



Gatatha Farmers Company Limited v Chemtingei & 3 others; Kaitet Tea Estates (1977)Limited & another (Interested Parties) (Environment & Land Case 9 of 2023) [2023] KEELC 20564 (KLR) (11 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20564 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 9 OF 2023
FO NYAGAKA, J
OCTOBER 11, 2023**

BETWEEN

GATATHA FARMERS COMPANY LIMITED PLAINTIFF

AND

SIMATWA CHEMTINGEI 1ST DEFENDANT

ODUORI CHONGORE 2ND DEFENDANT

THE ESTATE OF OLOIRO OKOYO 3RD DEFENDANT

OTIENO OKIRO 4TH DEFENDANT

AND

KAITET TEA ESTATES (1977)LIMITED INTERESTED PARTY

ENDEBESS ESTATE PRIMARY SCHOOL INTERESTED PARTY

RULING

1. When this matter came up before me on 9/10/2023 for the hearing of a preliminary objection filed by the 1st interested Party the 4th defendant who filed this suit informed the court that he had filed a Power of Attorney and wish the donee to represent him. The court inquired from him when he had done that and whether or not he had served the same. He answered that he had since served the same on all the Advocates through their emails, and that the document had been filed on 04/10/2023. The court placed the file aside and waited for the document to be placed in the file. Meanwhile learned counsel for the other parties were given time to confirm service. This they all did and the document filed was placed in the court file.



2. The 4th defendant argued that the Power of Attorney he filed was properly before court and that it was in compliance with the law. When called upon to inform the court whether the document had been filed and registered with the relevant government office before filing in court he admitted that it was not registered but argued further that all that he needed to do was to sign the Power of Attorney and file it, which he had done. He stated that he was a layman and that in the interest of justice he be permitted to proceed through the donee. He submitted that in the alternative he should be permitted to withdraw the document and file a registered one.
3. Learned counsel for the plaintiff submitted that he did not have an issue with the 4th defendant being represented by the donee. However, the Power of Attorney needed to be first registered in the relevant government office. On his part, learned counsel for the Interested Party submitted that the 4th defendant should not be allowed by the court to be represented by an individual in whose favour a proper document had been drawn and filed. He recalled that the 4th defendant had a history of filing many applications against his client and his client did not wish to see the matter stay in court for long due to technicalities. He submitted that on that basis it was incumbent and obligatory on the 4th defendant to appoint the said Attorney in a proper manner so that there would be proper proceedings before the court.
4. I have considered the issue before me. The same is whether the document referred to as a Power of Attorney is one indeed, and whether the said document is properly before court hence to base the permission of court to be given to the ‘donee’ to represent the 4th defendant.
5. The law regarding representation of parties in a matter is to be found in the [Civil Procedure Rules 2010](#). Order 9. Under Order 9 Rule 1 provides for appearance, applications or the act of any matter in court being conducted to be by the party in person or recognized agent, or advocate duly appointed in that behalf. Order 9 Rule 2 then defines who recognized agents or parties may be. In terms of the Rule, the agents can be persons holding Power of Attorney authorizing them to make such appearance, applications or do such acts on behalf of parties, or in case of businesses persons carrying on trade or business for and in the names of persons or parties not resident within the local limits of the jurisdiction of court but that has to be limited to that business venture only, or if the party is a corporation then an officer of the corporation duly authorized under the corporate seal.
6. Thus, if I understood him well, for the instant case the 4th defendant wishes to appoint the donee of the Power of Attorney in terms of Order 9 Rule 2(a) of the C.P.R. The question that arises is, how is an agent appointed in terms of the provision qualified to be a holder of such a power? The [Civil Procedure Act](#) and Rules do not provide for the manner of appointment of such agent by way of qualification or process. Needless to say, that a Power of Attorney goes to the root of the capacity of the person alleged to be the holder or donee of the power. Without a proper Power of Attorney, the person purporting to hold the power does not have the legal authority or capacity to do any act for and on behalf of the donor or party. This court will not at this stage delve into defining and giving the various types of Power of Attorney.
7. For the instant case, what is relevant is for this court to determine then how the purported should have had the proper donation of the power, if at all he does not have a proper one. The starting point such a situation is to appreciate the fact that any suit or matter filed in any court is an act open to and can be for public scrutiny. It goes without saying that public policy requires that the person by or against whom the matter is brought be a real one and not fictitious. Also, save for situations where for privacy reasons the names of parties are “veiled”, for instance by use of initials of the(ir) names, the parties’ identities ought to be available for the public to see and know, if it desires. Therefore, where an individual party(ies) decides to appoint an agent, it also goes without saying that such an agent should, as is the case



