



**Gitau v Nguti (Environment & Land Case 191 of 2015)  
[2023] KEELC 22631 (KLR) (3 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 22631 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 191 OF 2015**

**JM ONYANGO, J**

**JULY 3, 2023**

**BETWEEN**

**EVANS NGUTI GITAU ..... PLAINTIFF**

**AND**

**JACINTA WANJIRU NGUTI ..... DEFENDANT**

**RULING**

1. By a Notice of Motion dated 15<sup>th</sup> May, 2023 the Defendant filed an application seeking to strike out the suit herein on the ground that the Limited Grant upon which the suit is predicated has since been revoked by the High Court. The application is premised on the Defendant/Applicant's Supporting Affidavit sworn on 15<sup>th</sup> May 2023 in which she deposes that the plaintiff's Letters of Administration Ad Litem issued vide Eldoret HC Succession Cause No. 42 of 2015 which the Plaintiff used to file this suit was revoked during the pendency of this suit on 30<sup>th</sup> August, 2021. She further deposes that in the circumstances the plaintiff who filed this suit on behalf of the estate of Tirus Gitau Kamanda has no locus standi.
2. The application is opposed by the Plaintiff through his Replying affidavit sworn on 5<sup>th</sup> June, 2023. In the said affidavit he avers that he filed the instant suit pursuant the orders in HC Succession Cause No. 5 of 1984- *In the matter of the estate of Tirus Gitau Kamanda (Deceased)* where he was appointed as one of the substitute administrators of the estate of the deceased on 27<sup>th</sup> November, 2018. He avers that the application is made in bad faith to frustrate the hearing of this case which is part heard so as to deny him and the other beneficiaries of the deceased their share in the land parcel known as Soy Farm No. 10018 measuring approximately 903 acres. That the Defendant had previously filed another application to strike out the suit but the same was dismissed.
3. The application was prosecuted through oral submissions.



4. In his submissions, Mr. Kibii learned counsel for the Defendant/ Applicant relied on the grounds set out on the face of the Notice of Motion and the Applicant's Supporting Affidavit sworn on 15<sup>th</sup> May, 2023. He submitted that the suit herein was commenced through an amended plaint dated 7<sup>th</sup> October, 2021 on the strength of a Limited Grant issued in HC Ad Litem Cause No. 42 of 2015. He further submitted that since the said Grant was revoked on 30<sup>th</sup> August, 2021, the Plaintiff lacked the locus standi to prosecute the suit and the continuity of the suit based on the said Grant was unsustainable. It was his contention that the only Grant that the Plaintiff had produced as an exhibit was the Limited Grant. It was his further contention that the issue of locus standi touches on the jurisdiction of this court. He submitted that the suit was incompetent and it ought to be struck out.
5. On his part, Mr. Angu, learned counsel for the Plaintiff/ Respondent relied on the Plaintiff's Replying Affidavit, the Constitution of Kenya and the Law of Succession Act, orders in ELD HC Succession Cause No. 36 of 2002 and HC Succession Cause No. 5 of 1984. He started by asserting that this case was part heard. He traced the genesis of this case to an order dated 23<sup>rd</sup> December, 2014 in HC Succession Cause No. 36 of 2002 where the Applicant had sought an injunction against various persons including the plaintiff. The High Court advised the said parties to move the court in order to protect their interests. It was pursuant to the said order that the Respondent obtained a Limited Grant in ELD HC Ad Litem Grant No. 42 of 2015 under rules 36 and 37 of the Probate and Administration Rules. The said Grant was issued on the following terms:-

“for purposes of filing or defending a civil suit in the Environment and Land Court against one Jacinter Wanjiru Nguti in respect of the estate of the late Tirus Gitau kamanda and until further representation were granted by this court to Evans Nguti Gitau, he having undertaken faithfully to administer such estate according to law (limited as aforesaid) and until further representation be granted and render a true and just account thereof whenever required by law so to do”
6. He submitted that the said Grant was valid for six months and this suit was filed on 3<sup>rd</sup> July, 2015 within the six months' period. After filing the case the Plaintiff moved the court for substitution of the administrators of the estate of Tirus Gitau Kamanda in HC Succession Cause No. 5 of 1984 and he was duly appointed as one of the administrators on 27<sup>th</sup> November, 2018. He therefore submitted that the suit was lawfully before the court and the Defendant should be allowed to pursue his rights in terms of Article 50 of the Constitution as he has the capacity to prosecute the case. He relied on Re In the Matter of the estate of Moranji Bhanji Dhanak ( Deceased) eKLR which discusses the different types of Grants issued under the Law of Succession Act.
7. In a brief rejoinder, Mr. Kibii submitted that it was a mandatory requirement that one must have capacity to bring proceedings before the court. He reiterated that the Limited Grant issued to the Plaintiff was revoked and the said revocation had not been challenged on appeal. He was of the view that in the circumstances, the Plaintiff had been divested of the capacity to continue with these proceedings.
8. Having considered the application, the affidavits filed by the parties together with the rival submissions, the only issue for determination is whether the plaintiff lacks the locus standi to continue prosecuting the suit.
9. It is not in dispute that the Plaintiff obtained a Limited Grant of Letters of Administration Ad Litem in respect of the estate of Tirus Gitau Kamanda (deceased) dated 26<sup>th</sup> May, 2015 for purposes of filing or defending a suit in the Environment and land Court against Jacinter Wanjiru Nguti in respect of the estate of Tirus Gitau Kamanda. The said Grant was to remain in force until further representation was



granted to the plaintiff. Pursuant to the said Grant, the Plaintiff filed the instant suit against the plaintiff on 3<sup>rd</sup> July, 2015. In the meantime, the plaintiff was appointed to substitute one of the administrators of the estate of Tirus Gitau Kamamda on 27<sup>th</sup> November, 2018 as three of the widows who had initially been appointed as administrators had died and the only surviving one was unable to discharge her duties.

10. The suit herein was set down for hearing on 17<sup>th</sup> November, 2022 when the Plaintiff testified and produced the Limited Grant issued to him. Unbeknownst to him the said Grant had been revoked by the High Court on 30<sup>th</sup> August, 2021 without notice to the parties. However, by the time the suit came up for hearing the plaintiff had been appointed as one of the administrators of the estate of Tirus Gitau Kamanda on 27<sup>th</sup> November, 2018. The Plaintiff annexed a copy of the ruling delivered on 27<sup>th</sup> November, 2018 to his Replying affidavit. It is therefore not true that the Plaintiff lacks the capacity to continue with the suit as he is one of the four administrators of the estate of the deceased. The fact that he did not produce the full Grant after the order for substitution was made does not make him less of an administrator of the deceased's estate. The ruling of the Court delivered on 27<sup>th</sup> November, 2018 is clear and this court takes judicial notice thereof.
11. In the circumstances, the Defendant's application lacks merit and the same is dismissed with no order as to costs.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 3<sup>RD</sup> DAY OF JULY 2023**

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**J.M ONYANGO**

**JUDGE.**

In the presence of;

Mr. Kibii for the defendant/Applicant

Mr. Angu Kitigin for the Plaintiff/Respondent

Court Assistant: H. Akidor

