



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**ELC CASE NO. 19 OF 2019**

**MARY ENOLE NKOLIA.....1<sup>ST</sup> PLAINTIFF/APPLICANT**

**NAISIMAYIE ENE DIKIR.....2<sup>ND</sup> PLAINTIFF/APPLICANT**

**KARSIS ENOLE YENGO.....3<sup>RD</sup> PLAINTIFF/APPLICANT**

*(Suing in their capacity as personal rep. of Parmuat Ole Togom deceased)*

**-VERSUS-**

**ALLAN MUSANKA TOGOM.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**DISTRICT LAND**

**REGISTRAR NAROK.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**THE HON. ATTORNEY GENERAL....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**RULING**

The Plaintiff commenced the suit herein by way of a plaint dated 12<sup>th</sup> March, 2019 seeking for inter alia a permanent order of inhibition to the transfer, change or any other dealings in respect of LR NO. CIS MARA/ILMASHARIANI/MORIJO/408 which forms the estate of Parmuat Ole Togom and a declaration that the transfer without the confirmation of the grant of letters of administration was null and void and an order for rectification of the register deleting the names of Allan Musanka Togom and restoring that of the deceased.

The 1<sup>st</sup> Defendant/Respondent raised a Preliminary Objection to the suit stating that the honourable court lacked jurisdiction to hear and determine the suit as it touches on the estate of the Late Paramuat Ole Togom and the issuance of grant of letters of administration as sought in prayers 2 and 3 of the Plaintiff's application dated 12<sup>th</sup> March, 2019 and hence jurisdiction lies with the Family Division of the High Court.

The Defendant further stated that the orders granted by the court on 13<sup>th</sup> March, 2019 were extreme, harsh and final at the interim stage and hence are ultra vires ab-initio. The Defendant also contends in his Notice of Preliminary Objection that the 1<sup>st</sup> Defendant/Respondent is the registered owner of the suit land and it has not been shown that he obtained his title through fraud or mistake of omission and that the same was allocated to him by virtue of being a member of Ilmashariani Group Ranch.

Lastly, the Defendant contends that the Plaintiff ought to have sued Ilmashariani Group Ranch Officials as the suit does not disclose any cause of action against the 1<sup>st</sup> Defendant.

I have read the Notice of Preliminary Objection and the submissions filed by counsel and from the onset I must point out that the preliminary objection on points of law as the name denotes are objections in law which when raised may be determined instantaneously.

From the points contained in the instant application though they are four points I wish to deal with objections that are purely on matters of law and hence I find that objection 2 and 3 are issues of facts which I will not make any determination.

Having stated above and upon perusal of the submissions made by counsel the issues for determination are two folds that is: -

1. Whether the court has jurisdiction to hear and determine the matter

2. Whether the plaintiff discloses any cause of action

3. Whether a misjoinder of parties to warrant the striking out of the entire suit

From the pleadings filed it is quite evident that the land in issue is a parcel of land situated within the local Jurisdiction of this court which land is currently registered in the name of the 1<sup>st</sup> Defendant and it is the Plaintiff's case that this was part of the estate of the late Paramuat Ole Togom and the 1<sup>st</sup> Defendant rightly states that this being land and property of a deceased person the same is governed by the law of Succession Act which grants the High Court Family Division the jurisdiction to hear and determine the matter and not the Environment and Land Court.

The Jurisdiction of this court is defined and outlined under Article 162 (2) of the Constitution of Kenya and its mandate as defined in the aforesaid Article is to determine disputes relating to environment, and the use and occupation of, and title to land. The constitution is thus clear on the jurisdiction of the court and I find that since this is a matter that relates to the estate of the deceased person which in my mind will be the central issue for determination during the trial this court lacks the requisite jurisdiction to hear and determine the suit herein and I consequently tender the transfer of the suit to the High Court's Family Division.

Having stated so I will not in the circumstances make any determination on the other two issues however, I wish to state that having perused the orders that were issued on 12<sup>th</sup> March, 2019 and more particularly order No. 3 which by the manner in which it is framed looks final orders which I could not possibly grant at the interlocutory stage I agree with the 1<sup>st</sup> Defendant and consequently will vacate the said orders.

Each party shall bear the cost of the application.

**DATED, SIGNED and DELIVERED in open court at NAROK on this 4<sup>th</sup> day of July, 2019**

**Mohammed Noor Kullow**

**Judge**

**4/7/19**

In the presence of:-

N/A by the Plaintiff

Mr Lemein for the 1<sup>st</sup> defendant/respondent

CA:Chuma

**Mohammed Noor Kullow**

**Judge**

**4/7/19**