



REPUBLIC OF KENYA



In re Estate of Benedict Micheal Muya Kimeu (Deceased) (Succession Cause 772 of 2015) [2025] KEHC 1806 (KLR) (12 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1806 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 772 OF 2015
FR OLEL, J
FEBRUARY 12, 2025**

IN THE MATTER OF THE ESTATE OF BENEDICT MICHEAL MUYA KIMEU (DECEASED)

BETWEEN

ANN MUTHONI WAWERU APPLICANT

AND

JACINTA KAVIVI KIMEU RESPONDENT

RULING

A. Introduction

1. Before the court for determination is the summons dated 18th March 2023 filed by the Applicant, without specifying the provisions of law she relies on. The applicant seek for orders that;
 - a. Spent.
 - b. Spent
 - c. That the Honourable court be pleased to order the Administrator/Respondent to, within 30 days of the order, transfer all that property known as Mavoko Town Block 3/44709 to the Applicant herein in exchange for the balance of the purchase price in the sum of Kshs 1,200,000.00/=
 - d. That in default of (b) above, the deputy registrar of this court be directed to execute a transfer of the said property to the Applicant herein on behalf of the administrator. Further, the land registrar, Machakos be directed to accept the transfer documents executed by the deputy registrar and to further exempt the Applicant from the requirement to produce the original title deed in registering the transfer.
 - e. That the cost of the transfer and this application be borne by the respondent personally.



2. The said application is supported by the grounds made on the face of the said Application and the supporting affidavit of the Applicant dated 18th March 2024, and opposed by the respondent through her replying affidavit dated 19th June 2023.

Pleadings

3. The Applicant deposes that in February 2015, she did enter into a land sale agreement with the deceased herein, who agreed to sell to her a portion of Mavoko Town Block 3/76 measuring two (2) acres. Unfortunately, the deceased died before this process was completed, but as an acknowledged purchaser for value, with an established interest in the estate, this portion of property sold was confirmed in her favour, when the final/confirmed grant issued by the court. This property was subsequently subdivided and her portion identified as Mavoko Town Block 3/44709 (hereinafter referred to as the suit property).
4. Over the years, after confirmation of grant, she had pursued the respondent to effect transfer of the property to her, in return of her paying her the pending balance of Kshs.1,200,000/=, but the respondent had been taking her around in circles. In January 2023, she got wind that the respondent intended to sell the suit parcel of land and filed a complaint with the area chief. The respondent was summoned but refused to attend the chief's arbitration meeting to resolve the pending dispute.
5. In March 2023, she conducted a land search and discovered that the respondent had transferred the suit parcel to herself and obtained its title deed. She therefore had no valid reason, for failing to transfer the suit property to her as she had previously violated her fiduciary duties as the estate administrator by delaying and/or refusing to transfer the said property to its rightful beneficiary. It was therefore necessary to compel her to do so through the court.
6. This application was opposed by the respondent, through her replying affidavit dated 19th June 2023. She confirmed that the applicant had entered into an agreement to buy the suit property with her deceased husband, but clarified that as at the time of his death, the applicant had only paid a sum of Kshs.4,300,000/=, leaving a balance of Kshs.2,700,000/= unpaid. Later the applicant added her Kshs.1,500,000/=, which then left a balance of Kshs.1,200,000/= as the unpaid purchase price.
7. She obtained confirmation of grant on 6th October 2017 and on 13th October 2017, deposited the original title deed and all completion documents at the law firm of Makhandia & Makhandia Advocates, who then placed a call to the applicant requesting her to settle the balance of the purchase price outstanding.
8. The applicant never did so, despite several reminders and ignored phone calls. Finally, her patience ran out and she collected the completion documents from their joint advocates on 24th August 2020. It was the applicant who had violated the agreement and failed to keep the timelines agreed upon and had no right to purport to subdivide the suit property and sell portions to third parties without her permission and authority.
9. In conclusion the respondent stated that, she should be allowed to sell the suit property and refund the applicant the monies already paid less 10% penalty and other expenses incurred.

B. Analysis and Determination

10. I have considered all the pleadings filed concerning the summons dated 18th May 2023, and the respective submissions filed by the parties and unfortunately for the applicant, find that what is up for determination is a land ownership dispute, which is a matter beyond the purview of this court.



