



**Boit (Suing as the Administrator of the Estate of Richard Kipchumba Boit –Deceased) v
Boit (Sued as the Administrator of the Estate of Sila Kibet Boit- Deceased) (Environment
& Land Case E035 of 2023) [2023] KEELC 22325 (KLR) (19 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22325 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E035 OF 2023
JM ONYANGO, J
DECEMBER 19, 2023**

BETWEEN

**PAMELA BOIT (SUING AS THE ADMINISTRATOR OF THE ESTATE OF
RICHARD KIPCHUMBA BOIT –DECEASED) PLAINTIFF**

AND

**GEOFFREY KIRWA BOIT (SUED AS THE ADMINISTRATOR OF THE ESTATE
OF SILA KIBET BOIT- DECEASED) DEFENDANT**

RULING

1. Pamela Boit, the Plaintiff herein filed a Notice of Motion dated June 22, 2023 pursuant to section 1A, 1B and 3A of the *Civil Procedure Act* and order 40 rule 1 and order 50 rule 1 of the *Civil Procedure Rules, 2010* seeking a temporary injunction restraining the defendant/respondent, whether by himself, his servants, agents employees and/or anyone acting on his authority from selling, disposing of, sub-dividing, alienating, wasting, planting, leasing or otherwise intermeddling with the share of Chorornok Farm (sergoit) LR No 9128 belonging to Richard Kipchumba Boit pending the hearing and determination of the suit herein.
2. He also sought an order of restriction /inhibition stopping/restricting any dealing with land parcel known as Chorornok Farm (sergoit) LR No 9128 until the suit is heard and determined.
3. The grounds upon which the suit is based are outlined on the face of the notice of motion and the applicant’s supporting affidavit sworn on the June 22, 2023. In the said affidavit, the applicant deposes that she was appointed as the administrator of the estate of Richard Kipchumba Boit -Deceased through Eldoret HC Succession Cause No E026 of 2022 while the Defendant is the administrator of the estate of Sila Kibet Boit- Deceased, having been appointed as such in Eldoret HC Succession Cause No. 156 of 1992. It is her deposition that the defendant, herself and the late Richard Kipcumba Boit were the children of the late Sila Kibet Boit who died partially testate and partially intestate. That



the late Sila Kibet Boit bequeathed part of his estate being Chorornok Farm (sergoit) LR No 9128 measuring 463.5 acres to his two sons namely, the late Richard Kipchumba Boit and Geoffrey Kirwa Boit (the defendant) but unfortunately Richard died on September 11, 1986 without leaving any child or wife and before their late father's estate was administered. She avers that Richard was only survived by his siblings being the applicant, Margaret Chepchirchir and James Raymond Kipngetich Boit.

4. She deposes that after the confirmation of Grant in Succession Cause No 156 of 1992, the Respondent took possession the whole of Chorornok Farm (sergoit) LR No 9128 and he has refused to give up the share of the late Richard Kipchumba Boit to the applicant and her siblings. She is apprehensive that the respondent may proceed to sell a substantial portion of the said farm to third parties thus dispossessing her and other beneficiaries as a result of which they will suffer irreparable loss which cannot be adequately compensated by an award of damages.
5. In opposing the application, the respondent filed grounds of opposition and a replying affidavit sworn on July 19, 2023. In the grounds of opposition, he states that this suit is *res judicata* as the suit property was transmitted to the respondent *vide* the certificate of confirmation of grant in Succession Cause No 156 of 1992 which has not been challenged.
6. He further contends that to the extent that the applicant is claiming as a beneficiary of the estate of the late Sila Kibet Boit, the suit herein is a succession matter disguised as a land matter and he court therefore lacks jurisdiction to hear and determine the same.
7. The respondent also contends that the applicant is guilty of laches having brought this suit after a delay of 31 years without any reasonable explanation and she is undeserving of the court's discretion. Furthermore, having been aware of the succession proceedings, she deliberately failed to participate in the same and thereby acquiesced therein.
8. The respondent further states that the applicant has fraudulently obtained a grant of letters of administration in respect of the estate of Richard Kipchumba Boit by material non-disclosure and her claim is based on ulterior motives.
9. He avers that the applicant has come to court with unclean hands and she has not met the conditions for the grant of a temporary injunction.
10. In his replying affidavit, the respondent has amplified the grounds of opposition by stating that the applicant fraudulently obtained a grant by concealing the fact that the respondent and his siblings are also beneficiaries of the estate of Richard Kipchumba Boit. He states that he intends to apply for revocation of the said grant.
11. He takes issue with the applicant's assertion that the late Sila Kibet Boit died partially testate and partially intestate as his estate was administered as an intestate estate *vide* HC Succession Cause No 156 of 1992.
12. The applicant further denies that their late father bequeathed part of the suit property to the late Richard Kipchumba Boit as their father's will was contradictory and was not relied on in the succession cause. He avers that contrary to the applicant's claim that the respondent is the sole beneficiary of the suit property, the respondent has always lived on the suit property with his mother and siblings and they have derived their livelihood therefrom while the applicant and her siblings have never resided on it. He denies that Chorornok Farm forms part of the estate of the late Richard Kipchumba Boit.
13. It is the respondent's contention that the applicant got her share of their late father's estate and she is seeking to have a second bite at the cherry after failing to participate in the Succession Cause.



