



Bor (Suing as the legal representative and administrator of the Estate of Philip Kibor (Deceased) v Kipsingok & 3 others (Environment & Land Case E008 of 2023) [2023] KEELC 19849 (KLR) (20 September 2023) (Ruling)

Neutral citation: [2023] KEELC 19849 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E008 OF 2023
JM ONYANGO, J
SEPTEMBER 20, 2023**

BETWEEN

AMOS KIPLAGAT BOR (SUING AS THE LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF PHILIP KIBOR (DECEASED) PLAINTIFF

AND

**SOSTEN KIPSINGOK 1ST DEFENDANT
PHYSICAL PLANNING OFFICER 2ND DEFENDANT
LAND REGISTRAR, UASIN GISHU COUNTY 3RD DEFENDANT
COUNTY LAND SURVEYOR 4TH DEFENDANT**

RULING

1. By a Notice of Motion dated 21st February 2023 the Applicant filed an application seeking the following orders:
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of the suit filed herewith, this Honourable court be pleased to issue a temporary injunction restraining the Respondents, their servants, agents, assigns, personal representatives, employees any other person claiming under them from charging, selling, leasing sub-dividing, alienating and/or dealing whatsoever with the suit land parcel number Eldoret Municipality /langas Phase 11 Sheet IV 64-68 and 73-77 (LR 8500).



- d. That the costs of this application be provided for.
 - e. That such other order be issued as the honourable court deems fit.
2. The application is premised on the grounds enumerated in the Notice of Motion and the Applicant's Supporting Affidavit sworn on 21st February 2023. In essence the Applicant avers that he is the administrator of the estate of Philip Kibor –Deceased who was the registered owner of land parcel number Eldoret Municipality /langas Phase 11 Sheet IV 64-68 and 73-77 (LR 8500) measuring 2.2 acres. That the Applicant and the 1st Respondent are step-brothers and the said parcel of land is supposed to be divided between the deceased's two households represented by the Applicant and the 1st Respondent. It is the Applicant's contention that the 1st Respondent had sued a 3rd party for trespass in ELD ELC Case No. 359 of 2015 and after obtaining a judgment in his favour he intends to sub-divide the suit property and dispose of it without regard to the Applicant's interest therein.
 3. In his Replying affidavit sworn on 13th March 2023, the 1st Respondent deposes that the suit property is the subject of Kapsabet Succession Cause No. E017 of 2020 where the interests of the Applicant and 1st Respondent ought to be determined. In the same vein he contends that the matter is sub-judice as the court entered judgment in his favour on 8.6.2022 in ELC Case No. 359 of 2015 and the Defendant in the said case has filed a Notice of Appeal and obtained a stay of execution.
 4. In his response to the 1st Respondent's Replying affidavit, the Applicant filed a Supplementary affidavit sworn on 2nd April 2023 in which he contends that the 1st Respondent merely obtained Limited Grant in respect of the suit property which does not entitle him to intermeddle with the property of a deceased person. He further deposes that the judgment in ELC Case No. 359 of 2015 ordered a survey and not a sub-division of the suit property.
 5. The 2nd Respondent opposed the application through the Replying Affidavit of Charles Kimani, the County Physical Planner sworn on 20th March 2023. In the said affidavit he deposed that the role of the 2nd Respondent under sections 56,57,58 and 59 of the *Physical and Land Use Planning Act*, 2019 is to regulate and monitor developments plans and activities within its area of jurisdiction. He denied that the 2nd Respondent has colluded with the 1st Respondent with a view to sub-dividing the suit property. He added that the dispute herein is purely between the Applicant and the 1st Respondent.

Analysis And Determination

6. The court directed that the application be disposed of by way of written submissions and both parties filed their submissions.
7. Having considered the pleadings, application and Replying affidavits and the parties submissions, the following issues fall for determination:
 - a. Whether the court has jurisdiction to hear and determine this matter
 - b. Whether the Applicant is entitled to a temporary injunction.

Whether the court has jurisdiction to hear and determine this suit.

8. Learned counsel for the 1st Respondent submitted that jurisdiction everything and that before the court proceeds with the matter it must satisfy itself that it has jurisdiction to hear and determine the



suit.. He relied on the case of Owners of the Motor Vessel Lillian “S”V. Caltex Oil (Kenya) Ltd (1989) KLR where the court observed as follows:

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 down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

9. It is common ground that the Plaintiff/ applicant and 1st Defendant/Respondent are step brothers. They both claim to be administrators of the estate of Philip Kibor-Deceased who is the registered owner of the suit property. Both of them have a beneficial interest in the suit property which is the subject of Kapsabet CM Succession Cause No. E017 of 2020. The main prayer in the Plaint is that the 1st Defendant holds the suit property on behalf of the deceased Philip Kibor and that the same should be transmitted through succession. The Plaintiff has raised issues which fall within the jurisdiction of the succession court.
10. The jurisdiction of this court is clearly set out in section 13 of of the Land and Environment Court Act which provides as follows:
 - (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
 - (2) In exercise of its jurisdiction under Article 162 (2) (b) of *the Constitution*, the Court shall have power to hear and determine disputes"
 - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) relating to compulsory acquisition of land;
 - (c) relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) any other dispute relating to environment and land.
11. To the extent that the Plaintiffs is seeking a determination of his interest in the suit property and the manner of distribution thereof to the beneficiaries through transmission, the suit falls squarely within the jurisdiction of the succession court and not the Environment and Land Court. This court would only be able to deal with disputes arising between the Plaintiff and 1st Defendant after the process of succession has been concluded.
12. That being the case I am constrained to agree with counsel for the 1st Defendant/ Respondent that this court lacks the jurisdiction to entertain this suit and I must down my tools. Consequently, the application cannot be granted and the entire suit is struck out with costs to the Respondents.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20TH DAY OF SEPTEMBER, 2023.

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J.M ONYANGO
JUDGE

