



**Kinyanjui v Karungu & another (Environment & Land Case
E28 of 2023) [2023] KEELC 18718 (KLR) (12 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18718 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E28 OF 2023
FM NJOROGE, J
JULY 12, 2023**

BETWEEN

MARY WANJIRU KINYANJUI PLAINTIFF

AND

PENINAH INYANJE KARUNGU 1ST DEFENDANT

NAKURU DISTRICT LAND REGISTRAR 2ND DEFENDANT

RULING

1. This is a ruling on an application dated May 3, 2023 filed by the plaintiff under article 40 of the Constitution of Kenya 2010, sections 3, 3A, and 19(2) of the Environment and Land Court Act, and section 68 of the Land Registration Act. It seeks orders that pending the hearing and determination of the present suit an order of inhibition be placed on parcels Nos Shawa / Gicheha Block 4/598 (Kangakinga) - Shawa /Gicheha Block 4/610 (Kangakinga) (inclusive) and any of their resultant subdivisions.
2. The grounds relied on are at the foot of the application and in the supporting affidavit of the plaintiff annexed thereto. They are that the plaintiff is the administratrix of the estate of the late Tom Kamau Karungu, a beneficiary of - Shawa /Gicheha Block 4/292 (Kangakinga) formerly owned by his father the late John Kamau Karungu and the latter's estate is administered to by the 1st defendant; that the succession court has already issued an order that the late Tom and the plaintiff share the suit land equally; that the order was registered in the land registry; that however when the plaintiff commenced the process of subdivision of the land she was informed that the land had been subdivided into 13 portions in 2016 by the defendants and the cadastral map amended but its register with the office of the 2nd defendant has never been closed; that the 1st and 2nd defendants colluded to have the suit land registered in the 1st defendant's name as sole proprietor in 2016; that the suit land was only distributed *vide* the amended grant issued in the succession court in 2022; that any alteration of the register or map effected before the distribution is null and void and fraudulent; that the plaintiff stands to suffer



- irreparable damage should further dealings be registered in respect of the suit land. In her affidavit the plaintiff discloses that some of the resultant subdivisions have already been disposed of to third parties.
3. The motion is opposed by the 1st respondent through her sworn replying affidavit dated May 11, 2023. Her response is that Tom died intestate; that John Kamau Karungu (not John Ngige Karungu) is a stranger to her and has never owned the suit land; that the applicant has concealed the existence of an appeal in the Court of Appeal regarding the amendment of the grant cited by the applicant; that the amended grant never appointed the applicant as administrator; that the applicant has no mandate to subdivide the suit land as she conceded she tried to do without consulting the 1st defendant; that the suit land, then known as LR No Shawa /Gicheha Block 4/292 (Kangakinga) (and here I think she meant Shawa /Gicheha Block 4/229 (Kangakinga)) was initially owned by John Ngige Karungu, her late husband who passed on about 7 years after making his will in which he had bequeathed the suit land to Tom and the 1st defendant; that her late husband later on subdivided plot No Shawa /Gicheha Block 4/229 (Kangakinga) into plot Nos 292 and 293 which are not mentioned in his will; that John sold plot 293 and the total proceeds thereof were received by Tom, the applicant's husband; that John also caused plot no 292 to be subdivided into the present minor portions that the plaintiff is complaining about; that before the process of subdivision and registration of mutation were completed John had already entered into various sale agreements and obtained the full or part of the purchase price together with Tom. Some copies of sale agreements and cheques dating back to the year 2011 are exhibited in the application. The copy of certificate of death of John shows that he died on March 18, 2013. The 1st defendant avers that there was a lot of intermeddling by the plaintiff and her husband Tom as some of the transactions were entered into without the late John's authority and some were entered into immediately after his demise; that John had adeemed the bequest over the parcel of land known as 229 as he had caused the same to be converted into properties of different kinds; that parcel number 292 therefore falls under the late John's intestate estate and automatically devolves to her upon intestacy, she being the sole surviving spouse to John, to hold in trust for her children and or their representatives until after her demise and/or remarriage whichever precedes the other; that all that the 1st respondent has done is to ensure that the resultant subdivisions are transferred to the persons to whom they were sold and that the instant application therefore has numerous falsehoods.
 4. The plaintiff filed her further affidavit on May 26, 2023. In it she stated that the succession of the estate of John Ngige Karungu had been determined by a court of competent jurisdiction; that it is not in doubt that in 2016 the suit land was registered in the 1st respondent's name; that the form RLA 19 used to transfer the land to the 1st respondent does not grant proprietorship but allows a transferee to hold the land as administrator only; that the attached sale agreements are mere fabrications. She disputes the allegation that the subdivision of the suit land was done during her late father-in-law's lifetime and asserts it was conducted 3 years after his demise; that the issue arising in the present suit is not of inheritance but whether the entries registering the 1st defendant as owner of the suit land and the subdivision thereof are irregular and liable to be cancelled. She maintained that her late husband's estate is a co-proprietor in common of the suit land.
 5. The parties filed submissions for the disposal of the application upon order of court, and I have taken consideration of those submissions in the present ruling.
 6. There is a dispute as to whether plot No 292 was subdivided in 2016 or before the demise of the deceased and the answer to that question will depend on the evidence availed by the parties. It is the case that the 1st respondent has already exhibited copies of cheques dated issued to the deceased in his name prior to his demise. Copies of bank statements have also been provided showing the same state of affairs. What matters is whether at the trial of the said issue any party will be able to demonstrate that the sales represented by that transactional documentary evidence arose in respect of subdivisions



