



**Njoroge v Njoroge & another (Environment & Land Case 36 of 2023)  
[2023] KEELC 21808 (KLR) (23 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21808 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
ENVIRONMENT & LAND CASE 36 OF 2023**

**YM ANGIMA, J  
NOVEMBER 23, 2023**

**BETWEEN**

**PETER MUNGAI NJOROGE ..... APPLICANT**

**AND**

**RACHAEL NYAMBURA NJOROGE ..... 1<sup>ST</sup> RESPONDENT**

**JOSEPPH NJUGUNA NJOROGE ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**A. Application's Claim**

1. By an originating summons dated 8<sup>th</sup> July, 2020 expressed to be based upon Order 34 of the Civil Procedure Rules (the Rules), Section 28 of the *Land Registration Act*, 2012 and all other enabling provisions of the law, the Applicant, Peter Mungai Njoroge, sought determination of the following questions:
  - a. Whether the Respondents hold in trust Nyandarua/Oljoro Orok Salient/14021, Nyahururu/ Municipality Block VI/495, Nyahururu/Municipality Block 8/803, Nyahururu Municipality/Block 3/311, Laikipia/ Marmanet North/Rumuruti Block 2/8370, Laikipia/ Marmanet North/Rumuruti Block 2/8371, Nakuru/Municipality Block 22/3134 and Motor Vehicle Registration No. KAX 245E for themselves and for the Applicant and Penninah Wangui Njoroge.
  - b. Whether the Respondents have excluded the Applicant from benefiting from the properties which are the subject matter of this suit and whether the Respondents have acted equitably in allocating benefit on the suit properties as trustees and whether the Respondents ought to be compelled to render a just, true and fair account of all proceeds and rental income derived from the properties they hold in trust.



- c. Whether the Applicant is entitled together with other siblings to an equal and equitable share and benefit of the suit properties.
  - d. Whether the trust created herein should be determined and the above stated properties shared equally and equitably while taking into account past benefits and the other beneficiaries to the trust created.
  - e. Who should bear the costs of this originating summons.
2. The said originating summons was based upon the grounds set out on the face of the summons and the contents of the supporting affidavit sworn by the Applicant on 8<sup>th</sup> July, 2020. The gist of the summons was that the Applicant was aggrieved by the conduct of the Respondents who had allegedly denied him his fair share of the estate of his deceased father (the deceased) and prevented him from benefiting from the estate of the deceased in any other manner. The Applicant was also aggrieved by the certificate of confirmation of grant which allowed the Respondents to hold the entire estate of the deceased in trust for themselves and other beneficiaries (including the Applicant) instead of having the estate distributed in the usual manner so that each beneficiary could enjoy his share absolutely.
  3. The Applicant further contended that the Respondents had failed to render an account of the rental income generated from the estate of the deceased. He further contended that since he was an adult of sound mind capable of holding and managing his own share of the estate the Respondents ought not to be allowed to hold the entire estate in trust for all the beneficiaries for an indefinite period.
  4. Finally, the Applicant stated that although he had filed an application for review, variation and setting aside of the certificate of confirmation of grant the same was dismissed by the Magistrates' court for lack of jurisdiction. He did not, however, exhibit a copy of the ruling dismissing his application in his supporting affidavit.

## **B. Respondents' Response**

5. The 1<sup>st</sup> Respondent filed a replying affidavit sworn on 30<sup>th</sup> September, 2020 on her own behalf and on behalf of the 2<sup>nd</sup> Respondent in opposition to the said application. The Respondents conceded that the Applicant was a beneficiary of the estate of the deceased which was administered vide Nyahururu PM Succession Cause No. 38 of 2016 – In the matter of the Estate of Njoroje Mungai (the Succession Cause).
6. The Respondents stated that the Applicant fully participated in the said succession cause and a certificate of confirmation was issued by consent of all the beneficiaries of the estate of the deceased, including the Applicant. The Respondents annexed a copy of the relevant consent which was apparently executed by the Applicant.
7. The Respondents denied that they had been enjoying and utilizing the proceeds of the estate to the exclusion of the Applicant. They denied having converted the proceeds to their personal use as alleged by the Applicant. They further stated that they have been paying school fees for the Applicant's three sons; his house rent; his NHIF medical cover; and contributing towards the subsistence of the Applicant's family. They exhibited various documents to demonstrate the relevant payments and disbursements.
8. The Respondents further contended that the Applicant was not entitled to join the family business since he was not one of the administrators of the estate and that he was an irresponsible person who was out to plunder the estate of the deceased. The Respondents pointed out that the Applicant had



not identified a single need which had not been taken care of by the Respondents. Consequently, they asked the court to dismiss the summons for lack of merit.

### **C. Interested Party's Response**

9. The Interested Party filed a replying affidavit sworn on 04.07.2023 in opposition to the originating summons. She fully associated herself with the response filed by the Respondents in opposition to the summons. It was her response that the certificate of confirmation was issued with the consent of all the beneficiaries of the estate of the deceased including the Applicant. It was further contended that the Applicant had benefitted immensely from the estate through payment of his house rent, children's school fees as well as his upkeep hence he had no reason to complain.

### **D. Trial of the Suit**

10. Prior to the hearing of the suit, it was directed that the originating summons shall be treated as the plaint whereas the Respondents' replying affidavit was to be treated as the defence to the suit. It was further directed that the suit shall be canvassed through oral and documentary evidence. The parties were also given the liberty to file additional documents and witness statements, if deemed necessary.
11. At the trial hereof, the Applicant testified on his own behalf as the sole witness and closed his case. He adopted his witness statement dated 01.11.2021 and his affidavit sworn on 25.10.2019 in support of the originating summons as his evidence in-chief. He also relied upon the exhibits to the supporting affidavit in support of his claim.
12. The Respondents called 2 witnesses at the trial and closed their case. The 1<sup>st</sup> Respondent adopted the contents of her replying affidavit sworn on 30.09.2020 as her evidence in-chief and she produced the annexures thereto as exhibits. The Interested Party also testified at the trial on her own behalf as the sole witness and closed her case. She stated that she was satisfied with the manner in which the Respondents were managing the estate of the deceased and that there was no reason to determine the trust or to revisit the certificate of confirmation of grant.

