



**Maina v Maina (Environment & Land Case E065 of 2023)
[2023] KEELC 20476 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20476 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E065 OF 2023**

**JO MBOYA, J
OCTOBER 5, 2023**

BETWEEN

JOHN GACHARA MAINA APPLICANT

AND

MARGARET WANJIRA MAINA RESPONDENT

RULING

Introduction And Background

1. The instant suit has been filed and or commenced by the plaintiff herein, who claims to be entitled to half share of the property otherwise known as Plot No. A116 Umoja Innercore Section 1 – Nairobi, which property was hitherto owned and registered in the name of one Stephen Maina Gichaga, now deceased.
2. Instructively, it is also appropriate to state that the Defendant in the suit herein is a blood sister of the Plaintiff; and same is contended to also own half share of the suit property, arising from the certificate of confirmation of Grant which was issued vide Nakuru HCC Succession Cause No. 167 of 2008.
3. Nevertheless, a dispute appears to have arisen between the plaintiff and the Defendant herein, pertaining to the extent and scope of their respective shares/ratios over and in respect of the suit property.
4. Consequently and as a result of the foregoing, the plaintiff/applicant has taken out and/or filed an application dated the 17th August 2023; and in respect of which same has sought for the following reliefs (verbatim);
 - i.Spent.
 - ii. It is our prayer that immediately the court directs the collection of the rental income from Plot No. a116 Umoja Innercore Section 1 – Nairobi to be deposited into the courts accounts



pending the dispute resolution over the joint owned property, namely Plot No. A116 Umoja Innercore Section 1 – Nairobi between the plaintiff and the Defendant herein.

- iii. In alternative, we respectfully request the court to order the establishment of a joint account, facilitated by the parties, where the rental income from Plot No. A116 Umoja Innercore Section 1 – Nairobi shall be collected and held in trust pending the resolution of the dispute over the property.
 - iv. We humbly pray that the court orders Margaret Wanjira Maina to provide a just and transparent account of the estate, including detailed financial report/statement.
 - v. It is further our prayer that John Gachara Maina be granted his rightful half share of the rental income from Plot No. A116 Umoja Innercore Section 1 – Nairobi, commencing from January 2020 to the present day amounting to Kes3, 200, 000/= Only.
 - vi. We submit to this courts wisdom and discretion, seeking any further relief that the court deems just and necessary in relation to the property in dispute.
 - vii. The costs of this application be in the cause
5. The instant application is supported by the affidavit of the Plaintiff/applicant sworn on the 17th August 2023; as well as the Further affidavit by the same plaintiff/applicant. In addition, the applicant has also annexed assorted documents, inter-alia a copy of the Grant of letters of administration and the Certificate of confirmation of Grant issued vide Nakuru HCC Succession No. 167 of 2008.
 6. On the other hand, upon being served with the pleadings and the instant application, the Defendant/ Respondent filed a Replying affidavit sworn on the 11th September 2023; and in respect of which same has annexed inter-alia a copy of the will of Stephen Maina Gichaga, now deceased, as well as certificate of confirmation of Grant, issued on the 3rd December 2009, respectively.
 7. Moreover, the application herein came up for hearing on the 28th September 2023; whereupon the advocates for the respective Parties covenanted to ventilate and dispose of same by way of oral submissions. Consequently and in this regard, the advocates thereafter proceeded to and highlighted their respective submissions.

Parties' Respective Submissions:

a.Applicant's Submissions:

8. Learned counsel for the applicant adopted the averments contained in the supporting affidavit, as well as the Further supporting affidavit sworn by the applicant and thereafter same highlighted four (4) pertinent issues for consideration by the Honourable court.
9. Firstly, Learned counsel for the applicant has submitted that the suit property was distributed to both the applicant and the Respondent herein on Equal basis; whereby the applicant and the Respondent both own half shares, respectively.
10. Additionally, Learned counsel for the applicant has submitted that based on the fact that both the applicant and the Respondent own half shares in respect of the suit property, it is therefore deemed that the suit property is therefore Jointly owned and thus each Party is entitled to equal share of the rental income emanating there from.



11. Secondly, Learned counsel for the applicant has submitted that despite the fact that the suit property is Jointly owned, the Respondent herein has chosen to partake of and appropriate the proceeds emanating from the suit property by herself and to the exclusion of the applicant.
12. Thirdly, Learned counsel for the applicant has submitted that the suit property hitherto belonged and was registered in the names of their deceased Father; and hence the Respondent herein cannot lay exclusive rights and/or interests to and in respect of the suit property.
13. Fourthly, Learned counsel for the applicant has submitted that the succession court at Nakuru concluded her task and/or mandate in the distribution of the Estate of the deceased in terms of the Certificate of confirmation of Grant issued on the 3rd December 2009. In this regard, Learned counsel has thus contended that the succession court is therefore divested of the requisite Jurisdiction to revisit the subject dispute.
14. Premised on the foregoing submissions, Learned counsel for the Respondent has therefore invited the Honourable court to find and hold that the application beforehand discloses a prima facie case; and is thus meritorious.
15. Consequently and in this regard, the applicant has implored the court to allow the application and grant the reliefs sought thereunder.

