. It is based on the the annexed affidavit of Elizabeth Joram William Multhoff-Sama and grounds that the Deceased, Hardy Multhoff passed on some times between 01.09 2011 and 03.09.2011 at 12:15 hours at Fuldata in the Republic of Germany, as a result, Solicitor Holger Adolph, Friedrich-Ebert-Strasse 127, 34119 Kassel was appointed the administrator of his estate by the Local Court of Kassel, in the Republic of Germany in Probate Court File No: 791 VI 2573/ 11 M. That the Deceased, Hardy Multhoff owned a property being residential property on Portion No: 2549(original No: 1935/387), Malindi central, Kilifi County within the Republic of Kenya registered with Lands Registry Mombasa in Vol. L. T 21, Folio 500/ 1, File 4767 in equal share with the Applicant herein Elizabeth Joram William Multhoff-Sama. That the Solicitor Holger Adolph, Friedrich-Ebertstrasse 127, 34119 Kassel as the duly appointed Administrator of the Estate of Hardy Multhoff (Deceased) sold the above described deceased's estate to the Applicant who fully paid for it pursuant to German Laws of conveyance. That since the property is within the Republic of Kenya, the Purchaser who is the Applicant herein was mandated by the Administrator to solely execute and take personal charge of the transition of ownership at the Lands Registry in Kenya. That it is just and equitable that the Applicant be granted the Orders she prays for the same to meet the ends of justice.
3. The Land Registrar in Mombasa stated that in respect to this case, the property in question is LT 21 folio 5QOL4 File 4767 as opposed to LT 21 Folio 500/1 File 4767. That the property in question started a record from Lt 35 Folio 468/234. A conveyance dated 10th April, 1980 to Fakhurudin Nuroodin Gulamhusein was done for the said portion of land measuring 0.0409 Ha. On 17th March, 1989 there was a recovery of mortgage and consequently on 15th November an entry No.4, an indenture of conveyance to Hardy Multhoff and Elizabeth Joram William Multhoff Sama was registered. He confirms that the deceased (Hardy Multhoff) and the applicant are the true registered owners of the property.
4. I have perused the court record and find that this property is situate in Malindi in Kilifi County and the Applicant also resides in Malindi Kilifi County. The certificate of Postal search describes the suit property as Portion No. 2549 – Malindi. The letter from the office of the President is also addressed to Malindi High Court. Section 12 of the *Civil Procedure Act* Cap 21 provides for guidelines on choosing territorial jurisdiction. When filing matters. It provides thus; -

‘Subject to the preliminary or other limitations prescribed by any law,

- a. for the recovery of immovable property; with or without rent or profits;
- b. for the partition of immovable property;
- c. for the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;
- d. for the determination of any other right to or interest in immovable property;
- e. for compensation for wrong to immovable property;
- f. for the recovery of movable property actually under distraint or attachment, where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate: Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the Defendant may, where the relief sought be entirely obtained through his personal obedience, be instituted either in the court within the local limits of whose jurisdiction the property is situate, or in the court within the local limits of whose jurisdiction the Defendant actually and voluntarily resides or carries on business, or personal works for gain.’



Section 13 provides; -

Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different courts, the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situate, provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such court.”

5. In the instant case the suit property is in Kilifi County which is served with Malindi Environment and Land Court in Kilifi County. Given that the suit property is located within Kilifi County Government, subject to Section 12 the correct forum is the Malindi Environment and Land Court. Consequently, I transfer this matter to the Environment and Land Court Malindi for hearing and determination. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 26TH DAY OF SEPTEMBER 2023.

N.A. MATHEKA

JUDGE