### **E. Directions on Submissions**

13. Upon conclusion of the trial the parties were given timelines within which to file and exchange their respective submissions. The record shows that the Respondent's submissions were filed on 25.07.2023 whereas the Interested Party's submissions were also filed on 25.07.2023. However, the Applicant's submissions were not on record by the time of preparation of the judgment even though they were on record by the time of delivery of judgment.

### **F. Issues for determination**

14. The court has perused the pleadings, the evidence and documents on record and is of the opinion that the following key issues arise for determination herein:
  - a. Whether the court has jurisdiction to entertain the suit.
  - b. Whether the Applicant is entitled to termination of the trust created in the succession cause.
  - c. Whether the Applicant is entitled to absolute ownership of a share of the estate of the deceased.
  - d. Whether the Respondents should be compelled to render an account to the Applicant in their capacity as administrators of the estate of the deceased.
  - e. Who shall bear costs of the suit.



## G. Analysis and Determination

- a. Whether the court has jurisdiction to entertain the suit
15. The court has considered the material and submissions on record on this issue. The court is aware that the Applicant is essentially challenging the mode of distribution of the estate of the deceased in the succession cause. The material on record shows that the Respondents were to hold all the assets of the estate in trust for themselves and the beneficiaries of the estate. The Applicant contended that he was over the age of 18 hence it would be unfair for his mother and brother to continue managing the entire estate when he was capable of getting his definite and absolute share so that he may manage it on his own.
  16. This court was established pursuant to Article 162(2) & (3) of *the Constitution* of Kenya, 2010 which stipulates as follows:
    - (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to:-
      - (b). The environment and the use and occupation of, and title to, land.”
    - (3). Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).”
  17. Section 13(2) of the *Environment and Land Court Act*, 2011 on the jurisdiction of the court stipulates as follows:
    - (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.
  18. The court is of the opinion that the Applicant’s claim has nothing to do with the use, occupation or title to land per se within the meaning of Article 162(2)(b) of *the Constitution*. The Applicant is essentially aggrieved by the mode of distribution of the estate of the deceased in the succession cause. The Applicant is unhappy with the creation of the continuing trust to be managed by the Respondents. The court agrees with the contention by the Respondents and the Interested Parties that the proper forum for dealing with succession matters is the succession court and not this court. As a result, the court finds and holds that it has no jurisdiction to entertain this suit.
  19. The Applicant must have been aware all along that this matter belonged to the succession court hence the reason he filed the notice of motion dated 25.10.2019 in the succession cause seeking, inter alia, a review, variation or setting aside of the trust and for ascertainment of the shares of the individual beneficiaries. The Applicant was aggrieved then, as he is now, that the 2 Respondents were managing



the entire estate of the deceased on behalf of all the beneficiaries. He also contended in his application before the succession court that the Respondents had failed to render a full and accurate account of the income generated by the estate.

20. The Applicant conceded in his originating summons that his said application for review, variation or setting aside of the trust was rejected by the succession court. There is no indication on record to demonstrate that the Applicant ever challenged the dismissal order on appeal. The court is thus of the opinion that the Applicant was not entitled to ignore the dismissal order and initiate fresh proceedings before the Environment and Land Court for determination of essentially the same issues.

b. Issues (b), (c) & (d)

21. It has been held that the jurisdiction of a court or tribunal to entertain a claim or dispute is so fundamental such that the absence of jurisdiction renders any consequent proceedings a nullity. In the case of “Owners of Motor Vessel “Lilian S” –vs- Caltex Oil (Kenya) Ltd [1989] KLR 1” it was held, inter alia, that:

“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 continuation of proceedings pending other evidence. A court of law must down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

22. Similarly, in the case of Samuel Kamau Macharia –vs- Kenya Commercial Bank & 2 Others [2012] eKLR it was held that:

“A court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter before it is not one of mere procedural technicality, it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings...where *the Constitution* exhaustively provides for the jurisdiction of a court of law, the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.”

23. The court having determined that it has no jurisdiction to entertain the suit cannot proceed to consider and determine the rest of the issues save for costs. The court is of the opinion that the Applicant simply filed his claim before the wrong forum hence he is not entitled to a determination of his claim on merit.

(e) Who shall bear costs of the suit

24. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd [1967] EA 287. Although the Respondents are the successful parties in the suit, the court has noted that all the parties to the proceedings are close family members. In the premises, the court is of the view that each party should bear his own costs of the suit.



## **H. Conclusion and Disposal Order**

25. The upshot of the foregoing is that the court finds and holds that it has no jurisdiction to entertain the Applicant's claim and to grant the orders sought. Accordingly, the originating summons dated 08.07.2020 is hereby struck out in its entirety. Each party shall bear his own costs of the suit.

It is so decided.

**JUDGMENT DATED AND SIGNED AT NYANDARUA THIS 23<sup>RD</sup> DAY OF NOVEMBER, 2023  
AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.**

In the presence of:

Ms. Wangechi Wangare for the Applicant

Ms. Muigai holding brief for Mr. Gakuhi Chege for the Respondents

Mr. Ngechu for the Interested Party

C/A - Carol

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**Y. M. ANGIMA**

**JUDGE**

