



Hassan v Mohammed & 2 others (Environment and Land Case Civil Suit E400 of 2022) [2023] KEELC 20926 (KLR) (19 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20926 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT E400 OF 2022
LN MBUGUA, J
OCTOBER 19, 2023**

BETWEEN

HALIMA HASSAN PLAINTIFF

AND

ALLI HASSAN MOHAMMED 1ST DEFENDANT

ATTORNEY GENERAL (SUED ON BEHALF OF THE CHIEF LAND REGISTRAR) 2ND DEFENDANT

SHAAM SHOPPING MALL LIMITED 3RD DEFENDANT

RULING

1. This suit was commenced by a plaint dated 26.7.2022. The Plaintiff contends that her deceased mother, Asha Ebrahim Hassan was the registered owner of the property known as LR 36/VII/452-Eastleigh. She accuses her brother, the 1st Defendant of fraudulently transferring the property to his name to her exclusion.
2. In response to the claim, the 1st Defendant filed a preliminary objection dated 8.5.2023 objecting to the hearing of the suit on grounds that this court lacks jurisdiction to hear the suit as it is the preserve of the succession court to determine the properties of the deceased and the mode of distribution. He avers that the Plaintiff lacks locus standi to bring this action for and on behalf of the Estate of Asha Ebrahim Hassan.
3. On 21.6.2023, the Respondents to the preliminary objection were directed to file responses by 5.7.2023 and written submissions by 3.8.2023. However, as at 26.9.2023, the parties had not complied with the said directions.



4. The sole issue for determination is whether the preliminary objection herein is merited. In *Mukhisa Biscuit Manufacturing Co Ltd v West End Distributors Limited* (1969) E.A 696 it was held that:

“ A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure 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 what is sought is exercise of judicial discretion.....”

5. I find that the grounds upon which the Preliminary Objection is brought are pure points of law in that the issue at hand relates to the locus of the plaintiff to bring forth this suit. It is not disputed that Esha Ebrahim Hassan passed away on 8.11.2019, and that the Plaintiff and the 1st Defendant are her children.

6. The Plaintiff’s claim for LR 36/VII/452-Eastleigh is tied to her mother’s right to the parcel on account of her previous registration as proprietor. At prayer ‘b’ of the plaint, the Plaintiff seeks orders cancelling the title issued to the 1st Defendant and directing rectification of the title to include her as co-owner with the 1st Defendant in line with Islamic law.

7. Section 82 (a) of the *Law of Succession Act* empowers personal representatives to enforce, by suit or otherwise all causes of action which survive the deceased or arise out of their death.

8. In *Trouistik International Union and Ingrid v Jane Mbeyu & Another* Civil Appeal No. 145 of 1990 [1993] eKLR, cited *in Re Estate of John Karani Keberenge (Deceased)* [2018] eKLR the Court of Appeal stated;

“ To determine who may agitate by suit any cause of action vested in him at the time of his death, one must turn to section 82 (a) of the *Law of Succession Act*. That section confers that power on personal representatives and on them alone. As to who are personal representatives within the contemplation of the Act, section 3, the interpretative section, provides an all-inclusive answer.”

9. The plaintiff has not taken out a grant of representation to the estate of her mother. She therefore lacks the capacity to lay a claim under her in respect of the suit land. The preliminary objection is therefore merited.

10. In conclusion, this suit is hereby struck out as the plaintiff has no locus standi to prosecute the same. Seeing that the main protagonists are alleged to be siblings, then I direct that each party should bear their own costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF OCTOBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Ochieng for Plaintiff

Irungu for 1st Defendant

Mohamed Karach for 3rd Defendant

Court Assistant: Eddel