b.Respondent’s Submissions:

16. Learned counsel for the Respondent has adopted and reiterated the contents of the Replying affidavit sworn on the 11th September 2023; and thereafter highlighted two salient issues for consideration by the Honourable court.
17. First and foremost, Learned counsel for the Respondent has submitted that the sharing ratio pertaining to and concerning the suit property, was the subject of the succession cause vide Nakuru HCC Succession 167 of 2008. In this regard, counsel has invited the court to take cognizance of the certificate of confirmation of Grant issued on the 3rd December 2009.
18. Additionally, Learned counsel for the Respondent has further submitted that the succession cause, details in terms of the preceding paragraph, was informed by the Will of the late Stephen Maina Gichaga, now deceased, which bequeathed the suit property to the Respondent in whole.
19. Nevertheless, Learned counsel for the Respondent has submitted that during the confirmation proceedings, an error was made by the Learned Judge, who proceeded to order that the suit property shall belong to the Respondent in “whole”; and similarly made a corresponding order that the suit property shall also belong to the applicant in “whole”.
20. Based on the foregoing, Learned counsel for the Respondent has therefore submitted that there is an error at the foot of the Certificate of confirmation of Grant, pertaining to the beneficial ownership of the suit property, which error can only be corrected and or remedied by the Succession court.
21. Consequently and in the premises, Learned counsel for the Respondent has submitted that this court is therefore divested of the Jurisdiction to address and resolve the sharing ratios, if any, touching on the suit property.
22. Secondly, Learned counsel for the Respondent has submitted that if this court were to endeavor to and speak on the sharing ratio touching on the suit property, this court would be attempting to superintend the decision of the High court as espoused vide the certificate of confirmation of Grant.



23. Furthermore, Learned counsel has also submitted that the determination of the beneficial and/or sharing ratios of the suit property may involve the interrogation and variation of the last Will of the deceased which informed the distribution of the Estate of the deceased. Consequently and in this respect, counsel has implored the court to take cognizance of annexure MWN -1 attached with the supporting affidavit.
24. In a nutshell, Learned counsel for the Respondent has thus implored the court to find and hold that this court is divested of Jurisdiction to entertain not only the application but also the entire suit.

Issues For Determination:

25. Having reviewed the application beforehand, as well as the Response thereto; and upon taking into consideration the oral submissions by/on behalf of the Parties, the critical issue that does emerge and which deserves determination is; whether or not this court is seized of the requisite Jurisdiction to adjudicate upon the subject dispute.

Anaylis and Determination

Issue number 1

Whether this court is seized of the requisite Jurisdiction to adjudicate upon the subject dispute.

26. Before venturing to resolve the issue herein before, it is appropriate to take cognizance of the background and/or circumstances underpinning the dispute beforehand.
27. To start with, there is no dispute that the suit property which is being contested by the applicant and the Respondent, respectively, hitherto belonged and was registered in the name of Stephen Maina Gichaga, now deceased.
28. Subsequently and upon the death of Stephen Maina Gichaga, now deceased, the beneficiaries of the Estate of the Deceased took out and filed succession proceedings vide Nakuru HCC Succession Cause No 167 of 2008, which was ultimately heard and concluded vide certificate of confirmation of Grant issued on the 3rd December 2009.
29. Pursuant to and by dint of the certificate of confirmation of Grant, the suit property was distributed to both the applicant and the Respondent, respectively. However, it is worthy to note that the schedule of distribution showed that the applicant was given “Whole” ; whilst the Respondent was also given “Whole” share.
30. From the schedule of distribution, which is contained at the foot of the certificate of confirmation of Grant, there is no gainsaying that an error was committed by the Honorable Judge, insofar as the said property cannot be granted to two different people, each holding “Whole” share.
31. Other than the foregoing, there is also the issue of the last know Will of Stephen Maina Gichaga, now deceased, which is contended to have been the basis of the distribution of the Estate of the deceased, during the hearing of the succession proceedings. Instructively, the Will of the deceased indicated that suit property was devised and bequeathed exclusively to the Respondent herein.
32. From the contents of the two documents, namely, the certificate of confirmation of Grant and last known Will of the deceased, there appears to be a disconnect in terms of the beneficial ownership of the suit property.



