



Wanyama (Suing as the Personal Representative of the Estate of Wanyama Tindinya Manguya) v Mukunza & 2 others (Environment & Land Case E014 of 2023) [2025] KEELC 4360 (KLR) (28 May 2025) (Ruling)

Neutral citation: [2025] KEELC 4360 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE E014 OF 2023**

**A NYUKURI, J
MAY 28, 2025**

BETWEEN

**GLADYS NASAKA WANYAMA PLAINTIFF
SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF
WANYAMA TINDINYA MANGUYA**

AND

**RONALD MUSUNGU MUKUNZA 1ST DEFENDANT
FEDGAR SANDANGI MUKUNZA 2ND DEFENDANT
OLIVER SIMWA MUKUNZA 3RD DEFENDANT**

RULING

Introduction

1. Before court is a Notice of Motion dated 4th September, 2024 filed by the defendants seeking the following orders;
 - a. Spent
 - b. Spent
 - c. That this suit be struck out as the plaintiff lacks locus standi to bring suit and the court lacks jurisdiction to handle this suit.
 - d. That all consequential orders arising from this suit be set aside.
 - e. That costs of this application as well as costs of this suit be borne by the plaintiff.



2. The application is predicated on the supporting affidavit of Oliver Simwa Mukunza the 3rd defendant. The applicants' case is that the plaintiff filed the suit herein in her capacity as the legal representative of the estate of the late Wanyama Tindinya Munguya by dint of the grant issued to her in Butali PMC Succession Cause No. E022 of 2023. They argued that by a ruling delivered on 27th March, 2024, the court at Butali made a finding that it had no pecuniary jurisdiction to handle the succession cause No. E022 of 2023 and dismissed the same, and that therefore the grant of letters of administration became null and void and so the plaintiff must obtain fresh grant.
3. They also stated that as the disputed parcel is in the name of a deceased person and no grant of letters of administration existed in regard to the deceased's estate, this court cannot determine this matter. They attached a copy of the ruling in Butere Succession Cause No. E022 of 2023 and Notice by the Land Registrar for ascertaining the boundaries.
4. The application was opposed. Gladys Nasaka Wanyama the respondent filed a replying affidavit sworn on 12th September, 2024. She stated that there was no basis for the Honourable Magistrate to hold that he had no jurisdiction to handle the succession cause as what he was to address was an application for stay of proceedings and that there was no valuation report; the magistrate is not a valuer and that the magistrate delved into a matter that was not before him. That the respondent was aggrieved with the magistrate's decision and filed appeal in the High court.
5. She pointed out that although the Honourable magistrate held that he had no jurisdiction to handle the respondent's application, he did not revoke the grant made to the respondent and hence she still has capacity to sue. She stated that these proceedings ought to be stayed pending hearing and determination of the appeal. She complained that parties were not granted opportunity to address the court on the issue of jurisdiction as that issue never arose nor was it addressed by parties in their submissions.
6. The application was disposed by way of written submissions. On record are submissions filed by the applicants dated 4th October, 2024 and those filed by the respondent dated 19th September 2024; both of which the court has duly considered.

Analysis and Determination

7. The court has carefully considered the application, response thereto and submissions. Although the applicants sought for the striking out of the suit on the basis that the plaintiff lacked the requisite capacity to proceed with this suit lacked jurisdiction, the sole reason for this prayer is the trial court in Butere Succession Cause No. E022 of 2023 held that it had no pecuniary jurisdiction to try the matter, yet the plaintiff's suit is predicated on the grant issued in that succession Cause. While the issue of capacity is properly premised on the decision in Butere Succession Cause No. E022 of 2023, no argument was advanced on the issue of jurisdiction. Jurisdiction and want of capacity of the parties are not one and the same thing, since lack of capacity for a claimant does not take away the courts power to determine the dispute starting with the question of capacity. In the instant case, nothing turns on jurisdiction. Therefore, the only issue for determination is whether the ruling in Butali PM Succession Cause No. E022 of 2023 dated 27th March, 2024, took away the plaintiff's capacity to proceed with this suit.
8. Section 82 of the *Law of Succession Act* vests the power to file suit on behalf of the estate of a deceased person on the personal representatives of the estate, having a grant in that regard, and provides as follows;

Powers of personal representatives



Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—

- (a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;
9. In the instant case, the plaintiff filed this suit upon obtaining grant in Butali PMCs Succession Cause No. E022 of 2023. From the evidence on record and more particularly the magistrate's ruling in the above succession cause, it is apparent that the plaintiff herein is the petitioner in the said succession cause while the 3rd defendant herein is the objector in the same. Apparently, by application dated 16th February 2024, the petitioner therein sought stay of proceedings pending hearing and determination of this instant case. Having considered the application, response and submissions, the learned trial magistrate held that he believed that the value of the suit property was about Kshs. 14,000,000/= and found that he had no pecuniary jurisdiction to handle the succession cause. Having made that finding the trial court stated as follows: "I therefore respectfully down tools"
 10. It is clear that the magistrate in Butali PM Succession Cause found that he had no pecuniary jurisdiction to hear the case and proceeded to down tools. However, and most importantly, he did not pronounce himself on the fate of the succession cause and or orders issued therein and therefore without a doubt, the same remains as an active file with intact orders before that court. Unlike in this case where the defendants are seeking for striking out of the suit, in the Butali Succession Cause No. E022 of 2023, the 3rd defendant herein has not sought for, nor obtained the striking out of the said Succession Cause, leaving it alive/active although in a precarious state. The legality or otherwise of the order downing tools is not for this court to decide. That being the position, and as long as the succession suit has not been struck out, and or the court has not declared as null and void the orders issued therein, that suit remains active together with all orders issued therein, including the grant of letters of administration made to the plaintiff herein.
 11. For the above reasons, the instant application having been brought before the final determination and/or the striking out of Butali SPMCC E022 of 2023 or the nullification of the grant made to the respondent; I find and hold that the same was prematurely filed. I therefore dismiss the application dated 4th September 2024 with costs to the respondent.
 12. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 28TH DAY OF MAY, 2025

A. NYUKURI

JUDGE

In the presence of;

Ms Mukhwana for the Defendants/applicants

Mr. Wainaina holding brief for Mr. Momanyi the Plaintiff/ respondent

Court Assistant: M. Nguyai

