



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC NO. 208 OF 2017

LILIAN JEROBON KIMUTAI:.....1ST PLAINTIFF/APPLICANT

TIMOTHY KIPRUTO:.....2ND PLAINTIFF/APPLICANT

VERSUS

ARON CHIRCHIR:.....1ST DEFENDANT/RESPONDENT

ABRAHAM KIMUTAI:.....2ND DEFENDANT/RESPONDENT

STANLEY KIMUTAI:.....3RD DEFENDANT/RESPONDENT

THE LAND REGISTRAR

UASIN GISHU COUNTY:.....4TH DEFENDANT/RESPONDENT

RULING

INTRODUCTION

This ruling is in respect of a Preliminary Objection dated 27/ 6/17 by the 1st , 2nd and 3rd defendants on the following grounds:-

1. That the Honourable court is bereft of jurisdiction to entertain this suit as the suit falls within the purview of the Succession court.
2. That the suit is frivolous, vexations and an abuse of the court process.
3. That the 2nd Plaintiff has no *locus standi* to bring the instant suit.
4. That the 2nd Plaintiff has no power of attorney to lodge the instant suit at the behest of the 1st Plaintiff.
5. That no privity of contract has been demonstrated by the Plaintiffs.
6. That the reliefs sought by the Plaintiffs against the 1st , 2nd and 3rd Defendants are untenable.

Counsel for the 1st, 2nd and 3rd defendants argued the Preliminary objection and submitted that this court does not have jurisdiction to hear and determine this matter. He referred the court to the plaint which

indicates that the suit properties belonged to the deceased Kimutai Musa a fact which has not been disputed by both parties. He further submitted that there is no dispute that there is a succession cause in respect of the estate of the deceased being Eldoret succession cause No. 36/16.

Mr. Nyaroso submitted that it is also not disputed that the 1st Plaintiff together with the 1st, 2nd and 3rd Defendants are beneficiaries of the estate of the deceased. He further stated that the two properties have not been listed in the schedule of assets as per paragraph 10 of the supporting affidavit and that the Plaintiffs ought to have filed a suit against the administrators of the estate of the deceased. Counsel submitted that it is clear that the Environment and Land court excludes a property which falls within a succession cause. He therefore urged the court to find that the court does not have the jurisdiction to hear this matter.

Counsel submitted that the 2nd Plaintiff does not have *locus standi* to institute this suit against the defendants and that the plaint does not disclose any right against the defendants. The 2nd Plaintiff states that he is a son of the Plaintiff and this does not give him authority to bring this case on behalf of the 1st Plaintiff.

Mr. Nyaroso further submitted that the replying affidavit has been deponed by the 2nd plaintiff and he does not state whether he has authority to do so or not. It should be noted that the plaintiff filed a supplementary affidavit annexing an authority to act. Counsel submitted that the power to act on behalf of someone in a case can only be done by way of a power of attorney and therefore the letter does not meet the legal requirement. Counsel therefore urged the court to find that the suit is fatally defective and should be dismissed with costs.

Miss Lung'u for the 4th defendant associated herself with the Preliminary objection by the counsel for the 1st, 2nd and 3rd defendants.

In response to the Preliminary Objection Counsel for the plaintiffs urged the court to dismiss it as it lacks merit. He stated that he agreed with the submissions of counsel for the 1st, 2nd and 3rd defendants that the plaintiffs should have filed a suit against the administrators of the estate of the deceased. Counsel submitted that this is such suit which has been brought against the administrators of the estate of the deceased who got a grant of letters of administration dated 29/ 11/ 2016 vide succession cause No. 36/2016.

Mr. Miyenda submitted that the court has jurisdiction to hear this matter as the properties are not in the name of the deceased as per the annexure marked 'AKC1' which shows that the two properties are registered in the name of Keiyo Housing Limited. On the issue of *locus standi* counsel submitted that the authority was donated by the 1st plaintiff to enable him file this suit therefore the 2nd plaintiff has *locus* to file this suit on behalf of the mother. He urged the court to dismiss the Preliminary objection with costs.

ANALYSIS AND DETERMINATION.

The Preliminary Objection by the defendants urges the court to find that it does not have jurisdiction to hear and determine this matter. It is not in dispute that the property in dispute belongs to the Late Kimutai Musa whose estate is subject to a Succession Cause No 36/16. It is also admitted that the deceased is the one who purchased the suit properties in his name from Keiyo Housing Ltd as a member.

The second issue is as to whether the 2nd plaintiff has *locus standi* to bring this suit on behalf of the 1st plaintiff. It is stated in the plaint that the 1st plaintiff is in the United States of America. I notice that the plaintiff filed a letter of authority to act on behalf of the 1st plaintiff vide a Supplementary affidavit after the issue of *locus* had been raised. The suit was filed without such authority on 25th May 2017. The supplementary affidavit was filed on 11th August 2017 after a preliminary objection to the suit had been filed. I find that this does not cure the suit and as such the same was filed without authority.

Mr. Miyianda Counsel for the plaintiff admitted in his submissions that it is true that the suit should have been brought against the administrators of the estate of the late Kimutai Musa which he submitted that this suit is in such respect. I do not agree with Counsel that this suit is brought against the administrators of the estate of Kimutai Musa. The defendants are not described as administrators of the late Musa Kimutai.

Further the suit property is described to be for the late Kimutai Musa whose estate is subject to succession cause No. 36/16 which is admitted by both counsel. It is also not in dispute that the suit property was bought in the name of the deceased as a member of Keiyo Housing Ltd. If the register reads the name of the late Kimutai Musa then the right forum for the issue to be canvassed is the succession cause. If Keiyo housing Ltd is asked to transfer the suit property, then the parties must produce a grant showing that they are entitled by way of transmission.

Counsel submitted that the property is not part of the succession cause, the right place to canvass the issue is vide the succession cause and not this court. I find that this court does not have jurisdiction to entertain this suit as per section 13 of the Environment and Land Court Act which stipulates the mandate of the court. In the case of **The Owners of Motor Vessel 'Lillian S' Vs Caltex Oil Kenya Limited (1989) KLR 1, Nyarangi JA** stated as follows:

“Jurisdiction is everything. Without it, a court has no power to make one step. Where a court has no jurisdiction, there will be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds that it is without jurisdiction.”

From the above case I will also down my tools in this matter as this court has no jurisdiction to entertain this matter. I am also guided by the Mukisa Biscuits case on preliminary objections which deal with points of law. I find that this preliminary objection meets the threshold and I accordingly allow the same.

The suit is hereby struck out with costs to the defendants.

Dated and delivered at Eldoret on this 1st day of November, 2017

M.A ODENY

JUDGE

Read in open court in the presence of:

Mr. Miyianda for the Plaintiff

Mr. Ngumbi for the 4th Defendant

Mr. Koech: Court Assistant

In the absence of:

Mr. Chepkonga for the 1st, 2nd and 3rd defendants.