



**Wainaina v Njoroge & 2 others (Environment & Land Case 1612 of 2016)
[2023] KEELC 21770 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21770 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1612 OF 2016
MD MWANGI, J
NOVEMBER 23, 2023**

BETWEEN

JANE WAMBUI WAINAINA PLAINTIFF

AND

GRACE WAIRIMU NJOROGE 1ST DEFENDANT

THE REGISTRAR OF LANDS, KIAMBU 2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

RULING

Background

1. The application by the 1st defendant/applicant dated 21st July, 2023 prays for orders to strike out the Plaintiff's suit with costs. The Application is premised on the grounds on the face of it primarily on the basis that:
 - a. The proceedings in this suit are res judicata to the proceedings in Nairobi HCCC 226 of 1982
 - b. The suit property was sold by Public Auction in execution of the decree in HCCC No. 266 of 1982 to the 1st Defendant's husband.
 - c. The decree of the Court in HCCC No. 266 of 1982 and the subsequent orders including the order authorizing the Deputy Registrar to sign transfer forms in favour of the 1st Defendant's husband and eviction of the former owner were issued on merit and by a Court of competent jurisdiction. This Court therefore lacks the jurisdiction to determine the issue of ownership of the suit property or sit on appeal against the orders of the High Court in HCCC No. 266 of 1982.



2. The supporting affidavit of Grace Wairimu Njoroge reiterates and elaborates on the grounds in support of the application as well as attaching the proceedings in HCCC No. 266 of 1982.

Response by the Plaintiff

3. The plaintiff's response to the 1st defendant's application was by way of a replying affidavit sworn on 3rd August, 2023. She denies that her suit is res judicata since she was not a direct party in the high Court suit, HCCC No. 266 of 1982. She further deposes that she never participated directly in the said case as a party. Finally, she asserts that she is not claiming under Wainaina Nganga who was the party in that cause.
4. It is the Plaintiff's case that the issues in this case were not directly and substantially in issue in HCCC No. 266 of 1982.
5. The plaintiff alleges that the 1st defendant/applicant has also raised similar issues in her amended Defence dated 22nd June, 2020. The application by the 1st Defendant is therefore an attempt to dispose of the main suit before it is fully heard and determined. She opines that the application is made in bad faith and only meant to delay the hearing and final determination of this matter.

Court's Directions

6. The Court's directions were that the application be canvassed by way of written submissions. Both the 1st Defendant/Applicant and the Plaintiff complied and filed their respective submissions. I have had the opportunity to read the said submissions which now form part of the record of this court. The 2nd and 3rd defendants did not participate in the application.

Issues For Determination

7. Having carefully considered the pleadings filed by the parties, the application by the 1st defendant, the response by the plaintiff and the submissions on record, I am of the view that the two critical issues for determination in this matter are:
 - A. Whether the court has jurisdiction to entertain the plaintiff's suit as presented.
 - B. Whether the Plaintiff's suit is res judicata HCCC no. 266 of 1982.
8. The third issue would be off course be on the issue of costs.

Analysis and Determination

A. Whether the court has jurisdiction to entertain the plaintiff's suit as presented.

9. In her further Amended Plaint, the Plaintiff pleads that sometimes in the year 2015, she learnt that her land had been sold by way of auction in Civil Suit Number 226 of 1982 against Wainaina Ng'ang'a, her late grandfather. The Plaintiff's claim is that she was given the suit property by the late Wainaina Ng'ang'a way back and issued with a title Deed on the 19th November, 1984. She alleges that she has been in possession of the suit property since then.
10. It is the Plaintiff's case that by the time the High Court case was in Court, the title to the suit property had already been transferred to her. The Plaintiff therefore asserts that if at all the suit property was ever auctioned or sold to any third party, the same was done by way of fraudulent means and misrepresentation. She proceeds to tabulate the particulars of fraud and misrepresentation.



11. The Plaintiff therefore prays for, amongst other orders, a declaration that the sale and transfer of the suit property, Muguga/Nderi/T.8 to the 1st defendant was unlawful and fraudulent and an order of cancelation of the 1st defendant's title.
12. What the plaintiff is seeking in essence is that this court declares the attachment in execution of the decree in HCCC No. 266 of 1982 unlawful and fraudulent and proceed to cancel the resultant title.
13. The million-dollar question is whether I have the jurisdiction to do what the plaintiff has invited me to do.
14. Jurisdiction as defined in *Halsbury's Laws of England* (4th Ed.) Vol. 9 means, "the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for decision."
15. The *Black's Law Dictionary* (9th Ed.) on its part defines jurisdiction to mean the Court's power to entertain, hear and determine a dispute before it.
16. In the well-known case of *Owners of Motor Vessel 'Lilian S -vs- Caltex Oil (K) Ltd* [1989] KLR, Nyarangi, J.A was categorical 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 a continuation of the proceedings."
17. Jurisdiction is an important matter that can be raised at any stage of the proceedings.
18. As I have already pointed out, the Plaintiff prays that this Court declares unlawful, the execution proceedings before the High Court in HCCC No. 226 of 1982.
19. The Supreme Court of Kenya in the case of *Republic -vs- Karisa Chengo & 2 others* [2017] eKLR concurred with the view of the Court of Appeal in respect of the jurisdiction of the two Specialized Courts created under article 162(1) of *the Constitution* of Kenya 2010 to the effect that the Specialized Courts are of equal rank to the High Court and none, as Mrima, J observed in *Constantine Joseph Advocates LL -vs- Attorney General* [2022] eKLR, has the jurisdiction to superintend, supervise, direct, shepherd and or review the mistake, real or perceived of the other. Meaning that the decision of the Environment and Land Court or the Employment and Labour Relations Court cannot be the subject of appeal to the High Court and vice versa. None of these Courts is subject to supervision or direction from another.
20. From the foregoing, it goes without saying that this Court does not have the jurisdiction to superintend, supervise, shepherd or review the mistake, real or imagined of the High Court in HCCC No. 266 of 1982. The Plaintiff must go for relief to the same Court that authorized the execution proceedings leading to the sale of the suit property to the 1st Defendant. The Plaintiff's suit before this court is therefore an abuse of the process of Court. As Mativo J (as he then was) stated in the case of *Satya Bhama Gandhi vs Director of Public Prosecutions and 3 Others* (2018) eKLR,

"Courts are not powerless when it comes to dealing with such misconduct. The doctrine of abuse of process, based upon the inherent come before it, is a power incidental and necessary to the exercise of substantive jurisdiction. That power, together with rules of court and statutory provisions, enables the court to dismiss or strike claims which are frivolous and vexatious."



21. Having found that this court lacks the jurisdiction to entertain the Plaintiff's suit as presented, there cannot be any basis whatsoever for the continuation of these proceedings any further. It will be a waste of precious judicial time. I must without any further ado terminate these proceedings at this stage by striking out the Plaintiff's suit in its entirety with costs to the 1st Defendant.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF NOVEMBER, 2023.

M. D. MWANGI

JUDGE

In the virtual presence of:

No appearance by the parties.

YVETTE

COURT ASSISTANT