- of the suit land, in which case the trial court will be in a position to decide whether it is the deceased who conducted the subdivision before his demise or not. At the present moment the claims of both parties can not be verified on the basis of affidavit evidence; these are issues that should go to hearing.
7. The question of whether or not the land register for the suit property was closed on subdivision, and the implications of non-closure also arise in the present suit. It is however clear that the succession court made an order that the suit land (Shawa /Gicheha Block 4/292 (Kangakinga)) be shared between the estate of Tom on the one hand and the 1st defendant on the other. It is not clear from the ruling of the succession court however if the issue of disposal of the land to third parties was raised before it before it arrived at its decision. The 1st defendant also reveals that there is an appeal -Nairobi civil appeal No E457 of 2022- against that decision which disclosure was not made by the applicant herein. In toto, the issue arising herein is whether the court should find the registration in the 1st defendant's name and subdivision of the suit land irregular and issue an order of cancellation thereof.
 8. A battle has already been fought and won or lost over the issue of entitlement to the suit land in an entirely different jurisdiction from that of this court and that also persuades the court that title held by John Ngige Karungu the original owner not being in dispute only the issue of distribution of his estate upon his demise arises. This court can not for that very reason shut its eyes to the existence of an appeal against the succession court decision by Muchelule J. distributing the suit land equally between the plaintiff and the 1st defendant and proceed to determine the present suit as though it were a pure land title ownership dispute between total strangers. Doing so may lead to disorder and embarrassment where this court's decision and the Court of Appeal decision may end up being at cross-purposes and consequently spawn more unnecessary litigation. For example, it is axiomatic that this court can not stay or consciously overrule in advance the proceedings of and decision at the Court of Appeal and perchance that court overrules the decision of the succession court, the 1st defendant will be reinstated as the person who by virtue of intestate succession the suit land devolves to. However, if the Court of Appeal rules in favour of the applicant herein, the issue of whether the registration in the name of the respondent, subdivision and disposal of portions of the suit land was irregular will come up and be decided in the appeal itself for the purpose of disposal of the dispute to finality. The unfortunate bit is that this court can not at the moment tell how much of the evidence of subdivision and disposal and third party involvement through sale went before Nbi High Court succession cause 2621 of 2013 in opposition to the application dated November 20, 2011 by the present plaintiff.
 9. For the present moment, the case by the plaintiff is quite appealing and has all the hall marks of a juicy land dispute emerging for this court's determination, but the plaintiff herein not having claimed that she is entitled to the suit land by means other than succession to John Ngige Karungu's estate, the hard and I believe quite unpalatable truth for her is that the dispute remains within the realm of succession and an appeal, Nairobi civil appeal No E457 of 2022 having been filed by her adversary, it would be improper for this court to pre-empt the decision of the Court of Appeal thereon. She is bound to await her fate before that court.
 10. Consequently, I find that the application dated April 8, 2023 lacks merit and it is hereby dismissed with costs to the 1st respondent only. It is only just that I do not strike out the present suit at the present juncture, but to enable court focus on other conflicts, I must restrain the gallant gladiators from further mortal combat in the corridors of this court while their more fitting arena is before the appellate court. Consequently, I order all the proceedings in this matter stayed pending the hearing and determination of the Nairobi civil appeal No E457 of 2022.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 12TH DAY OF JULY, 2023.



MWANGI NJOROGE
JUDGE, ELC, NAKURU