33. Furthermore, the conundrum pertaining to and concerning the beneficial ownership of the suit property has not been made easy by the conflicting scheme of distribution contained at the foot of the schedule, attached to the certificate of confirmation of Grant.
34. Arising from the outlined facts, the question that then becomes apparent and thus worthy of determination is whether this court [Environment and Land Court] ; can take it up upon itself and interpret the scheme of distribution contained at the foot of the certificate of confirmation of Grant and in particular, to over- rule the succession court and thus revise the scheme of distribution; to show that each Party herein holds half share in respect of the suit property.
35. Instructively, it is imperative to underscore that the certificate of confirmation of Grant issued on the 3rd December 2009, arose from the order and/or ruling of Hon Justice W Ouko, Judge (as he then was); and now Judge of the Supreme court of Kenya.
36. To the extent that the certificate of confirmation of Grant was presided over and executed by a Judge of the High court (as he then was), there is no gainsaying that this court cannot by any figment of imagination, purport to revise and/or in any event, over rule the decision of a Judge of the High court. See the holding of the Supreme Court in the case of Republic versus Karisa Chengo [2017] eKLR.
37. Despite the foregoing, Learned counsel for the applicant has invited this court to proceed and hold that both the applicant and the Respondent hold the suit property Jointly and furthermore, that each of the Parties is entitled to half share of the suit property.
38. I am afraid that the submissions by and on behalf of Learned counsel for the applicant are diametrically opposed to and at variance with the schedule of distribution at the foot of the certificate of confirmation of Grant. In any event, the submissions by counsel of the applicant herein, cannot supersede the ruling and by extension the decision of a court of law.
39. Consequently and in view of the foregoing, it is my humble view that for as long as the certificate of confirmation of Grant issued on the 3rd December 2009; remains in existence and without having been rescinded, this Honorable court cannot purport to make any declaration touching on and/or concerning the suit property in the manner sought by the applicant.
40. Additionally, I hold the firm view that the resolution and/or remedy in respect of the subject suit, falls within the purview of the Succession court sitting at Nakuru, who shall be seized of the Jurisdiction to interrogate whether the sharing of the suit property as Whole, in favor of the both the applicant and the Respondent, was erroneous.
41. Similarly, it is only the succession court that would be in a position to interrogate whether the schedule of distribution corresponds with the Testamentary will of the deceased; and if not, to rectify the certificate of confirmation of Grant.
42. Arising from the foregoing, I come to the conclusion that this Honorable court is devoid and divested of Jurisdiction to entertain and adjudicate upon the subject dispute. Absent jurisdiction, a court of law cannot engage with a dispute and/or purport to proclaim any orders thereto.
43. Furthermore, if a court of law without Jurisdiction purports to entertain a suit in respect of which same is divested of Jurisdiction, then the resultant proceedings and the orders arising therefrom, shall be a nullity ab initio.



44. In this respect, it is appropriate to adopt and reiterate the dictum in the case of *Owners of the Motor Vessel "Lillian S" versus Caltex Oil (Kenya) Ltd* [1989] eKLR, where the court stated as hereunder;
- “I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.
45. Most recently, the significance of Jurisdiction and its implication on the competence of a court to entertain a dispute and/or grant orders of whatsoever nature, was adverted to and elaborated upon in the case of *Phoenix of E.A. Assurance Company Limited versus S. M. Thiga t/a Newspaper Service* [2019] eKLR, where the court held thus;
1. At the heart of this appeal is the issue of jurisdiction. It is a truism jurisdiction is everything and is what gives a court or a tribunal the power, authority and legitimacy to entertain any matter before it. What is jurisdiction?
 2. In common English parlance, ‘Jurisdiction’ denotes the authority or power to hear and determine judicial disputes, or to even take cognizance of the same. This definition clearly shows that before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination. If a court therefore proceeds to hear a dispute without jurisdiction, then the result will be a nullity ab initio and any determination made by such court will be amenable to being set aside ex debito justitiae.
46. Quite clearly, the issues at the foot of the instant matter do not fall within the purview and/or competence of the Environment and Land court as established vide the Provisions of article 162(2) of *the Constitution* 2010.

Final Disposition:

47. In my humble view, the dispute which has been brought and/or mounted before the Environment and Land Court stems from the interpretation and/or interrogation of the schedule of distribution contained at the foot of the certificate of confirmation of Grant issued vide Nakuru HCC Succession Cause No. 167 of 2008.
48. Consequently, the only court that can address and remedy the beneficial ownership and/or sharing ratios as between the two beneficiaries of the Estate of the deceased, is the succession/ High court and not otherwise.
49. In view of the foregoing, it is my finding and holding that the entire suit has been mounted and/or placed before a court without the requisite Jurisdiction. In this regard, the entire suit herein be and is hereby struck out.
50. As pertains to costs, it is not lost on this court that the dispute herein pits a brother as against a sister. The disputants herein are siblings. Consequently, the order that commends itself to me is that each Party shall bear own costs. See the holding in the case of *Jabir Singh Rai & 3 Others vs Talochand Singh Rai & 4 Others* (2014)eKLR; where the supreme court espoused the principles applicable to the award of costs.



51. It is so ordered

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF OCTOBER 2023.

OGUTTU MBOYA,

JUDGE

