



Shah v The Chief Land Registrar, Nairobi Lands Registry & 2 others (Environment & Land Petition E011 of 2022) [2022] KEELC 14970 (KLR) (21 November 2022) (Ruling)

Neutral citation: [2022] KEELC 14970 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION E011 OF 2022
EK WABWOTO, J
NOVEMBER 21, 2022**

BETWEEN

SUNIL LALCHAND SHAH PETITIONER

AND

**THE CHIEF LAND REGISTRAR, NAIROBI LANDS REGISTRY 1ST
RESPONDENT**

INVESTMENT AND MORTGAGES (I&M) BANK 2ND RESPONDENT

ESTATE OF JOSEPH MWANGI KANYONGO 3RD RESPONDENT

RULING

1. This ruling is in respect to the 1st respondent's notice of preliminary objection dated March 28, 2022. The objection was raised on the following terms:
 - i. That this honourable court has no jurisdiction to hear and determine or issue orders in this case as the dispute is in respect of a charge which fall within the jurisdiction of the High Court
 - ii. That the suit related to a legal charge that this is purely a commercial dispute within the jurisdiction of the High Court.
 - iii. That the suit is misconceived, bad in law and an abuse of the court process.
2. The facts of the case are that in 1997, the late Lalchand Fulchand Shah and his wife (the petitioners parents) were registered proprietors of the suit property- LR No 209/66/41. It is alleged that they provided the suit property as a third party security a short term facility at the 2nd respondent bank for the benefit of their son in law- Suresh Keshvji Shah. The property was not to be charged but only held as an equitable deposit of title. On June 11, 1997, the proprietors received a notice from the 2nd



respondents for recovery of Kshs 30,710,137 plus interests and costs. The recovery of payment was challenged vide a suit HCCC No 2533 of 1997 (Milimani High Court) which is still ongoing.

3. The 1st respondent filed submissions dated July 27, 2022 in which they argued that the court lacked jurisdiction due to the commercial nature of the suit. It was argued that the issues raised did not relate to the use of land. Secondly, it was submitted that the petitioner lacked locus standi by virtue of the death of the proprietors (donor) and consequent exhaustion of the said power of attorney.
4. In submissions dated September 20, 2022 the petitioner averred that the court had jurisdiction to hear and determine the matter as enshrined in the Constitution and Environment and Land Court Act. Further, it was submitted that issue of locus standi had not been raised in the preliminary objection but only put forward in the respondent's submissions. However, if the court were to consider the issue of locus, it should find the petitioner successful under the ambit of article 22(2) of the Constitution.
5. Having perused the written submissions and evidence, it is evident that the issue for determination before this court is whether the preliminary objection is merited.
6. It is trite law that a preliminary objection must be raised on a point of law as reiterated in the case of *Mukbisa Biscuits Manufacturing Co Ltd v West-End Distributors Limited (1969) EA 696*. Having raised the objection on a specific provision of the law, the preliminary objection would be alive and within the jurisdiction of this court.
7. The question before this court is whether the petitioner qualifies as an agent who can rightfully seek audience of the court. My perusal of the petition confirms that the petitioner relied upon the power of attorney dated March 25, 2019 and that the proprietor of the suit property is deceased. It is a well-established principle that power of attorney is extinguished upon death of the donor. By the death of the donor, the power of attorney is automatically revoked. The donee ceases to have such power. The issue is fatal to the life of the instant petition which cannot be saved even by reference to article 22 of the Constitution, in the circumstances, I have no option but to strike out the petition.
8. I must state that in striking out the petition I am alive to the provisions of article 159(2) of the Constitution, but nevertheless it is imperative to take cognizance of the decision of the five-bench Court of Appeal in the case of *Mumo Matemu vs Trusted Society of Human Rights Alliance & 5 Others Civil Appeal No 290 of 2012(2013) eKLR* whereby the honourable Court of Appeal observed as hereunder:

' In our view it is a misconception to claim, as it has been in recent times with increased frequency, that compliance with rules of procedure is antithetical to article 159 of the Constitution and the overriding objective principle under section 1A and 1B of the Civil Procedure Act (Cap 21) and section 3A and 3B of the Appellate Jurisdiction Act (Cap 9). Procedure is also a handmaiden of just determination of cases.'
9. Having considered this issue whose effect renders the petition a non-starter, I have no basis to pronounce myself on the other limbs of the preliminary objection as raised by the 1st respondent.
10. In conclusion, I hereby make the following orders; -
 - i. The petition dated March 10, 2022 be and is hereby struck out.
 - ii. Each party to bear own costs of the petition.
11. It is so ordered.



DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF NOVEMBER, 2022.

EK WABWOTO

JUDGE

In the presence of: -

N/A for the Petitioner.

N/A for the 1st Respondent.

N/A for the 2nd Respondent.

N/A for the 3rd Respondent.

Court Assistant; Caroline Nafuna.

EK WABWOTO

JUDGE