for Advocates or agents of business owners as is provided for in Order 9 Rule 2(b), or representatives of corporations, the party's appointee should be legally recognized, identifiable and verifiable. How is that done? In my view, such a document ought to be drawn, signed by the donor and duly registered in terms of the law. The law in Kenya on registration of documents is the [Registration of Documents Act](#), Chapter 285, Laws of Kenya. Section 4 of the Act provides for documents to be registered. It makes it compulsory for documents that confer interest or purport to confer, declare, limit or extinguish any right or interest or title where vested or contingent in or over immovable property, other than testamentary documents, to be registered. It provides for exceptions. Section 48 of the [Land Registered Act](#), No. 3 of 2012 then provides for registration of Powers of Attorney in respect of land transactions.

8. While section 4 of the [Registration of Documents Act](#) does not specifically mention Power of Attorney, it is clear to me that any instrument which purports to confer upon the donee or right to deal with immovable property must be registered. Powers of Attorney of that nature must be registered since land is immovable property. However, what is not clear to me is why the law is silent on the registration of Power of Attorney which are for doing certain acts other than on immovable property. Be that as it may, basing my understanding of the import of the law on a purposive interpretation of the law relating to recognized agents and attorneys and advocates are alluded to above, powers of attorney ought to be registered in accordance with the provisions of the [Registration of Documents Act](#), irrespective of whether they are designed to confer an interest or limit the same on immovable property or not. This would weed out abuse, improve accountability of the donors and donee, bring certainty in the process of representation parties to suits. Of course, I am alive to the fact that the instant suit involves immovable property and whereas the purported power of attorney is for representation of the 4th defendant in court, much more is the need for registration of the said power of attorney.
9. Turning to the facts of the instant suit, I have carefully perused the documents filed on 04/10/2023. It is titled "Further List of Documents". It is undated, it is not signed. To it is attached another document titled "Specific Power of Attorney". It is a document purported to have been executed by the donor, said to be one Tom Otieno Opondo, of ID No. 1838478. Apart from noting that the document has not been registered as required by law, it is dated 08/06/2023 yet it purports and indicates to be in reference to the instant suit which was filed on 16/08/2023. Moreover, whereas the document purports to be a specific power of attorney, it in fact is a general 'Power' of attorney which purports to give the donee extensive powers to all the properties of the donor and is carefully and subtly worded towards the end to include the suit herein. Since the content of the document does not accord with both its title or heading and the date it was drawn in relation to the facts and dates surrounding the institution of this suit, I find the document to be one drawn by either a conman or a lay person who does not know the import and content of a specific power of attorney. I declare it invalid and void. And just to add, the 'donor' is lucky that he had not registered the document as required by law; he would be in deep trouble as against the wide powers he would have given the 'donee'.
10. My conclusions, as I strike out the document from the record is, if the 4th defendant wishes to appoint a recognized agent, he should seek legal advice rather than using quacks to draw for him documents which can end in having him lose all his properties, if he has any. I thus strike out the document with costs to the plaintiff and interested parties.

RULING DATED, SIGNED AND DELIVERED ONLINE THIS 11TH DAY OF OCTOBER, 2023.

HON. DR. IUR FRED NYAGAKA

JUDGE, ELC KITALE

