



**Moore (Suing on Behalf of the Estate of the Late Henry Albert Moore) v Patel (As the Administrator of the Estate of Kanji Naran Patel) & 2 others (Environment and Land Case Civil Suit E217 of 2023) [2023] KEELC 21773 (KLR) (21 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21773 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT E217 OF 2023  
LN MBUGUA, J  
NOVEMBER 21, 2023**

**BETWEEN**

**CHARLES HENRY MOORE (SUING ON BEHALF OF THE ESTATE OF THE LATE HENRY ALBERT MOORE) ..... PLAINTIFF**

**AND**

**ARVIND KANJI PATEL (AS THE ADMINISTRATOR OF THE ESTATE OF KANJI NARAN PATEL) ..... 1<sup>ST</sup> DEFENDANT**

**THE LAND REGISTRAR NAIROBI ..... 2<sup>ND</sup> DEFENDANT**

**ONSANDO OSIEMO ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. There is one pending application and 2 preliminary objections for determination herein.

**The Application dated 13.6.2023**

2. The above application was filed by the Plaintiff seeking injunctive orders against the 1<sup>st</sup> defendant restraining him from dealing with the suit property Title No LR 2255/1 and LR No 2255/2.
3. He also seeks orders directed at the 2<sup>nd</sup> defendant to produce the file of the suit properties as well as the deed file and correspondence file/certified copies in respect of the suit properties as well as a declaration that the provisional title issued on 8.12.2021 to the 1<sup>st</sup> Defendant is void and should thus be canceled.
4. The application is based on grounds on its face and on the supporting affidavit of Charles Henry Moore sworn in England on 20.4.2023. He avers that he is currently seeking a grant of representation of the estate of his deceased father, the late Henry Albert Moore who passed away in 1979.



5. He further avers that his late father held a memorandum of charge over parcels LR No 2251/1 and LR No 2255/2, of which in mid-1960's, he sold the said parcels to one Kanji Naran Patel, but he was not fully paid for the purchase price.
6. He avers that during the proceedings in Nairobi HCFP&A/E130/2021, in the Estate of Albert Moore, he discovered that the 1<sup>st</sup> Defendant has since obtained a provisional title dated 8.12.2021 over the suit parcels with the collusion of the 1<sup>st</sup> - 3<sup>rd</sup> Defendants.

#### **Preliminary Objection dated 11.7.2023**

7. In response to the application, the 1<sup>st</sup> Defendant filed a preliminary objection dated 11.7.2023 contending that the suit is statute barred and that the suit is subjudice to the succession matter.
8. The 1<sup>st</sup> Defendant also filed a replying affidavit sworn on 26.7.2023. He avers that Kanji Naran Patel, now deceased bought the two suit parcels from Henry Albert Moore (deceased) at a consideration and the transfer was registered as entry number I.R 6132/11. That Mr. Kanji Patel died in 1995 and Mr. Jayanti Kanji Patel and himself were appointed as joint executors of the estate of Kanji Naran Patel in Succession Cause No 467 of 1996: In the matter of the Estate of the late Kanji Naran Patel (Deceased), of which the suit properties formed part of the estate of Kanji Patel.
9. He avers that sometimes in December 2016, allegations were made that the suit parcels are public land, following which a complaint was made to the National Land Commission and the commission heard the complaint and rendered its decision on 14.3.2017.
10. That aggrieved by the said decision, he instituted Judicial review proceedings vide Nairobi JR No E16 OF 2017 Republic v The National Land Commission seeking orders to quash the said decision of which the court ruled in his favour.
11. He avers that there has been a myriad of actions of fraud and collusion by the Plaintiff and unknown persons with the aim of disentitling him. He points out that to fortify the collusion to disentitle him and the estate of Kanji Naran Patel, the records of the suit parcels could not be traced at the land registry warranting the reconstruction of the said records which led to issuance of a provisional title in accordance with the law.
12. He avers that while the Plaintiff claims to be the last surviving relative of the Estate of Henry Albert Moore, one Gloria Moore also alleges that she is the only daughter of the late Henry Albert Moore and that the said Albert Moore died in 2017 at Coptic Hospital Nairobi but after due diligence, the 1<sup>st</sup> Defendant discovered that Henry Albert Moore has never been admitted to the said hospital. The Said allegations are made by Gloria Moore in Succession Cause E130 of 2021: In the matter of the Estate of Henry Albert Moore.

#### **Preliminary Objection dated 24.7.2023**

13. The Honourable Attorney general filed the above Preliminary Objection to the Notice of Motion dated 13.6.3023 and the entire suit on grounds that the Plaintiff has no locus standi to file and /or maintain the suit as the suit offends Section 82 of the *Law of Succession Act*.
14. In response to the Preliminary Objections, the Plaintiff filed grounds of opposition dated 7.8.2023. He reiterates that being a beneficiary of the estate of the deceased Henry Albert More who holds a memorandum of charge over the suit property, he has an interest and locus standi to bring this suit even though he does not have letters of representation.



15. The application and Preliminary Objections were canvassed by way of written submissions which I have duly considered. I find that although the Plaintiff herein has filed the instant suit on behalf of the Estate of Henry Albert Moore (deceased), he admits that he does not have letters of administration of the said estate.
16. The Estate of a deceased person can only be represented by a person who is duly authorized to do so on behalf of the estate. Only a person who has been issued a grant of letters of administration has capacity to represent the estate of a deceased person as set out under Section 82 of the *Law of Succession Act*, Cap 160 of the Laws of Kenya.
17. In *Virginia Edith Wamboi Otieno v Joash Ochieng Ougo & another* [1987] eKLR the Court of Appeal held that:

“But an administrator is not entitled to bring action as administrator before he has taken out letters of administration. If he does, the action is incompetent at the date of its inception.”
18. In light of the above analysis, I find that the preliminary objection of the 2<sup>nd</sup> defendant dated 24/7/2023 is merited, hence the application of the plaintiff becomes a moot point.
19. The final orders are that the application dated 13.6.2023 and the entire suit are hereby struck out for want of *locus standi*, while the preliminary objection dated 11.7.2023 is marked as spent. Each party is to bear their own costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF NOVEMBER, 2023 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

S.M Mwaura for Plaintiff

Allan Kamau for 2<sup>nd</sup> Defendant

M/s Anyango Opiyo for 1<sup>st</sup> Defendant

Court Assistant: June