14. He is of the view that the applicant is guilty of laches, as she has come to court after a lapse of 31 years since Succession Cause No 156 of 1992 was filed and she has not demonstrated that she has *prima facie* case with a probability of success.
15. In response to the replying affidavit, the applicant filed a further affidavit sworn on the August 2, 2023 in which she denies some of the averments in the respondent's replying affidavit.
16. The application was canvassed by way of written submissions and both parties field their submissions which I have carefully considered.
17. Before delving into the merits of the application, I have to determine the question of the court's jurisdiction.
18. The Court of Appeal in the case of *Kakuta Maimai Hamisi v Peris Pesi Tobiko & 2 others* (2013) eKLR had the following to say on the centrality of the issue of jurisdiction: -

“So central and determinative is the jurisdiction that it is at once fundamental and overarching as far as any judicial proceedings in concerned. It is a threshold question and best taken at inception. It is definitive and determinative and prompt pronouncement on it once it appears to be in issue in a consideration imposed on courts out of decent respect for economy and efficiency and necessary eschewing of a polite but ultimate futile undertaking of proceedings that will end in barren *cui-de-sac*. Courts, like nature, must not sit in vain.”

19. The Supreme Court of Kenya in the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & others* (2012) eKLR stated as follows: -

“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 counsels 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. Nor can Parliament confer jurisdiction upon a court of law beyond the scope defined by the *Constitution*. Where the *Constitution* confers power upon Parliament to set the jurisdiction of a court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

20. The jurisdiction of the Environment and Land Court is set out under section 13 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.

21. In the instant case, is not in dispute that the applicant is claiming a share of the suit property which she alleges was bequeathed to her late brother Richard Kipchumba Boit. At the centre of this dispute is the manner in which the estate of her late Father Sila Kibet Boit was distributed. Whereas she claims that her late father died partially testate and partially intestate, it is evident that his estate was administered as an intestate estate *vide* Eldoret HC Succession Cause No 156 of 1992. In the certificate of confirmation of grant annexed to the respondent’s replying affidavit, Chorornok Farm (sergoit) LR No 9128 devolved to the defendant/respondent. The applicant admits in her further affidavit, that out of her late father’s estate, she was given a house in Harambee estate and that she was satisfied with the manner in which the said estate was distributed.
22. Although she has a grant in respect of the estate of her late brother Richard Kipchumba Boit, her claim as his beneficiary which suggests that he was entitled to half of the suit property by virtue of their later father’s will is not borne out by the certificate of confirmation of grant issued to the respondent. At no time did the court in Succession Cause No 156 of 1992 refer to the will of Sila Kibet Boit- deceased and it is therefore misleading for the Applicant to bring up the issue of the will long after the estate of her late father has been distributed. At any rate, it is clear from the respondent’s replying affidavit that the suit property was owned by Chorornok Farmers Limited where he was a co-director with one Pramodchanda Patel. The said company was subsequently wound up and the farm was divided between the two directors.
23. In the circumstances, I am constrained to agree with counsel for the respondent this is a succession dispute disguised as a land matter. Further, that the applicant is reprobating and approbating by deliberately concealing some facts and misstating others. What is clear to me is that the applicant is attempting to reopen the succession case relating to her late father’s estate by claiming that this court ought to consider his will in which he apparently bequeathed part of his estate to the late Richard Kipchumba Boit. By so doing, the applicant is asking this court to determine matters, succession which do not fall within the jurisdiction of this court. The case and application as framed by the applicant has more to do with succession than the use, occupation and title to land, which is the mandate of this court. As was held in the case of *Monica Wangari Njiri & 4 others v Eunice Wanjiru Igumba* (2016)eKLR;

“the claim by heirs is an interest as dependants or direct beneficiaries of the deceased and therefore a claim on succession or inheritance”

24. In *Re-Estate of Alice Mumbua Mutua Deceased* (2017)eKLR the court observed that;

“the provisions of the *Law of Succession Act* and the *Probate and Administration Rules* are tailored for resolution of disputes between personal representatives of the deceased and dependants. However, claims by and against third parties meaning persons who are neither



survivors of the deceased nor beneficiaries are for resolution outside the framework set out in the Law of Succession Act and the Probate and Administration Rules. Such have to be resolved through structures created by the Civil Procedure Act and Rules which have elaborate rules on suits by and against Executors and Administrators.”

25. The above case, which was cited by counsel for the applicant is distinguishable from the instant case where both parties are beneficiaries of the estate or property in dispute.
26. In view of the foregoing, the court lacks the jurisdiction to hear and determine this matter.
27. Accordingly, I must down my tools and I need not consider the merits of the application and the other issues raised by the parties in their submissions.
28. The upshot is that both the application and suit are hereby struck out with costs to the defendant/respondent.

DATED SIGNED AND DELIVERED VIRTUALLY AT ELDORET, THIS 19TH DAY OF DECEMBER 2023

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J.M ONYANGO

JUDGE

In the presence of;

1. Mr. Akang’o for the Plaintiff/Applicant
2. Mr. Langat for the Defendant/Respondent

Court Assistant: A. Oniala