11. The Court of Appeal in *Jamal Salim v Yusuf Abdulahi Abdi & another* Civil Appeal No 103 of 2016 [2018] eKLR stated as follows: -Jurisdiction either exists or it does not. Neither can it be acquiesced or granted by consent of the parties. This much was also appreciated by this court in *Adero & another v Ulinzi Sacco Society Limited* [2002] 1 KLR 577, where the court stated as follows;

- 1)
- 2) The jurisdiction either exists or does not ab initio ...
- 3) Jurisdiction cannot be conferred by the consent of the parties or be assumed on the grounds that parties have acquiesced in actions which presume the existence of such jurisdiction.
- 4) Jurisdiction is such an important matter that it can be raised at any stage of the proceedings even on appeal.

12. On the source of a court’s jurisdiction, the Supreme Court of Kenya in *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & others* (2012) eKLR stated as follows: -

A court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsels for the first and second respondents in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality, it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings ... where the Constitution exhaustively provides for the jurisdiction of a court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.

13. In *Re; Estate of Atibu Oronje Asioma (Deceased) (Succession Cause 312 of 2008)* [2022] KEHC 11046 (KLR) (22 July 2022) (Ruling), the Court stated:

“The design of the Law of Succession Act was that the mandate of the probate court was limited to distribution of the assets, and where a dispute arose on ownership of any asset, then the same should be placed in another forum, and not the succession cause, for litigation and determination. That was the spirit of rule 41(3) of the Probate and Administration Rules. Succession proceedings were not appropriate for determining disputes between the estate and third parties over title to or ownership of assets placed before the court for distribution. Besides the provisions of the Law of Succession Act and the Probate and Administration Rules, the applicants had to also contend with the Constitution of Kenya, 2010 (Constitution), so far as the jurisdiction of the High Court was concerned, with respect to disputes over title to land and trusts over land related to title to the land. Article 162(2) of the Constitution envisaged a court with jurisdiction to handle disputes relating to title or ownership of land.

Under article 165(5) of the Constitution the High Court should not exercise jurisdiction over the matters to be placed under the court contemplated by article, 162(2). The court envisaged in article 162(2) was subsequently established under the Environment and Land Court Act, to handle the disputes stated in article 162(2). The Land Registration Act and



the Land Act identified the Environment and Land Court as the court for the purposes of disputes relating to matters touching on land, including registration, which was at the core of the instant application. Those provisions were in sections 2 and 101 of the Land Registration Act and sections 2 and 150 of the Land Act. Section 47 of the Law of Succession Act did not grant the High Court elastic jurisdiction to grant such orders as it pleased. It had been equated with section 3A of the Civil Procedure Act as saving the inherent powers of the court. Section 47 of the Law of Succession Act merely stated that the High Court had jurisdiction to deal with applications and determine disputes that arose over matters that were governed by the Law of Succession Act, and pronounce decrees and make orders as could be expedient, in the context of the provisions of the Law of Succession Act. It did not confer jurisdiction to handle disputes and applications that were not provided for under the Law of Succession Act. Inherent power was not saved under section 47 of the Law of Succession Act, but under rule 73 of the Probate and Administration Rules. The High Court could only exercise jurisdiction, according to section 47, with respect to the matters covered by or provided for under the Act. It said no more than that. The Law of Succession Act was divided into 8 parts, and the High Court was limited to handling applications that arose with respect to the matters that were governed in those 8 parts. The jurisdiction of the High Court came out clearly when juxtaposed against that of the Magistrates Courts as set out in section 48(1) of the Law of Succession Act. The jurisdiction of the Magistrate’s Court was not as wide as that of the High Court.”

14. The dispute herein falls squarely within the ambit of the Environment and Land Court as both parties claim ownership of the suit property, and/or are entitled to ownership thereof. There is also the preliminary issue of who failed to uphold their side of the bargain, leading to the arising dispute. Those issue have to be determined by the Environment and Land Court as mandated under Section 4 as read with Section 13 of the Environment and Land Court Act, 2011 and not this court which has limited jurisdiction of identifying the deceased estate and distributing the said estate to the right beneficiaries.

Disposition

15. The upshot is that the chamber summons dated 18th March 2023 lacks merit and the same is dismissed with no orders as to costs.
16. The Applicant is directed to file her claim, seeking enforcement of the sale agreement over Mavoko Town Block 3/44709 at the Environment and Land court, which has jurisdiction to deal with the matter.
17. It is so ordered.

RULING WRITTEN, DATED AND SIGNED AT MARSABIT THIS 12TH DAY OF FEBRUARY 2025.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 12TH DAY OF FEBRUARY 2025.

In the presence of;

No appearance for Applicant

No appearance for Respondent

I.Jabo Court Assistant

